TEXAS REGISTER

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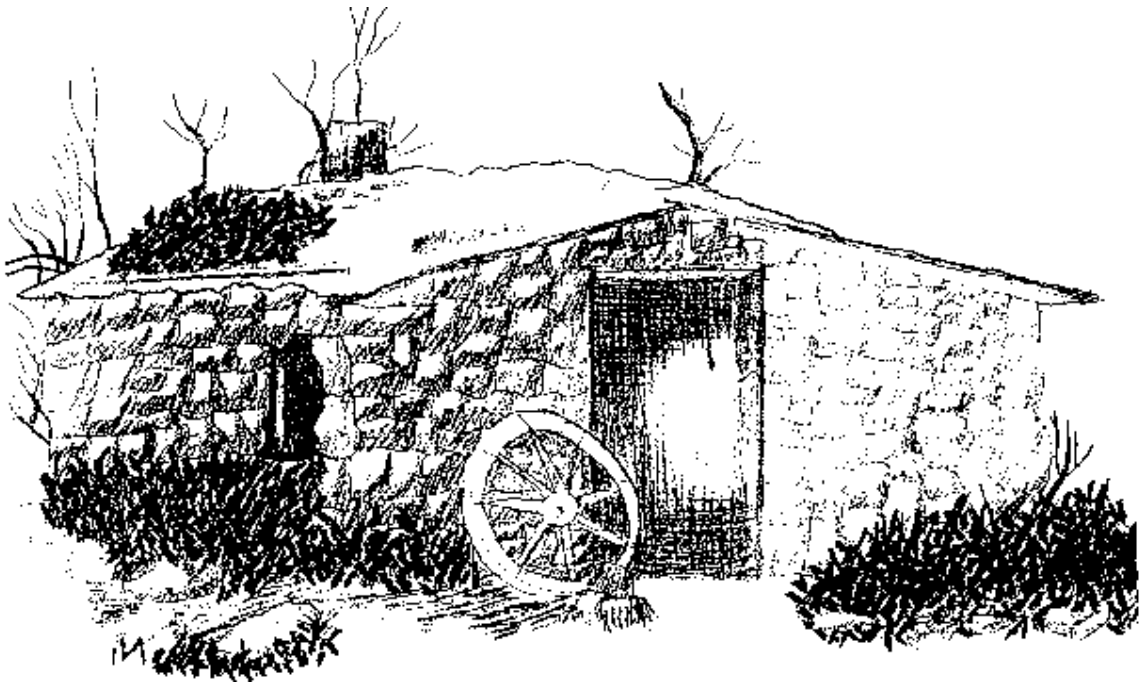

This month's front cover artwork:

Artist: *Chad Dieter*
7th grade
Lindsay ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

We will display artwork on the cover of each *Texas Register*. The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*. The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register*.

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ATTORNEY GENERAL

PROPOSED RULES

WITHDRAWN RULES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.

Open Records Decision No. 670

ORQ-56 (ID# 140643) February 5, 2001

Mr. G. Chadwick Weaver, First Assistant City Attorney, City of Midland, 300 N. Loraine, Rm. 320, P.O. Box 1152, Midland, Texas 79702-1152

Re: What information is excepted under section 552.117(2) of the Government Code and whether a governmental body may withhold the information without requesting a decision from the Attorney General.

Summary: All governmental bodies covered by the Public Information Act may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of "peace officer" set forth in article 2.12 of the Texas Code of Criminal Procedure or "security officer" in section 51.212 of the Texas Education Code, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies. This decision as to this type of information is a "previous determination" under section 552.301(a) of the Act.

TRD-200100789
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 7, 2001

♦ ♦ ♦

Open Records Decision No. 671

ORQ-57 (ID# 137887) February 5, 2001

No requestor. Issued under authority of section 552.011 of the Government Code.

Re: The Ellis County District Clerk currently produces a weekly index report that is available to the public and contains certain categories of information about the cases in District Court. The District Clerk has received a request for additional categories of information to be included in the weekly index report. Complying with the request would require the District Clerk to make data manipulation changes to a computer database, which contains the additional categories of information. The issues presented are thus (1) whether the request at issue constitutes a request for public information under the Public Information Act (i.e., whether the information at issue is "public information" as defined in section 552.002 of the Government Code or is information of the judiciary that is thereby excluded from the requirements of the Public Information Act by section 552.0035 of the Government Code) and (2) whether the Public Information Act requires the District Clerk to make data manipulation changes to produce the requested information.

Summary: The information contained in the weekly index reports produced by the Ellis County District Clerk's office is derived from a case disposition database that is "collected, assembled, or maintained . . . for the judiciary." Gov't Code § 552.0035(a). Therefore, the information contained in weekly index reports is not public information under the Act. The Act imposes no statutory duty on the District Clerk to add categories of information to the weekly index reports.

TRD-200100790
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 7, 2001

♦ ♦ ♦

Open Records Decision No. 672

ORQ-58 (ID# 141497) February 5, 2001

The Honorable Elton Bomer, Secretary of State of Texas, P.O. Box 12697, Capitol Station, Austin, Texas 78711

Re: Whether section 521.044 of the Transportation Code prohibits the Texas Department of Public Safety ("DPS") from including an individual's social security number in the categories of information that DPS provides to the Secretary of State pursuant to section 62.001 of the Government Code.

Summary: Subsection (a) of section 521.044 of the Transportation Code authorizes the use and disclosure of social security numbers that appear on driver's license applications in the custody of the Texas Department of Public Safety ("DPS") only to (1) the child support enforcement division of the Attorney General's office, or (2) another state entity responsible for enforcing the payment of child support. Subsection (f) of section 62.001 of the Government Code requires DPS to furnish

social security numbers in its possession to the Secretary of State on or before the first Monday of October of each year for the purpose of reconstituting the jury wheel. Because the two statutes are irreconcilable and because subsection (f) of section 62.001 of the Government Code is the later-enacted provision, it prevails as an exception to subsection (a) of section 521.044 of the Transportation Code.

TRD-200100791
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 7, 2001

♦ ♦ ♦

Request for Opinions

RQ-0340-JC

Mr. Gary L. Warren, Sr., Executive Director Texas Commission on Fire Protection 12015 Park 35 Circle, Building F, Suite 570 Austin, Texas 78755

Re: Use of unexpended balances in the Loan Repayments Revolving Fund of the Commission on Fire Protection (Request No. 0340-JC)

Briefs requested by March 1, 2001

RQ-0341-JC

The Honorable Michael P. Fleming Harris County Attorney 1019 Congress Avenue, 15th Floor Houston, Texas 77002-1700

Re: Validity of an eligibility and financial assistance policy under consideration by the Harris County Hospital District (Request No. 0341-JC)

Briefs requested by February 28, 2001

RQ-0342-JC

The Honorable Frank Madla Chair, Intergovernmental Relations Texas State Senate P.O. Box 12068 Austin, Texas 78711-2068

Re: Whether a governmental body in a groundwater conservation district with a population of less than 50,000 may appoint one of its own members to the district board (Request No. 0342-JC)

Briefs requested by February 28, 2001

For further information, please call 512 463-2110.

TRD-200100812
Rick Gilpin
Assistant Attorney General
Office of the Attorney General
Filed: February 7, 2001

♦ ♦ ♦

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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PRACTICE AND PROCEDURE

The Public Utility Commission of Texas (commission) proposes amendments to various sections of Subchapter P relating to Dispute Resolution, Subchapter Q relating to Post- Interconnection Agreement Dispute Resolution, and Subchapter R relating to Approval of Amendments to Existing Interconnection Agreements and Agreements Adopting Terms and Conditions Pursuant to FTA96 §252(i). In Subchapter P, the commission also proposes new §22.311 relating to Interconnection Agreements Under the Texas 271 Agreement (T2A). Project Number 22678 has been assigned to this proceeding.

The following sections are being amended: In Subchapter P, §22.301, Purpose; §22.303, Mediation; §22.304, Voluntary Alternative Dispute Resolution; §22.305, Compulsory Arbitration; §22.306, Confidential Information; §22.307, Subsequent Proceedings; §22.308, Approval of Negotiated Agreements; §22.309, Approval of Arbitrated Agreements; and §22.310, Consolidation; in Subchapter Q, §22.323, Filing of Agreement; §22.325, Informal Settlement Conference; §22.326, Formal Dispute Resolution Proceeding; §22.327, Request for Expedited Ruling; and §22.328, Request for Interim Ruling Pending Dispute Resolution; in Subchapter R, §22.341, Approval of Amendments to Existing Interconnection Agreements; and §22.342, Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA96) §252(i).

The amendments are proposed to clarify existing procedures and to modify the rules to be more administratively efficient for both the commission and parties. The proposed amendments reduce the number of copies required and allow for the dissemination of information by electronic mail and website to reduce costs; allow for commission staff in mediations to take part in the arbitration or review and approval proceedings unless objected to by the parties; modify timelines for greater efficiency; modify the confidential information requirements to be consistent with the proposed changes to the commission' procedural rules in Project Number 22870, *Rulemaking to Amend Procedural Rules in Subchapters A - O*; establish procedures for motions for reconsideration; delete subparts no longer necessary due to uncontested cases being processed administratively; and other minor changes to better reflect commission practice. Proposed new §22.311 codifies the commission's order relating to interconnection agreements under the Texas 271 Agreement.

Diane Parker, Arbitration Project Manager, Policy Development Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Parker has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be rules that better meet the needs of parties and the commission, codify commission practice and policy and are more administratively efficient. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, April 2, 2001 at 1:00 p.m. in Hearing Room Gee located on the 7th floor.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 40 days after publication. The commission invites specific comments regarding the costs associated

with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 22678.

SUBCHAPTER P. DISPUTE RESOLUTION

16 TAC §§22.301, 22.303 - 22.311

These amendments and new rule are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (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, §14.052 and the federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§22.301. Purpose.

This subchapter establishes the procedures for dispute resolution and approval of agreements pursuant to the commission's authority under the federal[~~Federal~~] Telecommunications Act of 1996 (FTA96).

§22.303. Mediation.

(a) Any party negotiating a request for interconnection, services or network elements under the federal Telecommunications Act of 1996 (FTA96)[~~FTA96~~] §251 may request, in writing, at any time, that the commission assist the parties by mediating any differences that have arisen in the negotiations. Six copies of the request shall be filed with the commission filing clerk and a copy shall be served on each of the other parties involved in the negotiations. The request shall identify the parties involved in the negotiations, the potential issues for which mediation may be needed and, if possible, an estimate of the time period during which mediation will be pursued.

(b) The commission shall notify the parties of the commission employee who is assigned to serve as a mediator. The commission employee assigned to serve as a mediator may [~~not~~]participate in arbitration or review and approval proceedings initiated under this subchapter involving the parties to the mediation, unless an objection is filed by one of the parties no later than ten days following initiation of the arbitration or review and approval proceeding. The mediator will work with the parties to establish an appropriate schedule and procedure for mediating any disputes. The mediator's role is limited to assisting the parties in attempting to reach an agreed resolution of the issues.

(c) Mediation proceedings shall not be transcribed and only parties to the negotiation may participate in the mediation proceeding.

§22.304. Voluntary Alternative Dispute Resolution.

In order to facilitate negotiated resolutions of any dispute concerning a request for interconnection, services or network elements pursuant to the federal Telecommunications Act of 1996 (FTA96)§251[~~of the FTA96~~], the parties are encouraged, but not required, to pursue any method of alternative dispute resolution agreeable to them, including, without limitation, mediation or private binding arbitration, in which the commission is not a direct participant. Agreements reached through the parties' use of alternative dispute resolution methods will be considered as equivalent to negotiated agreements, and will be processed for review and approval pursuant to §22.308 of this title (relating to Approval of Negotiated Agreements).

§22.305. Compulsory Arbitration.

(a) Request for arbitration. Any party to negotiations concerning a request for interconnection, services or network elements pursuant to the federal Telecommunications Act of 1996 (FTA96) §251[~~of the FTA96~~] may request arbitration by the commission by filing with the commission's filing clerk ten[~~13~~] copies of a request for arbitration. The request must be received by the commission during the period from the 135th to the 160th day (inclusive) after the date the local exchange company (LEC)[~~LEC~~] received the request for negotiation from the other negotiating party.

(1) The request for arbitration shall include:

(A) [~~(1)~~] the name, address, [~~and~~]telephone number, facsimile number, and, if available, email address of each party to the negotiations and the party's designated representative;

(B) [~~(2)~~] a description of the parties' efforts to resolve their differences by negotiation;

(C) [~~(3)~~] a list of any unresolved issues and the position of each of the parties on each issue[~~of those issues~~];

(D) [~~(4)~~] a list of the issues that have been resolved by the parties and how such resolution complies with the requirements of the FTA96;

(E) [~~(5)~~] if the request concerns a request for interconnection under §26.272 of this title (relating to Interconnection), the material required by §26.272(g) of this title; and

(F) [~~(6)~~] the most current version of the interconnection agreement being negotiated by the parties, if any, containing both the agreed language and the disputed language of both parties.

(2) Where a request for arbitration does not meet the requirements of this subsection, the arbitrator may consider dismissal without prejudice pursuant to §22.181 of this title (relating to Dismissal of a Proceeding) and order the party to refile.

(b) Response. Any non-petitioning party to the negotiation may respond to the request for arbitration by filing ten[~~13~~] copies of the response with the commission's filing clerk and serving a copy on each party to the negotiation. The response must be filed within 25 days after the commission received the request for arbitration. The response shall indicate any disagreement with the matters contained in the request for arbitration and may provide such additional information as the party wishes to present.

(c) Selection of arbitrator(s)[~~arbitrator~~]. Upon receipt of a complete request for arbitration, the arbitrator(s)[~~an arbitrator~~] shall be selected to act for the commission, unless two or more of the Commissioners choose to hear the arbitration en banc. The parties shall be notified of the commission-designated arbitrator(s)[~~arbitrator~~], or of the Commissioners' decision to act as arbitrator themselves. The arbitrator(s)[~~arbitrator~~] may be advised on legal and technical issues by members of the commission staff designated by the arbitrator(s)[~~arbitrator~~]. The commission staff members selected to advise the arbitrator(s)[~~arbitrator~~] shall be identified to the parties.

(d) (No change.)

(e) Participation. Only parties to the negotiation may participate as parties in the arbitration hearing. [~~The arbitrator may allow interested persons to file a statement of position and/or list of issues to be considered in the proceeding.~~]

(f) Prehearing conference; challenges. As soon as practical after[~~his or her~~] selection, the arbitrator(s)[~~arbitrator~~] shall schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties shall[~~should be prepared to~~] raise any challenges to the appointment of the arbitrator(s)[~~arbitrator~~] or to the inclusion of any issue identified for arbitration in the petition[~~the arbitrability of any issue~~]. If such challenges are not raised at the first prehearing

conference, they shall be deemed waived by the parties. The arbitrator(s)[~~arbitrator~~] shall serve on the parties orders ruling on challenges within five[~~10~~] working days of the first prehearing conference.

(g) Discovery issues. Parties may obtain discovery by submitting requests for information (RFIs), which include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as provided by Subchapter H of this chapter (relating to Discovery Procedures) and as allowed within the discretion of the arbitrator(s). Parties shall file a proposed discovery schedule that accommodates the FTA96 nine-month deadline, taking into consideration relevant commission timeframes including, but not limited to, the time for decision set out in subsection (s) of this section. If any party requests to extend beyond 45 days, all parties must agree to the extension and file a joint waiver to extend the nine-month deadline under FTA96.

(h) [~~(g)~~] Notice. The arbitrator(s)[~~arbitrator~~] shall make arrangements for the arbitration hearing, which shall [~~may not~~]be scheduled within[~~earlier than~~] 35 days after the commission receives a complete request for arbitration. The arbitrator(s)[~~arbitrator~~] shall notify the parties, not less than ten[~~10 working~~] days before the hearing, of the date, time, and location of the hearing.

(i) [~~(h)~~] Record of hearing. The arbitration hearing shall be open to the public. If any party requests it, a stenographic record shall be made of the hearing by an official court reporter appointed by the commission. It is the responsibility of the party ordering[~~desiring~~] the stenographic record to request the commission have an[~~arrange for the~~] official reporter [~~to be~~]present. A party may purchase a copy of the transcript from the official reporter at rates set by the commission. The court reporter shall provide the transcript and exhibits in a hearing to the arbitrator(s)[~~arbitrator~~] at the time the transcript is provided to the requesting party. If no court reporter is requested by a party, the arbitrator shall record the proceedings and maintain the official record and exhibits. Each party to the arbitration hearing shall be responsible for its own costs of participation in the arbitration process.

(j) [~~(i)~~] Hearing procedures.

(1) The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing.

(2) Redirect may be allowed at the discretion of the arbitrator(s), as long as parties have reserved time for redirect.

(3) The arbitrator(s)[~~arbitrator~~] may temporarily close the arbitration hearing to the public to hear evidence containing information filed as confidential under §22.306 of this title[~~subchapter~~] (relating to Confidential Information). The arbitrator(s)[~~arbitrator~~] shall close the hearing only if there is no other practical means of protecting the confidentiality of the information.

(4) For purposes of appeal, all parties shall provide three copies of all exhibits at the hearing.

(k) [~~(j)~~] Rules applicable. The rules of privilege and exemption recognized by Texas law shall apply to arbitration proceedings under this subchapter. The Texas Rules of Civil Procedure, Texas Rules of Civil Evidence, and Subchapters A-O of this chapter are not applicable to proceedings under this subchapter unless specifically referenced in this subchapter.

(l) [~~(k)~~] Authority of arbitrator(s)[~~arbitrator~~]. An arbitrator(s)[~~The arbitrator~~] has broad discretion in conducting the arbitration hearing and has the authority given to a presiding officer pursuant to §22.202 of this title (relating to Presiding Officer).

(m) [~~(l)~~] Time for hearing. The arbitration hearing shall be conducted expeditiously and in an informal manner. The arbitrator(s) may continue a hearing from time to time and place to place. Unless additional time is allowed by the commission or additional information is requested by the arbitrator(s)[~~arbitrator~~], the hearing may not exceed five working days.

(n) [~~(m)~~] Prefiled evidence. Parties to the hearing shall provide their direct cases to the arbitrator(s)[~~arbitrator~~] at least five working days prior to the hearing unless the arbitrator(s)[~~arbitrator~~] establishes a different deadline. Ten[~~Eighteen~~] copies of the direct case shall be filed with the commission filing clerk and a copy shall be provided to each of the other parties to the hearing at the same time it is provided to the arbitrator(s)[~~arbitrator~~]. The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The prepared case shall present the entirety of the party's direct evidence on each of the issues in controversy and shall serve as the party's complete direct case. Except as provided in §22.306 of this title[~~(relating to Confidential Information)~~], all materials filed with the commission or provided to the arbitrator(s)[~~arbitrator~~] shall be considered public information under the Open Records Act, Texas Government[~~Gov't.~~] Code, §552.001, *et. seq.*

(o) [~~(n)~~] Decision point list (DPL) and witness list. Parties[~~At the arbitrator's request, the parties~~] shall file[~~develop~~] a jointly-populated DPL, in a format approved by the arbitrator, no later than five days before the commencement[~~start~~] of the hearing. An electronic copy of the DPL shall also be provided. The DPL shall identify all issues to be addressed, the witnesses who will address each issue, and a short synopsis of each witness's position on each issue, with specific citation to the parties' testimony relevant to that issue. [~~that includes the specific issues to be decided in the compulsory arbitration, the parties' position on each issue and reference to the parties' testimony relevant to that issue. The DPL may be amended before the close of the arbitration hearing, provided that the opposing party has a reasonable opportunity to present evidence on any issue to be added to the DPL.~~] Except as provided in §22.306 of this title, all materials filed with the commission or provided to the arbitrator(s) shall be considered public information under the Open Records Act, Texas Government Code §552.001, *et seq.*

(p) [~~(o)~~] Cross-examination. Each witness presenting written direct testimony shall be available for cross-examination by the other parties to the arbitration. The arbitrator(s)[~~arbitrator~~] shall judge the credibility of each witness and the weight to be given the[~~his or her~~] testimony in part based upon the responses[~~his or her response~~] to cross-examination. If the arbitrator(s)[~~arbitrator~~] determines that a witness' responses are evasive or non- responsive to the questions asked, the arbitrator(s)[~~arbitrator~~] may disregard the witness' testimony on the basis of a lack of credibility.

(q) [~~(p)~~] Clarifying questions. The arbitrator(s)[~~arbitrator~~] or a staff member identified as an advisor to the arbitrator(s)[~~arbitrator~~] may ask clarifying questions at any point during the proceeding and may direct a party or a witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator(s)[~~arbitrator~~], the arbitrator(s)[~~arbitrator~~] shall render a decision on the basis of the best information available from whatever source derived.

(r) [~~(q)~~] Briefs. The arbitrator(s)[~~arbitrator~~] may require the parties to submit post-hearing briefs or written summaries of their positions. The arbitrator(s)[~~arbitrator~~] shall determine the filing deadline and any limitations on the length of such submissions.

(s) [~~(r)~~] Time for decision. The arbitrator(s)[~~arbitrator~~] shall endeavor to issue a final decision on the arbitration within 30 days after

filing of any post- hearing briefs, unless waived by the parties[~~the conclusion of the hearing~~]. The arbitrator(s)[~~arbitrator~~] shall issue a final decision not later than nine months after the date the local exchange company (LEC)[~~LEC~~] received the request for negotiation under the FTA96, unless the deadline is waived by all parties.

(t) [~~(s)~~] Decision. The final decision and report of the arbitrator(s)[~~arbitrator~~] shall be based upon the record of the arbitration hearing. The arbitrator(s)[~~arbitrator~~] may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The final decision and report of the arbitrator(s)[~~arbitrator~~] shall include:

(1) a ruling on each of the issues presented for arbitration by the parties;

(2) a statement of any conditions imposed on the parties to the agreement in order to comply with the provisions of FTA96 §252(c);

(3) a statement of how the final decision meets the requirements of FTA96 §251, including any regulations adopted by the FCC pursuant to §251;

(4) the rates for interconnection, services, and/or network elements established according to FTA96 §252(d);

(5) a schedule for implementation of the terms and conditions by the parties to the agreement; and

(6) a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision, unless the arbitration is conducted by two or more of the Commissioners acting as the arbitrator(s)[~~arbitrator~~].

(u) [~~(t)~~] Distribution. The final decision and report of the arbitrator(s)[~~arbitrator~~] shall be filed with the commission as a public record and shall be mailed by first class mail to all parties of record in the arbitration. On the same day that the decision is issued, the arbitrator(s) shall notify the parties by facsimile or electronic mail that the decision has been issued. If the decision involves 9- 1-1 issues, the arbitrator(s) shall also notify the Commission on State Emergency Communications (CSEC) by facsimile or electronic mail on the same day.

(v) Implementation. Unless modified under subsection (t)(5) of this section implementation of the terms and conditions of the final decision and report shall comply with §22.309 of this title (relating to Approval of Arbitrated Agreements).

(w) Motions for reconsideration. Motions for reconsideration of a compulsory arbitration award shall be filed pursuant to §22.309 of this title.

§22.306. Confidential Information.

(a) General. If any party believes that any material it files with the commission or provides to the arbitrator(s)[~~arbitrator~~] during the arbitration process should be exempt from disclosure under the Open Records Act, it may designate such material as confidential information and submit the information under seal, pursuant to the requirements of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials) and subsection (b) of this section.

(b) Filing under seal. Copies of the material shall be delivered to the filing clerk[~~Filing Clerk~~] of the commission [~~and to the arbitrator~~]in a sealed envelope that is clearly marked on the outside, in letters at least one inch tall, "CONFIDENTIAL AND UNDER SEAL"[~~as containing "Confidential Information"~~]. Each page of the material submitted under seal shall be consecutively numbered and the envelope shall clearly specify the number of pages contained therein. The party designating the material as confidential information shall clearly identify each portion of the material alleged to be confidential information, and provide a written explanation of the claimed exemption. Such explanation may be accompanied by affidavits providing appropriate factual support for any claimed exemption. The claim of exemption shall also indicate:

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

(c) Exemption from disclosure. Material received by the commission or by the arbitrator(s)[~~arbitrator~~] in accordance with this procedure shall be treated as exempt from public disclosure until and unless such confidential information is determined to be public information as the result of an Open Records Decision by the Attorney General, or pursuant to an order of the presiding officer entered after notice to the parties and hearing, or pursuant to an order of a court having jurisdiction.

(d) - (f) (No change.)

(g) Disposition of confidential information. Upon the completion of commission proceedings to review the arbitration agreement pursuant to the federal Telecommunications Act of 1996 (FTA96)[~~FTA96~~] §252 and any appeals thereof, confidential information received by the parties shall be returned to the producing party. Any notes or workproduct prepared by the receiving party which were derived in whole or in part from the confidential information shall be destroyed at that time. Material filed with the commission will remain under seal at the commission and will continue to be treated as confidential information under this subchapter. The commission may destroy confidential information in accordance with its records retention standards.

(h) (No change.)

(i) Reclassification of confidential material. Materials filed as confidential are presumed to be confidential. However, in any disputes regarding whether materials filed as confidential should be reclassified as not being confidential, the party asserting the confidential nature of the materials shall have the burden of proof.

§22.307. Subsequent Proceedings.

A commission employee who has participated as a mediator under §22.303 of this title (relating to Mediation), an arbitrator(s)[~~arbitrator~~] under §22.305 of this title (relating to Compulsory Arbitration), or a staff member designated as an advisor to the arbitrator(s)[~~arbitrator~~] under §22.305(c) may not participate as an ex parte advisor to Commissioners in any subsequent commission proceedings concerning the review and approval of the resulting agreement pursuant to the federal Telecommunications Act of 1996 (FTA96)[~~FTA96~~] §252(e), except in cases where two or more of the Commissioners act as the arbitrator(s)[~~arbitrator~~]. In a proceeding to approve an arbitrated agreement pursuant to §22.309 of this title (relating to Approval of Arbitrated Agreements), the commission or the presiding officer may call upon a commission employee who has participated as an arbitrator under this subchapter to the extent necessary to explain any ambiguities in the arbitrator's final decision.

§22.308. Approval of Negotiated Agreements.

(a) Application. Any agreement adopted by negotiation shall be submitted to the commission for review and approval and may be submitted by any of the parties to the agreement. The parties requesting approval shall submit an application for approval of the agreement by filing ten[~~13~~] copies of the application with the commission's filing clerk and serving a copy on each of the parties to the agreement. Any

agreement submitted to the commission for approval is a public record and no portion of the agreement may be treated as confidential information under §22.306 of this title (relating to Confidential Information). An application for approval of a negotiated agreement shall include:

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

(b) Notice. The presiding officer may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The presiding officer may require publication of the notice in addition to direct notice to affected persons. At the presiding officer's discretion, direct notice may be provided by electronic mail or a web site, provided all affected persons are made aware of the web site. The presiding officer shall determine the appropriate scope and wording of the notice to be provided. In addition to any notice ordered by the presiding officer, the commission shall cause to be published notice of the filing of the agreement in the *Texas Register*.

(c) Proceedings.

(1) (No change.)

(2) Formal review. The presiding officer may determine that a formal review is necessary to determine if the negotiated agreement meets the requirements of the federal Telecommunications Act of 1996 (FTA96)[~~FTA96~~] §252. At a minimum, the commission will allow interested persons[~~, the Office of Regulatory Affairs~~] and the Office of Public Utility Counsel to file written comments, provided such comments are filed within 25 days of the filing of the application.

(d) Comments. An interested person[~~, the Office of Regulatory Affairs,~~] or the Office of Public Utility Counsel may file comments on the negotiated agreement by filing ten[~~13~~] copies of the comments with the commission's filing clerk and serving a copy of the comments on each party to the agreement. As a part of the comments, a person may include a request for a public hearing on the negotiated agreement. The comments shall include the following information:

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

(e) (No change.)

(f) Authority of presiding officer. The presiding officer has broad discretion in conducting the proceeding and has the authority given to a presiding officer pursuant to §22.202 of this title (relating to Presiding Officer). [~~Any discovery allowed by the presiding officer shall be limited to the issues relevant to the proceeding.~~]

(g) Final decision.

(1) Administrative review. The commission delegates its authority to the presiding officer to administratively approve or deny any negotiated interconnection agreements subject to the administrative review process in subsection (c)(1) of this section. The notice[~~Notice~~] of approval or denial shall be issued within 35 days of the filing of the application. If a notice of denial is filed, the notice of denial shall include written findings indicating any deficiencies in the agreement.

(2) (No change.)

[~~(h) Rehearing process regarding administratively approved negotiated agreements.~~]

[~~(1) On the first and fifteenth day of each month, the presiding officer shall file a monthly status report in a project created for that purpose listing all of the negotiated interconnection agreements administratively approved since the previous report.~~]

[~~(2) Motions for reconsideration seeking commission review of any agreement in a status report shall be filed within ten days of the filing of that report. All motions for reconsideration shall state any claimed error with specificity. Motions for reconsideration filed by non-parties will be considered as comments filed by an interested person.~~]

[~~(3) Upon the filing of a motion for reconsideration, the Office of Policy Development shall send separate ballots to each commissioner to determine whether the docket should be placed on an open meeting agenda. If a majority of commissioners ballot to reconsider the motion within five days of its filing, the agreement shall be considered at the next open meeting for which notice of the docket may be properly made. The administratively approved agreement shall be considered approved on an interim basis from the date the presiding officer files the notice of approval until the time to file motions for reconsideration has expired, or if a motion for reconsideration is filed, until considered at open meeting.~~]

(h) [~~(i)~~] Filing of agreement. If the commission approves the agreement with modifications the parties to the agreement shall file two copies, one unbound, of the complete agreement with the commission's filing clerk within ten days of the commission's decision[~~it will be filed in central records, along with the commission's final decision approving the agreement~~]. The copies shall be clearly marked with the control number assigned to the proceeding and the language "Complete interconnection agreement as modified and approved on (insert date)".

(i) Motions for reconsideration.

(1) Limitations. Only parties to the negotiated agreement or the Office of Public Utility Counsel may file motions for reconsideration. Any motions for reconsideration filed by non-parties will be considered as comments filed by an interested person. Issues subject to motions for reconsideration are limited to modifications made to the negotiated agreement.

(2) Procedure. A motion for reconsideration of a negotiated agreement shall be filed within five working days of the issuance of the final order. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery. Responses to a motion for reconsideration shall be filed within three working days of the filing of the motion.

(3) Content. A motion for reconsideration shall specify the reasons why the order is unjustified or improper.

(4) Agenda ballot. Upon filing a motion for reconsideration, the Policy Development Division shall send separate ballots to each Commissioner to determine whether they will consider the motion at an open meeting. The Policy Development Division shall notify the parties by letter whether a Commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting Commissioner(s).

(5) Denial or granting of motion.

(A) If after five working days of the filing of a motion, no Commissioner has by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied.

(B) If any Commissioner has balloted in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the Commissioner may direct by the agenda ballot. In the event two or more Commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.

§22.309. Approval of Arbitrated Agreements.

(a) Application. Any agreement resulting from arbitration shall be filed with[~~submitted to~~] the commission for review and approval in accordance with the arbitrator's requirements within 30 days of the date of the arbitrator's final decision and report, unless otherwise provided by the arbitrator(s)[~~arbitrator~~]. Following the conclusion of an arbitration proceeding under §22.305 of this title (relating to Compulsory Arbitration), the parties shall jointly file an application for approval of the agreement by filing ten[~~13~~] copies of the application with the commission's filing clerk. Any agreement submitted to the commission for approval is a public record and no portion of the agreement may be treated as confidential information under §22.306 of this title (relating to Confidential Information). The application for approval of an arbitrated agreement shall include:

(1) (No change.)

(2) the name, address, [~~and~~]telephone number, facsimile number, and, if available, email address of each of the parties to the agreement, and

(3) (No change.)

(b) Notice. The presiding officer may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The presiding officer may require publication of the notice in addition to direct notice to affected persons. At the presiding officer's discretion, direct notice may be provided by electronic mail or a web site, provided all affected persons are made aware of the web site. The presiding officer shall determine the appropriate scope and wording of the notice to be provided. In addition to any notice ordered by the presiding officer, the commission shall cause to be published notice of the filing of the agreement in the *Texas Register*.

(c) Proceedings. The commission may conduct whatever proceeding it deems necessary in order to review the arbitrated agreement, including, but not limited to, authorizing a presiding officer to conduct an expedited contested case hearing. The commission or the presiding officer may issue a procedural order or a preliminary order establishing additional procedural requirements for the proceedings. At a minimum, the commission shall allow interested persons[~~, the Office of Regulatory Affairs,~~] and the Office of Public Utility Counsel to file written comments, provided such comments are filed within seven days of the filing of the application. The arbitrator(s)[~~arbitrator~~] shall file a recommendation concerning the agreement's compliance with the arbitrator's award and any issues that remain in dispute between the parties.

(d) Comments. An interested person[~~, the Office of Regulatory Affairs~~] and the Office of Public Utility Counsel may file written comments concerning the arbitrated agreement by filing ten[~~13~~] copies of the comments with the commission's filing clerk and serving a copy of the comments on each of the parties to the agreement. Such comments shall be limited to whether the arbitrated agreement meets the requirements of the federal Telecommunications Act of 1996 (FTA96)[~~FTA96~~] and relevant portions of state law. If such comments request rejection or modification of the agreement, the interested person must provide the following information:

(1) (No change.)

(2) specific allegations that the agreement, or some portion thereof:

(A) does not meet the requirements of FTA96 §251, including any Federal Communications Commission (FCC)[~~FCC~~] regulation implementing §251; or

(B) - (C) (No change.)

(3) (No change.)

(e) (No change.)

(f) Final decision. The commission will issue its final decision on the agreement within 45[~~30~~] days of publication of *Texas Register* notice pursuant to subsection (b) of this section [~~following the filing of the application~~]. The commission's final decision may reject the agreement as submitted, approve the agreement as submitted, or approve the agreement with modifications necessary to establish or enforce compliance with other requirements of state law or commission policy. If the commission rejects the agreement, the final decision will include written findings indicating any deficiencies in the agreement.

(g) Filing of agreement. If the commission approves the agreement with modifications, the parties to the agreement shall file two copies, one unbound, of the complete agreement with the commission's filing clerk within ten days of the commission's decision[~~it will be filed in central records, along with the commission's final decision approving the agreement~~]. The copies shall be clearly marked with the control number assigned to the proceeding and the language "Complete interconnection agreement as modified and approved on (insert date)".

(h) Motions for reconsideration.

(1) Limitations. Only parties to the arbitrated agreement or the Office of Public Utility Counsel may file motions for reconsideration. Any motions for reconsideration filed by non-parties will be considered as comments filed by an interested person.

(2) Procedure. A motion for reconsideration of an arbitrated agreement shall be filed within five working days of the issuance of the commission's final order. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery. Responses to a motion for reconsideration shall be filed within three working days of the filing of the motion.

(3) Content. A motion for reconsideration shall specify the reasons why the order is unjustified or improper.

(4) Agenda ballot. Upon filing a motion for reconsideration, the Policy Development Division shall send separate ballots to each Commissioner to determine whether they will consider the motion at an open meeting. The Policy Development Division shall notify the parties by letter whether a Commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting Commissioner(s).

(5) Denial or granting of motion.

(A) If after five working days of the filing of a motion, no Commissioner has by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied.

(B) If any Commissioner has balloted in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the Commissioner may direct by the agenda ballot. In the event two or more Commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.

§22.310. Consolidation.

Consistent with the federal Telecommunications Act of 1996 (FTA96) §252(g), the[~~The~~] commission or the arbitrator(s)[~~arbitrator~~] may, to the extent practical, consolidate separate [~~arbitration~~]proceedings under §22.305 of this title (relating to Compulsory Arbitration) or §22.326 of this title (relating to Formal Dispute Resolution Proceedings) in order to reduce the administrative burdens on parties and the commission. The[~~and the~~] presiding officer may consolidate separate applications

for approval of negotiated or arbitrated agreements as appropriate under §22.34 of this title (relating to Consolidation and Severance). The commission may consolidate the arbitration proceeding and the approval process for any arbitration conducted by the commission.

§22.311. Interconnection Agreements Under the Texas 271 Agreement (T2A).

(a) Acceptance of full T2A.

(1) Any party who accepts the terms of the T2A agreement as approved in Project Number 16251, *Investigation of Southwestern Bell Telephone Company's Entry into the Texas Interlata Telecommunications Market*, Order Number 55, Approving the Texas 271 Agreement, shall notify Southwestern Bell Telephone Company (SWBT) in writing. Within five business days of notification, SWBT shall present the party with a signed interconnection agreement substantively identical to the T2A. Within five days of receipt of the signed interconnection agreement, the party shall sign the interconnection agreement and file a copy of the agreement's executed signature page with the commission.

(2) The signed interconnection agreement shall become effective by operation of law immediately upon filing the executed signature page with the commission.

(b) Acceptance of less than the full T2A.

(1) If a party opts into less than the full T2A, in combination with its own interconnection agreement, taking all legitimate related terms, conditions and prices outlined in the T2A document, the commission's expedited approval process pursuant to §22.341 of this title (relating to Approval of Amendments to Existing Interconnection Agreements) shall apply.

(2) If a party opts into less than the full T2A, in combination with provisions from other commission-approved interconnection agreements, taking all legitimate related terms, conditions and prices outlined in the T2A document, the commission's expedited approval process pursuant to §22.342 of this title (relating to Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA96) §252(i)) shall apply.

(3) If a party opts into less than the full T2A, taking all legitimate related terms, conditions and prices outlined in the T2A document, and negotiates the remaining provisions under FTA96 §252, the commission's approval process pursuant to §22.308 of this title (relating to Approval of Negotiated Agreements) shall apply.

This 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 February 1, 2001.

TRD-200100652
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 936-7308

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SUBCHAPTER Q. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION

16 TAC §§22.323, 22.325 - 22.328

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (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, §14.052 and the federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§22.323. Filing of Agreement.

To the extent that the arbitrator(s)[~~arbitrator~~] concludes that the dispute resolution requires amending the interconnection agreement, the[~~such~~] amended agreement shall be submitted to the commission for review and approval in accordance with [~~Subchapter P,~~]§22.309 of this title (relating to Approval of Arbitrated Agreements). The amended agreement shall be submitted within 20 days after the arbitrator's decision is final. If amendments are filed as substitution pages to an existing interconnection agreement, the revision date and docket number shall be clearly marked on each substituted page.

§22.325. Informal Settlement Conference.

(a) Filing a request. Either party to an interconnection agreement may request an informal settlement conference by filing ten[~~13~~] copies of a written request with the commission and, on the same day, delivering a copy of the request either by hand delivery or by facsimile to the other party (respondent) to the interconnection agreement from which the dispute arises. The written request should include:

(1) The name, address, telephone number,[~~and~~] facsimile number, and, if available, email address of each party to the interconnection agreement and the requesting party's designated representative;

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

(b) The settlement conference. The commission staff conducting the informal settlement conference shall notify the parties of the time, date, and location of the settlement conference, which, if held, shall be conducted[~~held~~] no later than ten[~~10~~] business days from the date the request was filed. The commission staff may require the respondent to file a response to the request. The parties should provide the appropriate personnel with authority to discuss and to resolve the disputes at the settlement conference. If the parties are in disagreement as to the need of a settlement conference, the presiding officer may deny the request for good cause.

(c) - (d) (No change.)

§22.326. Formal Dispute Resolution Proceeding.

(a) Initiation of formal proceeding. A formal proceeding for dispute resolution under this subchapter will commence when a party (complainant) files a complaint with the commission and, on the same day, delivers a copy of the complaint either by hand delivery or by facsimile to the other party (respondent) to the interconnection agreement from which the dispute arises.

(1) The complaint shall include:

(A) the name, address, telephone number,[~~and~~] facsimile number, and, if available, email address of each party to the interconnection agreement and the complainant's designated representative;

(B) (No change.)

(C) a detailed list of the discrete issues in dispute, with a cross-reference to the area or areas of the interconnection agreement applicable or pertaining to the issues in dispute;

(D) - (E) (No change.)

(2) (No change.)

(3) Where a request for formal dispute resolution does not meet the requirements of this subsection, the arbitrator(s) may consider dismissal without prejudice pursuant to §22.181 of this title (relating to Dismissal of a Proceeding) and order the party to refile.

(b) Response to the complaint. Unless §22.327 or §22.328 of this title apply, the respondent shall file a response to the complaint within ten[~~10~~] business days after the filing of the complaint. On the response filing date, the respondent shall serve a copy of the response on the complainant. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the interconnection agreement[~~contract~~] applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response also shall:

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

(c) (No change.)

(d) Provisions incorporated from [~~Subchapter P,~~]§22.305 of this title (relating to Compulsory Arbitration). Except as specified otherwise in this subchapter, the [~~following~~]provisions of [~~Subchapter P,~~]§22.305(c), (d) (f), (i), (j), (k), (m), (n), (o), (p), (q), and (r) of this titleare incorporated by reference into this subchapter[~~: §22.305(c), (d), (f), (h), (i), (j), (l), (o), (p), and (q)~~].

(e) Number of copies to be filed. Unless otherwise ordered by the arbitrator(s)[~~arbitrator~~], parties shall file ten[~~13~~] copies of pleadings subject to this subchapter.

(f) (No change.)

(g) Notice and hearing. Unless §22.327 or §22.328 of this title apply, the arbitrator(s)[~~arbitrator~~] shall make arrangements for the hearing to address the complaint, which shall commence no later than 50 days after filing of the complaint. The arbitrator(s)[~~arbitrator~~] shall notify the parties, not less than ten[~~15~~] days before the hearing, of the date, time, and location of the hearing. The hearing shall be transcribed by a court reporter designated by the arbitrator(s)[~~arbitrator~~].

(h) Authority of arbitrator. The arbitrator(s)[~~arbitrator~~] has broad discretion in conducting the dispute resolution proceeding and has the authority given to a presiding officer pursuant to [~~Subchapter K,~~]§22.202 of this title (relating to Presiding Officer). The arbitrator(s)[~~arbitrator~~] shall also have the authority to award remedies or relief deemed necessary by the arbitrator(s)[~~arbitrator~~] to resolve a dispute subject to the procedures established in this subchapter. The authority to award remedies or relief includes, but is not limited to, the award of prejudgment interest, specific performance of any obligation created in or found by the arbitrator(s)[~~arbitrator~~] to be intended under the interconnection agreement subject to the dispute, issuance of an injunction, or imposition of sanctions for abuse or frustration of the dispute resolution process subject to this subchapter and Subchapter P of this chapter (relating to Dispute Resolution), except that the arbitrator does not have authority to award punitive or consequential damages.

(i) Discovery. Parties may obtain discovery by submitting requests for information (RFIs), which include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as provided by Subchapter H of this chapter[~~, §22.141(b) of this title~~] (relating to Discovery Procedures[~~Methods~~]), and as allowed within the discretion of the arbitrator(s)[~~arbitrator~~].

[~~(j) Prefiled evidence/witness list. The arbitrator shall require the parties to file a direct case and a joint decision point list (DPL) on or before the commencement of the hearing. The arbitrator shall require the parties to file their direct cases under the same deadline. The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The DPL shall identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Except as provided in §22.324 of this title (relating to Confidential Information), all materials filed with the commission or provided to the arbitrator shall be considered public information under the Open Records Act, Tex. Gov't Code, §552.001, *et seq*.~~]

(j) [~~(k)~~] Decision.

(1) The arbitrator(s) shall endeavor to issue a final decision on the dispute resolution within 30 days[~~written decision of the arbitrator shall be filed with the commission within 15 days~~] after the filing of any post-hearing briefs [~~and shall be mailed by first-class mail to all parties of record~~]in the dispute resolution proceeding.

(2) The final decision and report of the arbitrator(s) shall be filed with the commission as a public record and shall be mailed by first class mail to all parties of record in the dispute resolution. On the same day that the decision is issued, the arbitrator(s)[~~arbitrator~~] shall notify the parties by facsimile that the decision has been issued. If[~~To the extent that~~] the decision involves 9-1-1 issues, the arbitrator(s)[~~arbitrator~~] shall also notify the [~~Advisory~~]Commission on State Emergency Communications (CSEC)[~~(ACSEC)~~] by facsimile on the same day.

(3) [~~(2)~~] The decision of the arbitrator(s)[~~arbitrator~~] shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The arbitrator may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The arbitrator(s)[~~arbitrator~~] may provide for later implementation of specific provisions as addressed in the arbitrator's decision. The decision may also contain the items addressed in §22.305(t)(4) - (6) of this title[~~Subchapter P, §22.305(s)(4)-(6)~~] to the extent deemed necessary by the arbitrator(s)[~~arbitrator~~] to explain or support the decision.

[~~(3) Within three business days from the date the arbitrator's decision is issued, any commissioner may place the arbitrator's decision on the agenda for the next available open meeting. If the decision is scheduled for open meeting, then the decision shall be stayed until the commission affirms or modifies the decision.~~]

(4) The commission will consider the report of the arbitrator(s) resolving the dispute within 45 days following the filing of the arbitrator's final decision and report. The commission's final decision may reject the report as submitted, approve the report as submitted, or approve the report with modifications necessary to establish or enforce compliance with other requirements of state law or commission policy.[~~If no commissioner places the arbitrator's decision on the open meeting agenda within three business days, the arbitrator's decision is final and effective on the expiration of that third business day. The arbitrator shall notify the parties when the arbitrator's decision is deemed final under this paragraph.~~]

(k) Motions for reconsideration.

(1) Limitations. Only parties to the negotiated agreement or the Office of Public Utility Counsel may file motions for reconsideration. Any motions for reconsideration filed by non-parties will be considered as comments filed by an interested person. Issues subject

to motions for reconsideration are limited to modifications made to the negotiated agreement.

(2) Procedure. A motion for reconsideration of a negotiated agreement shall be filed within five working days of the issuance of the final order. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery. Responses to a motion for reconsideration shall be filed within three working days of the filing of the motion.

(3) Content. A motion for reconsideration shall specify the reasons why the order is unjustified or improper.

(4) Agenda ballot. Upon filing a motion for reconsideration, the Policy Development Division shall send separate ballots to each Commissioner to determine whether they will consider the motion at an open meeting. The Policy Development Division shall notify the parties by letter whether a Commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting Commissioner(s).

(5) Denial or granting of motion.

(A) If after five working days of the filing of a motion, no Commissioner has by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied.

(B) If any Commissioner has balloted in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the Commissioner may direct by the agenda ballot. In the event two or more Commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.

§22.327. Request for Expedited Ruling.

(a) Purpose. This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under this subchapter may request an expedited ruling when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element. The arbitrator(s)[~~arbitrator~~] has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. Except as specifically provided in this section, the provisions and procedures of §22.326 of this title (relating to Formal Dispute Resolution Proceeding) apply.

(b) Filing a request. Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant to §22.326 of this title. The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in §22.326(a) of this title, the complaint shall also state the specific circumstances that make the dispute eligible for an expedited ruling.

(c) Response to complaint. The respondent shall file a response to the complaint within five business days after the filing of the complaint. In addition to the requirements listed in §22.326(b) of this title, the respondent shall state its position on the request for an expedited ruling. The respondent shall serve a copy of the response on the complainant by hand-delivery or facsimile on the same day as it is filed with the commission.

(d) Hearing. After reviewing the complaint and the response, the arbitrator(s)[~~arbitrator~~] will determine whether the complaint warrants an expedited ruling. If so, the arbitrator(s)[~~arbitrator~~] shall make arrangements for the hearing, which shall commence no later than 20 days after the filing of the complaint. The arbitrator(s)[~~arbitrator~~] shall notify the parties, not less than three business days before the hearing of the date, time, and location of the hearing. If the arbitrator(s)[~~arbitrator~~] determines that the complaint is not eligible for an expedited ruling, the arbitrator(s)[~~arbitrator~~] shall so notify the parties within five days of the filing of the response.

(e) Decision point list (DPL) and witness list. Parties shall[~~The arbitrator may require the parties to~~] file a jointly-populated DPL, in a format approved by the arbitrator, no later than five days[~~on or~~] before the commencement of the hearing. An electronic copy of the DPL shall also be provided. [~~The arbitrator shall require the parties to file their DPL under the same deadline.~~]The DPL shall identify all issues to be addressed, the witnesses[~~witness, if any,~~] who will address[~~be addressing~~] each issue, and a short synopsis of each witness's position on each issue, with specific citation to the parties' testimony relevant to that issue. Except as provided in §22.324 of this title (relating to Confidential Information), all materials filed with the commission or provided to the arbitrator(s)[~~arbitrator~~] shall be considered public information under the Open Records Act, Texas Government Code[~~Tex. Gov't Code~~], §552.001, *et seq.*

(f) Decision. The arbitrator(s)[~~arbitrator~~] shall issue a written decision on the complaint within ten[~~10~~] days after the close of the hearing. On the day of [~~the~~] issuance, the arbitrator(s)[~~arbitrator~~] shall notify the parties by facsimile that the decision has been issued. If[~~To the extent that~~] the decision involves 9-1-1 issues, the arbitrator(s)[~~arbitrator~~] shall also notify the [~~Advisory~~]Commission on State Emergency Communications (CSEC)[~~(ACSEC)~~] by facsimile on the same day. [~~A decision issued pursuant to this section is subject to the commission review provisions under §22.326(k) and will become final under the terms therein.~~]

§22.328. Request for Interim Ruling Pending Dispute Resolution.

(a) Purpose. This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under either §22.326 of this title (relating to Formal Dispute Resolution Proceeding) or §22.327 of this title (relating to Request for Expedited Ruling) may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This section is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of any[~~scheduled~~] service, functionality, or network element.

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

(d) Response. The respondent shall file a response to the complaint within three business days of the filing of the complaint.

(e) [~~(d)~~] Hearing. Within five[~~three~~] business days of the filing of a complaint and request for interim ruling, the arbitrator(s)[~~arbitrator~~] selected under this subchapter shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator(s)[~~arbitrator~~] will notify the parties of the date and time of the hearing by facsimile within two business days[~~24 hours~~] of the filing of a complaint and request for interim ruling. The parties shall[~~should~~] be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibilities of providing that service; and the potential harm in providing the service. The arbitrator(s)[~~arbitrator~~] will issue an interim ruling on the request based on the evidence provided at the hearing.

(f) [~~(e)~~] Ruling. The arbitrator(s)[~~arbitrator~~] shall issue a written ruling on the request within three business days[~~24 hours~~] of the close of the hearing and will notify the parties by facsimile or electronic

mail of the ruling. If[To the extent that] the decision involves 9-1-1 issues, the arbitrator(s)[arbitrator] shall also notify the [Advisory]Commission on State Emergency Communications (CSEC) [(ACSEC)]by facsimile on the same day. The interim ruling will be effective throughout the dispute resolution proceeding until a final decision is issued pursuant to this subchapter.

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

Filed with the Office of the Secretary of State, on February 1, 2001.

TRD-200100653
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 936-7308

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SUBCHAPTER R. APPROVAL OF AMENDMENTS TO EXISTING INTERCONNECTION AGREEMENTS AND AGREEMENTS ADOPTING TERMS AND CONDITIONS PURSUANT TO FTA96 §252(i)

16 TAC §22.341, §22.342

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (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, §14.052 and the federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§22.341. Approval of Amendments to Existing Interconnection Agreements.

(a) Application. Any amendments, including modifications, to a previously approved interconnection agreement shall be submitted to the commission for review and approval. Any or all parties to the agreement may file the application for approval of the amendments. The parties requesting approval shall file ten[13] copies of the application with the commission's filing clerk and, when applicable, serve a copy on each of the other parties to the agreement. An application for approval of an amended agreement shall include:

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

(b) Notice. The commission may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The commission shall determine the appropriate scope and wording of the notice to be provided. At the commission's discretion, reasonable notice may be provided by electronic mail or a web site, provided all affected persons are made aware of the web site. In addition to any notice ordered by the commission, the commission shall cause to be published notice of the filing of the agreement and request for comments in the *Texas Register*.

(c) Proceeding.

(1) Administrative review and approval.

(A) To be considered for administrative review and approval an application shall:

(i) (No change.)

(ii) meet the requirements of the federal Telecommunications Act of 1996 (FTA96)[FTA96] §252.

(B) (No change.)

(C) At a minimum, the commission will allow interested persons[, the Office of Regulatory Affairs,] and the Office of Public Utility Counsel[Policy Development] to file comments pursuant to subsection (e) of this section.

(2) Formal review. The presiding officer may determine that a formal review is necessary to determine if the negotiated agreement meets the requirements of the FTA96 §252. At a minimum, the commission will allow interested persons and the Office of Public Utility Counsel[Regulatory Affairs] to file written comments, provided the comments are filed within 25 days of the filing of the application.

(d) (No change.)

(e) Comments. An interested person or the Office of Public Utility Counsel[Regulatory Affairs] may file comments on the amended agreement by filing ten[13] copies of the comments with the commission's filing clerk and serving a copy of the comments on each party to the agreement within 20 days of the filing of the application. The comments shall include the following information:

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

(f) Approval or denial of application.

(1) (No change.)

(2) The application shall be approved if, based on the presiding officer's[staff's] review, it is determined[the commission determines] that all requirements have been met. If the commission determines that not all requirements have been met, the application shall either be denied or scheduled for further review pursuant to §22.308 of this title (relating to Approval of Negotiated Agreements) or §22.309 of this title (relating to Approval of Arbitrated Agreements). The commission shall issue notice of approval, denial, or further review within 35 days of the filing of the application.

(g) (No change.)

[(h) Rehearing regarding administratively approved amendments to existing interconnection agreements.]

[(1) On the first and fifteenth day of each month the presiding officer shall file a monthly status report, in a project created for that purpose, listing all of the amendments to existing interconnection agreements administratively approved since the previous report.]

[(2) Motions for reconsideration seeking commission review of any amendment in a status report shall be filed within ten days of the filing of that report. All motions for reconsideration shall state any claimed error with specificity. Motions for reconsideration filed by non-parties will be considered as comments filed by an interested person.]

[(3) Upon the filing of a motion for reconsideration, the Office of Policy Development shall send separate ballots to each commissioner to determine whether the docket should be placed on an open meeting agenda. If a majority of commissioners ballot to reconsider the motion within five days of its filing, the amendment shall be considered at the next open meeting for which notice of the docket may properly be made. The administratively approved agreement shall be considered

~~approved on an interim basis from the date the presiding officer filed the notice of approval until the time to file motions for reconsideration has expired, or if a motion for reconsideration is filed, until considered at open meeting.]~~

(h) [~~(i)~~] Filing of agreement. If the commission approves the amendments to the agreement, the parties to the agreement shall file two[~~three~~] copies, one unbound, of the complete amended interconnection agreement with the commission's filing clerk, if one has not already been filed, within ten days of the commission's decision. The copies shall be clearly marked with the control number assigned to the proceeding and the language "Complete amended interconnection agreement as approved on (insert date)."

(i) Motions for reconsideration.

(1) Limitations. Only parties to the amended agreement or the Office of Public Utility Counsel may file motions for reconsideration. Any motions for reconsideration filed by non-parties will be considered as comments filed by an interested person. Issues subject to motions for reconsideration are limited to the amendments and/or modifications made to the amended agreement.

(2) Procedure. A motion for reconsideration of a negotiated agreement shall be filed within five working days of the issuance of the final order. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery. Responses to a motion for reconsideration shall be filed within three working days of the filing of the motion.

(3) Content. A motion for reconsideration shall specify the reasons why the order is unjustified or improper.

(4) Agenda ballot. Upon filing a motion for reconsideration, the Policy Development Division shall send separate ballots to each Commissioner to determine whether they will consider the motion at an open meeting. The Policy Development Division shall notify the parties by letter whether a Commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting Commissioner(s).

(5) Denial or granting of motion.

(A) If after five working days of the filing of a motion, no Commissioner has by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied.

(B) If any Commissioner has balloted in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the Commissioner may direct by the agenda ballot. In the event two or more Commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.

§22.342. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA96) §252(i).

(a) Application. Under FTA96 §252(i), a local exchange carrier shall make available any interconnection, service, or network element provided under a previously approved interconnection agreement to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. Any agreement adopting terms and conditions of a previously approved interconnection agreement pursuant to FTA96 §252(i) shall be submitted to the commission for review and approval. Any or all of the parties to the agreement may file the application for approval. The parties requesting approval shall file ten[~~13~~] copies of the application with the commission's filing clerk and, when applicable, serve a copy on each of the other parties to the agreement. An application for approval of an agreement adopting terms and conditions pursuant to §252(i) shall include:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State, on February 1, 2001.

TRD-200100654
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 936-7308

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
SUBCHAPTER J. COSTS, RATES, AND TARIFFS
DIVISION 1. RETAIL RATES

16 TAC §25.236

The Public Utility Commission of Texas (commission) proposes to amend §25.236 relating to Recovery of Fuel Costs. The proposed amendment will implement the provisions of Public Utility Regulatory Act (PURA) §39.202(c) establishing the requirement of final fuel reconciliation for affiliated power generation companies. Project Number 23014 has been assigned to this proceeding.

The commission proposes to amend §25.236 by adding a new subsection (g) establishing a timeline for the filing of the final fuel reconciliation. The timeline as proposed is based upon staff estimates of available commission staff, complexity of the reconciliation filings and the anticipated workload of staff and potential interested parties.

Andy Curtis, Fuel Analyst, Electric Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Curtis has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the timely evaluation of the fuel expenses of affiliated power generation companies in accordance with the requirements of Senate Bill 7, 76th Legislature, Regular Session (SB7). There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Curtis has also determined that for each year of the first five years the proposed section is in effect there should be no

effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code § 2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, March 23, 2001 from 1:00 to 4:00 p.m. in Hearing Room Gee.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 23014.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.202(c), which requires each affiliated power generation company to file a final fuel reconciliation for the period ending the day before the date customer choice is introduced.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.202

§25.236. Recovery of Fuel Costs.

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

(g) Final fuel reconciliation. Notwithstanding the provisions of subsections (b) and (f) of this section, each electric utility's affiliated power generation company, except El Paso Electric Company's, shall file after January 1, 2002, a final fuel reconciliation according to the schedule in paragraphs (1) - (9) of this subsection. For the final fuel reconciliation, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within six months of the filing date, except for Reliant Energy and TXU Electric proceedings, which will be completed in eight months.

(1) West Texas Utilities - June 1, 2002;

(2) Reliant Energy - July 1, 2002;

(3) Southwestern Public Service - August 1, 2002;

(4) TXU Electric - October 1, 2002;

(5) Central Power & Light - December 1, 2002;

(6) Lower Colorado River Authority - February 1, 2003;

(7) Entergy Gulf States, Inc. - March 1, 2003;

(8) Texas-New Mexico Power Company - April 1, 2003; and

(9) Southwestern Electric Power Company - May 1, 2003.

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

Filed with the Office of the Secretary of State, on February 2, 2001.

TRD-200100683

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 936-7308

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.2

The Texas Alcoholic Beverage Commission proposes an amendment to §31.2, governing the management of state-owned vehicles within the commission's care. The proposed amendments relate to the use of vehicles not assigned to enforcement agents and is proposed to comply with the terms of Government Code, §2171.1045.

Lou Bright, General Counsel, has determined that there will be no fiscal impact on state or local government as a result of the amendment.

Mr. Bright has determined that the public will benefit by this amendment because its adoption will bring the commission into compliance with the relevant provisions of the Government Code. There will be no fiscal impact on small business as a result of the amendment.

Comments should be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed under Government Code, §2171.6045 which commands state agencies to adopt rules such as the one proposed herein.

Cross Reference: No provision of statutory law is affected by this rule.

§31.2. Vehicle Inscription Exemption and Assignment of Vehicles.

(a) State-owned vehicles utilized by the commission for the enforcement of the Alcoholic Beverage Code shall, in accordance with Texas Civil Statutes, Article 6701m-l, as amended, be exempt from the requirement that such vehicles bear inscriptions. The primary use of the exempt vehicles is by enforcement agents of the commission in the detection and investigation of criminal violations of the code. The purpose served by not printing inscriptions on such vehicles is to increase the effectiveness of commission enforcement agents in detecting and investigating violations of the Code and to provide a greater degree of safety for such agents and the state property under their control.

(b) Vehicles not assigned to enforcement agents of the commission shall be assigned to the agency motor pool and made available for checkout by qualified agency employees who require such vehicles for the performance of their duties.

(c) Vehicles assigned to the agency motor pool may not be assigned to an individual employee on a regular or everyday basis unless the administrator or his designee makes a written documented finding that such assignment is critical to the needs and mission of the agency.

This 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 January 30, 2001.

TRD-200100546
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 206-3204

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 176. DRIVER TRAINING SCHOOLS SUBCHAPTER AA. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

19 TAC §§176.1007, 176.1010, 176.1016, 176.1017, 176.1019

The Texas Education Agency (TEA) proposes amendments to §§176.1007, 176.1010, 176.1016, 176.1017, and 176.1019, concerning driver training schools. The sections establish minimum standards for operating a licensed driver education school in Texas. The sections specify definitions, requirements, and procedures relating to exemptions; driver education school licensure and instructor license; responsibility for employees; school and assistant directors and administrative staff members; courses of instruction; student enrollment contracts; attendance and makeup; conduct policy; cancellation and refund policy; facilities and equipment; motor vehicles; student complaints; records; names and advertising; driver education certificates; and application fees and other charges.

The proposed amendments modify and strengthen the rules to provide clear direction and guidance to the driver training industry and staff in areas that were previously not well defined. The proposed amendments update requirements, make corrections, add content, and modify language to provide clear direction and guidance, as follows:

The amendment to 19 TAC §176.1007(b)(1)(E) allows school owners to request approval to allow a teaching assistant (full) to substitute in a classroom beyond 25% of the course in emergency situations. This will provide for waivers that are provided currently in public school driver education programs.

The amendment to 19 TAC §176.1007(b)(1)(F) removes the requirement that the Texas Education Agency review all audiovideo instructional materials prior to use in driver education courses. This change will place the responsibility on the driver education schools and will allow staff to focus on more critical regulatory areas.

The amendment to 19 TAC §176.1007(b)(1)(H) allows schools to receive approval to use instructional materials or modules in lieu of textbooks adopted by the State Board of Education. The updated driver education curriculum guide will include instructional modules that are designed to replace textbooks to accommodate the change in textbook adoptions. This change is proposed because textbooks for driver education are no longer included in the state adoption process. Contracts for the current state-adopted textbooks will expire in 2003.

The amendment to 19 TAC §176.1007(b)(1)(J) allows schools to include make-up students in classes without the students being counted as part of the student-teacher ratio. This is currently allowed in public school driver education programs.

The amendment to 19 TAC §176.1007(b)(2)(B) corrects a statutory citation.

The amendment to 19 TAC §176.1007(c)(5) strengthens instructor requirements for instructor development courses. Some driver education schools that provide training to driver education instructors have used training methods and strategies that were not optimal to producing quality instructors. The amendment will ensure that the courses are approved and provided in a manner more aligned with the statutory provisions.

The amendment to 19 TAC §176.1010(c) makes minimum requirements of the driver education program equitable to public school driver education programs.

The amendments to 19 TAC §176.1010(f) and (g) strengthen make-up policy requirements. Schools will be required to submit make-up policies to the Texas Education Agency for approval. The amendment provides guidance to schools about approving and offering make-up lessons.

The amendment to 19 TAC §176.1016 adds subsection (f) which prevents schools from releasing student records that identify the student by name or address. Currently, there is no law that forbids the release of student information by commercial schools and this rule will prevent potential harm occurring to students by the release of this information.

The amendment to 19 TAC §176.1017 adds subsection (h) which states that the division director may deny approval of any course or the issuance of any license or invoke other appropriate sanctions if a school advertises before the school has a license to operate. This rule clarifies that schools should not advertise before a license is issued.

The amendment to 19 TAC §176.1019 adds subsection (e) which clarifies for schools and instructors that failure to pay a required fee or penalty assessed shall be cause for license revocation.

Robert Muller, Associate Commissioner for Continuing Education and School Improvement, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Muller and Criss Cloudt, Associate Commissioner for Accountability Reporting and Research, have 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 strengthened requirements for operating licensed driver education schools which will increase awareness of traffic safety and move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure

Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The amendments implement the Texas Civil Statutes, Article 4413(29c), §6.

§176.1007. Courses of Instruction.

(a) (No change.)

(b) This section contains requirements for driver education courses. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Teenage driver education.

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

(E) Students shall receive classroom instruction directly from an instructor who is certified and licensed by TEA, except that no more than 25% of the classroom phase may be provided by a licensed teaching assistant (full) when a certified instructor is not available. School owners may request prior approval from the division director to allow a teaching assistant (full) to provide additional instruction in emergency situations. The request must be in writing and include details about the emergency situation. The division director may require additional evidence to verify the emergency situation. An instructor shall be in the classroom and available to students during the entire 32 hours of scheduled instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of scheduled classroom instruction.

(F) Motion picture films, slides, videos, tape recordings, and other media [~~approved by the division director~~] that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the 32 hours of classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these shall not exceed 640 minutes of the total 32 hours.

(G) (No change.)

(H) Each classroom student shall be provided a driver education textbook currently adopted by the State Board of Education or access to instructional materials or modules approved by the division director. Instructional materials must be in a condition that is legible and free of obscenities.

(I) (No change.)

(J) A school may not permit more than 36 students per driver education class, excluding [~~including~~] make-up students , provided the school has adequate seating facilities and tables or desks for all students being trained.

(K)-(U) (No change.)

(2) Adult driver education. Courses offered to persons who are over 18 years old must be offered in accordance with the following guidelines.

(A) (No change.)

(B) An adult driver education course may be approved as required under Transportation Code, §521.222(c), [~~Texas Civil Statutes, Article 6687b, Chapter 173, §12,~~] if the course meets the minimum standards outlined in this paragraph.

(i)-(ii) (No change.)

(c) This section contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the division director may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

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

(5) All driver education instructor development courses shall be taught at a licensed driver education school, except when required by approved subject matter that relates directly to the course or topics approved by TEA. A properly licensed supervising teacher shall teach the course. The supervising teacher may allow driver education teachers and teaching assistants to provide training in areas appropriate for their level of certification and/or licensure. The supervising teacher must be in appropriate proximity during all instruction except self-study assignments which shall not exceed 25% of the total training program time.

(6) (No change.)

(d)-(i) (No change.)

§176.1010. Attendance and Makeup.

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

(c) Driver education training is limited to four hours per day (excluding classroom make-up lessons and in-car observation), which can consist of any combination of the following: [~~A student shall not receive more than four hours of driver education training in one calendar day no matter what combination of training is provided, with the exception of observation. Further, a student shall be limited to a maximum of two hours of scheduled classroom instruction (excluding make-up), one hour of behind-the-wheel instruction, three hours of simulation instruction, and two hours of multicar range driving per calendar day. There is no limit on the amount of observation time that a student may receive in a calendar day.~~]

(1) two hours or less of scheduled classroom instruction;

(2) one hour or less of behind-the-wheel instruction;

(3) three hours or less of simulation instruction; and/or

(4) two hours or less of multicar range driving.

(d)-(e) (No change.)

(f) Schools shall submit a make-up policy to the division director for approval. The make-up policy shall be developed by the school and shall ensure that all instructional hours and minimum course content required for the classroom and in-car phases are completed within the timelines specified in the original student enrollment contract. All absences are subject to the attendance policy regardless of whether the student attends make-up lessons. Students may [~~shall~~] be allowed to complete classroom make-up assignments at home. Schools shall not [~~cannot~~] initiate nor encourage absences [~~makeup~~]. Make-up policies shall adhere to the following requirements:

(1) For a policy that allows a student to attend a missed lesson at a later date at a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) For a policy that allows a student to perform an individual make-up lesson, a sample of each make-up lesson, clearly labeled as "makeup for the driver education course," shall be available for review by the Texas Education Agency at the school. Each lesson shall be clearly identified as a make-up lesson and identified as to the units of instruction to be covered. Evidence of completed makeup shall be placed in the student file.

(g) A school may allow a student to attend an alternative class on the same calendar day as the class the student was previously scheduled to attend. The school may provide alternative scheduling only if the sequence of instruction will be maintained by the identical lesson being offered in the alternative class time. In addition to all other requirements, the student instruction record shall reflect the time of day the alternative class was attended. A student selecting alternative scheduling shall not be considered absent.

(h) [~~(g)~~] The enrollment of students who do not complete all required instructional hours within the timelines specified in the original student enrollment contract will be terminated.

(i) [~~(h)~~] Variances to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the school owner and must be agreed to in writing by the parent or guardian.

§176.1016. Records.

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

(f) Driver education schools shall not release student records that identify the student by name or address, or may lead to such identification, except:

(1) to authorized representatives of the TEA;

(2) to a peace officer;

(3) under court order or subpoena; or

(4) with written consent of both the student and at least one parent or legal guardian, if the student is under 18 years of age.

§176.1017. Names and Advertising.

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

(h) The division director may deny approval of any course or the issuance of any required school license or invoke sanctions if a school advertises before the later of:

(1) the 30th day after the date the school applies for a driver education school license; or

(2) the date the school receives a driver education school license from the commissioner of education.

§176.1019. Application Fees and Other Charges.

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

(e) Failure to pay a required fee or penalty assessed shall be cause for revocation or denial of any license held by a school or instructor of whom the fee or penalty is required. Revocation or denial proceedings shall be started if the fee is not paid within 30 days of the expiration date of the appeal period set forth in Texas Civil Statutes, Article 4413(29c), §17.

This 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 February 2, 2001.

TRD-200100697
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-9701

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SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

19 TAC §§176.1101, 176.1103, 176.1105, 176.1108, 176.1111, 176.1113, 17.1114, 176.1116

The Texas Education Agency (TEA) proposes amendments to §§176.1101, 176.1103, 176.1105, 176.1108, 176,1111, 176.1113, 176.1114, and 176.1116, concerning driver training schools. The sections establish minimum standards for operating a licensed driving safety school or course provider in Texas. The sections specify definitions, requirements, and procedures relating to exemptions; driving safety school licensure; course provider licensure; driving safety school and course provider responsibilities; administrative staff members; driving safety instructor license; courses of instruction; student enrollment contracts; cancellation and refund policy; facilities and equipment; student complaints; records; names and advertising; uniform certificate of course completion for driving safety course; and application fees and other charges.

The proposed amendments update definitions and add content to modify and strengthen requirements for licensed driving safety schools and course providers in Texas, as follows:

The amendment to 19 TAC §176.1101(11) amends the definition of "new course" to clarify that new alternative delivery methods for driving safety courses are included. Courses are being submitted with alternative delivery methods with no funding provided to cover processing the application and approving the delivery method. The staff time involved in processing courses delivered through alternative delivery methods can involve hundreds of hours of review to ensure that the delivery method meets the minimum standards. Funding from other fee areas has had to be used to cover the cost of this process. The designation of alternative delivery methods as new courses will associate these courses with those for which a processing fee is charged.

The amendment to 19 TAC §176.1103(f) requires that renewal applications for driving safety schools include current lists of instructors and classrooms. This change will ensure that school information is updated on an annual basis.

The amendment to 19 TAC §176.1105(b)(3) requires course providers to distribute course changes within 60 days of approval. Instructor training may be required and will be specified in the approval letter.

The amendment to 19 TAC §176.1105(b)(5) requires course providers to submit school and instructor applications to the division within ten days of receipt. This requirement will ensure that course providers do not delay licensing processes for their schools and instructors.

The amendment to 19 TAC §176.1108(a)(1)(C)(x) clarifies that no more than 50 students can be permitted to attend the class when at least one student in a driving safety course will receive a uniform certificate of completion.

The amendment to 19 TAC §176.1108(a)(1)(J) adds clause (ii) which requires driving safety courses with alternative delivery methods to be approved in accordance with specific standards established by the division and contained in the "Technical Standards for Driving Safety Courses Taught By An Alternative Delivery Method" document.

Another amendment to 19 TAC §176.1108(a)(1)(J) adds clause (iii) which requires all alternative delivery methods approved before the effective date of this subsection to demonstrate compliance with all alternative delivery method requirements including the standards contained in the "Technical Standards for Driving Safety Courses Taught By An Alternative Delivery Method" document. The amendment also requires courses to continue to comply with the most current version of the standards document.

The amendment to 19 TAC §176.1111(d) strengthens facility requirements for driving safety classes by requiring that all instruction be offered in classrooms that promote learning. The amendment provides additional parameters that clarify the requirements.

The amendment to 19 TAC §176.1113 adds subsection (d) which prevents course providers and driving safety schools from releasing student records that identify the student by name or address. Currently, there is no law that forbids the release of student information by commercial schools and this rule will prevent potential harm occurring to students by the release of this information.

The amendment to 19 TAC §176.1114 adds subsection (f) which states that the division director may deny approval of any course or the issuance of any license or invoke other appropriate sanctions if a course provider or driving safety school advertises before the course provider or school has a license to operate. This rule clarifies that course providers and schools should not advertise before a license is issued.

The amendment to 19 TAC §176.1116 adds subsection (d) which clarifies for course providers, driving safety schools, and instructors that failure to pay a required fee or penalty assessed shall be cause for license revocation.

Robert Muller, Associate Commissioner for Continuing Education and School Improvement, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The proposed amendments change the definition of "new course" to include alternative delivery methods (ADMs) for driving safety courses and establish technical standards for the approval of ADM courses. The state is currently reviewing applications for driving safety alternative delivery methods (video, Internet, CD-ROM, etc.) without charging a fee to cover the administrative costs. The review/approval process may take months or years and requires hundreds of hours of staff time. The law requires that funds be sufficient to cover administrative costs. The fee for a new driving safety course approval is set at $9,000 by statute and is an appropriate fee based on manpower costs associated with the review/approval process. The agency anticipates the receipt of about three ADM applications in FY 2001 and FY 2002 and one such application in FY 2003 that will be subject to the $9,000 fee. Approval of these proposed rule changes will add $27,000 to agency revenue in FY 2001 and FY 2002 and $9,000 in FY 2003. There will be no fiscal implications anticipated for local government.

Mr. Muller and Criss Cloudt, Associate Commissioner for Accountability Reporting and Research, have 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 strengthened requirements for operating licensed driving safety schools and course providers in Texas which will increase awareness of traffic safety and move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. There will be an effect on small businesses. Small businesses that apply for ADM course approval will incur the $9,000 application fee. It is anticipated that the fee will ensure that only interested parties with high-quality programs will apply.

In addition to the application fee, there will be significant costs to small business associated with the proposed amendment to comply with the "Technical Standards for Driving Safety Courses Taught By An Alternative Delivery Method" document. Costs include items such as: geographic location of support personnel and computer equipment for the ADM; course design, content accuracy, and multimedia requirements; equipment reliability issues; validation requirements; data and equipment security requirements; student privacy requirements; and disaster recovery system requirements. Further, the lengthy approval process may result in additional costs to small businesses that cannot be estimated. These are significant start-up costs for a small business; however, the costs can be recouped through revenues generated by course fees within a reasonable period of time. These changes to the rules and their associated costs apply only to course owners interested in developing and marketing a driving safety course taught by an ADM. There is no known difference in costs, whether the affected applicant is a small business or the largest business. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The amendments implement the Texas Civil Statutes, Article 4413(29c), §6.

§176.1101. Definitions.

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

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

(11) New course--A driving safety course is considered new when it has not been approved by TEA to be offered previously, or has been approved by TEA and offered and then discontinued, or the content, [~~or~~] lessons, or delivery of the course have been changed to a degree that a new application is requested and a complete review

of the application and course presentation is necessary to determine compliance.

(12)-(13) (No change.)

§176.1103. Driving Safety School Licensure.

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

(f) Renewal of driving safety school license. A complete application for the renewal of a license for a driving safety school shall be postmarked or hand-delivered by the school to the course provider at least 30 days before the expiration of the license and shall include the following:

(1) completed application form for renewal;

(2) current list of instructors;

(3) current list of classrooms;

(4) [~~(2)~~] annual renewal fee, if applicable; and

(5) [~~(3)~~] any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

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

§176.1105. Driving Safety School and Course Provider Responsibilities.

(a) (No change.)

(b) Each course provider or employee shall:

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

(3) ensure that schools and instructors are provided with the most recent approved course materials and relevant data and information pertaining to driving safety within 60 days of approval. Instructor training may be required and shall be addressed in the approval notice;

(4) not falsify driving safety records; [~~and~~]

(5) ensure that applications for licenses or approvals are forwarded to TEA within ten days of receipt at the course provider facilities; and

(6) [~~(5)~~] ensure that instructor performance is monitored. A written plan describing how instructor performance will be monitored and evaluated shall be provided to the schools. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation (a minimum of once a year), and the corrective action to be taken when instructors do not meet the criteria established by the course provider. The instructor evaluation forms must be kept on file either at the course provider or school location for a period of one year.

(c)-(d) (No change.)

§176.1108. Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by subsection (a)(1)(J) of this section, all course content shall be delivered under the direct observation of a licensed instructor. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval of any course that is inactive as of September 1, 2000, will be revoked.

(1) Driving safety courses.

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

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines.

(i)-(ix) (No change.)

(x) No more than 50 students per class are permitted in driving safety courses if any student in the class receives a uniform certificate of completion.

(xi) (No change.)

(D)-(I) (No change.)

(J) Driving safety courses delivered by an alternative delivery method.

(i) The commissioner of education may approve an alternative delivery method for an approved driving safety course and waive any rules to accomplish this approval if the alternative delivery method includes testing and security measures that are at least as secure as the measures available in a usual classroom, including:

(I)-(V) (No change.)

(VI) the alternative delivery method incorporates testing of student knowledge throughout the course and the testing is administered by a TEA-licensed instructor; provided, if the alternative delivery method does not involve the student being in physical proximity to the instructor, the testing may be administered using technology; and

(VII) the alternative delivery method provides for the creation and maintenance of records documenting the steps taken to verify each student's identity verification, the participation of each student, and the testing of each student's knowledge. [~~; and~~]

~~*[(VIII)* for an alternative delivery method approved before the effective date of this subparagraph, the alternative delivery method has demonstrated compliance with this subparagraph prior to April 1, 2000; provided, the TEA shall find that an alternative delivery method approved before the effective date of this rule has demonstrated compliance for purposes of this rule if the information considered by the TEA in making the previous approval met the requirements of this rule.]~~

(ii) The specific requirements for alternative delivery methods as set forth in subsection (a)(1)(J) of this section are further explained in the most current version of the "Technical Standards for Driving Safety Courses Taught By An Alternative Delivery Method" document. The standards document shall be provided as part of the application to every applicant seeking approval of an alternative delivery method. The division director may approve an alternative delivery method only if it meets all of the standards set forth in the most current version of the "Technical Standards for Driving Safety Courses Taught By An Alternative Delivery Method" document, unless requirements are waived as provided by subsection (a)(1)(J)(i) of this section. The standards document may be revised periodically and the most current version shall be available on the TEA Internet website or, upon request, by mail.

(iii) For an alternative delivery method approved before the effective date of this subsection, the alternative delivery method must demonstrate compliance with this subsection prior to December 31, 2001. In addition, all courses must continue to demonstrate compliance with the most current version of the "Technical Standards for Driving Safety Courses Taught By An Alternative Delivery Method" document.

(iv) [~~(ii)~~] [~~Performance report.~~] One year after original approval of an alternative delivery method that is approved after

January 1, 2000, an evaluation of the delivery method based on criteria established by TEA shall be submitted to TEA by the course owner. The performance report will be used to determine whether the course is meeting its purpose and objectives and operating as approved. The performance report will be used as a basis for continued approval.

(K) (No change.)

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

(b)-(e) (No change.)

§176.1111. Facilities and Equipment.

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

(d) Each school and classroom shall conduct the Texas Education Agency-approved driving safety course in a facility that promotes the purpose and objectives as set forth in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth in this chapter. The driving safety course shall be provided in designated instructional areas that promote learning by ensuring that students are able to see and hear the instructor and audiovisual aids. Factors that will be considered in determining whether facilities promote learning include facility layout, visual and hearing distractions, and equipment functionality.

(e)-(i) (No change.)

§176.1113. Records.

(a) A driving safety school or course provider shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency (TEA). There may be announced or unannounced compliance surveys at each school or course provider each year.

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

(d) A course provider shall not release student records that identify the student by name or address, or may lead to such identification, except:

(1) to authorized representatives of the TEA;

(2) to a peace officer;

(3) under court order or subpoena; or

(4) with written consent of both the student and at least one parent or legal guardian, if the student is under 18 years of age.

§176.1114. Names and Advertising.

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

(f) The division director may deny approval of any course or the issuance of any required license or invoke other sanctions if a course provider or driving safety school advertises before the later of:

(1) the 30th day after the date the course owner or school applies for a course provider or driving safety school license; or

(2) the date the course owner or school receives a course provider or driving safety school license from the commissioner of education.

§176.1116. Application Fees and Other Charges.

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

(d) Failure to pay a required fee or penalty assessed shall be cause for revocation or denial of any license held by a course provider, driving safety school, or instructor of whom the fee or penalty is required. Revocation or denial proceedings shall be started if the fee is not paid within 30 days of the expiration date of the appeal period set forth in Texas Civil Statutes, Article 4413(29c), §17.

This 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 February 2, 2001.

TRD-200100698
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.7

The State Board of Dental Examiners proposes amendments to §101.7, Licensure by Credentials in conjunction with its review of Chapter 101, Dental Licensure and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Paragraph (3)(A) and (B) will be amended by deleting the phrase "prior to applying" and adding the phrase "preceding application to the State Board of Dental Examiners." The proposed amendments clarify language in the rule requiring that a dentist licensed in another jurisdiction who applies for a Texas dental license by virtue of credentials, must have continuously practiced dentistry during the five years immediately preceding application. In the past some applicants interpreted current language to mean "five calendar years" rather than the five year period immediately prior to application.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule is that the intent of the rule will be more easily understood. The language of the proposed amendment makes it clear that the five year period must have occurred immediately before the application.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§101.7. Licensure by Credentials--Dentists.

The State Board of Dental Examiners will license applicants by credentials upon payment of a fee, in an amount set by the Board, who meet all SBDE and State of Texas minimum applicant requirements and general licensure qualifications and all of the following criteria:

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

(3) Has practiced dentistry:

(A) For a minimum of five years immediately preceding application to the State Board of Dental Examiners [~~prior to applying~~]; and/or

(B) As a dental educator at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for a minimum of five years immediately preceding application to the State Board of Dental Examiners [~~prior to applying~~].

(4)-(15) (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 January 31, 2001.

TRD-200100611
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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22 TAC §101.8

The State Board of Dental Examiners proposes amendments to §101.8, Persons with Criminal Backgrounds, in conjunction with its review of Chapter 101, Dental Licensure and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The proposed amendments will more closely track the language of the statutes. Subsection (a) is amended to include wording in current subsection (b). Amended subsection (d), current subsection (e), is amended at paragraph (8) to change theft to felony theft. Changes in statutory references have been made to reflect the codification of the Dental Practice Act into the Occupations Code.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill 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 that the public will have a clearer understanding of the types of criminal offenses that could lead to revocation or suspension of a license or denial of an application for licensure. The enabling statutes require that the board issue guidelines stating the reasons particular crimes relate to fitness for licensing and other criteria that affect licensing decisions. New subsection (a) states the purpose of the rule, that is to comply with the requirements of the enabling statute. New subsection (b) clarifies that revocation, suspension or denial may be based on conviction under state or federal law of a felony or misdemeanor that directly relates to the duties of the profession. Paragraph (8) of new subsection (e) clarifies that a felony theft directly relates. Paragraph (10) clarifies that felony driving while intoxicated is another offense that is considered to directly relate. Former language concerning habitual use or addiction to controlled substance abuse has been deleted because a finding of such conduct might or might not result in a criminal conviction.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et. seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry; §53.022 and §53.023 which establishes whether a conviction relates to practice dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§101.8. Persons with Criminal Backgrounds.

(a) The purpose of this rule is to comply with the requirements of the Texas Occupations Code, Section 53.025. [~~The State Board of Dental Examiners (SBDE) may revoke or suspend an existing license, or deny an application for licensure because of a person's conviction of a felony under any state or federal law, if the crime directly relates to the duties and responsibilities of the profession for which the person seeks licensure.~~]

(b) The State Board of Dental Examiners (SBDE) may revoke or suspend an existing license, or deny application for licensure because of a person's conviction under state or federal law of a felony or misdemeanor that directly relates to the duties and responsibilities of the profession for which the person seeks licensure.

(c) [~~(b)~~] No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license to practice dentistry or dental hygiene. Such conviction of a person holding a license to practice dentistry or dental hygiene shall be cause for initiation of disciplinary procedures against such person.

(d) [~~(c)~~] In determining whether a criminal conviction directly relates to the practice of dentistry or dental hygiene, the board shall consider the factors listed in Texas Occupation Code, §53.022 (Vernon 2000) [~~Texas Revised Civil Statutes Annotated, Article 6252-13c(4)(b) (Vernon Supp., 1997)~~].

(e) [~~(d)~~] Those crimes which the board considers to be of such serious nature that they relate to fitness to practice a profession, or as

directly related to the practice of dentistry or dental hygiene include, but are not limited to:

(1) any felony of which fraud, dishonesty, or deceit is an essential element;

(2) any criminal violation of the Dental Practice Act or other statutes regulating or pertaining to the professions of dentistry or dental hygiene;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) murder;

(5) burglary;

(6) robbery;

(7) rape;

(8) felony theft;

(9) child molestation; and

(10) felony driving while intoxicated. [habitual use or addiction to controlled substance abuse or substance diversion; and]

[(11) felony driving while intoxicated.]

(f) [(e)] The board may consider a person's present fitness for licensure in determining whether a person's conviction of a crime is cause for denial of an application or for disciplinary procedures. In determining a person's present fitness for licensure, the board shall consider the factors listed in Texas Occupations Code, §53.023 (Vernon 2000) [Texas Revised Civil Statutes Annotated, Article 6252-13c(4)(c) (Vernon Supp., 1997)].

(g) [(f)] It shall be the responsibility of the applicant to secure and provide to the board the recommendations regarding all offenses from the prosecution, law enforcement, and correctional authorities who prosecuted, arrested or had custodial responsibility for the applicant. Failure to provide such recommendation is justification to refuse licensing or imposition of sanction unless the applicant shows good cause for such failure.

(h) [(g)] The applicant shall also furnish proof in such form as may be required by the board that he or she has maintained a record of steady employment, has supported his or her dependents, 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.

This 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 January 31, 2001.

TRD-200100612
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.2

The State Board of Dental Examiners proposes amendments to §103.2, Licensure by Credentials, Dental Hygienists, in conjunction with its review of Chapter 103, Dental Hygiene Licensure and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Paragraph (3)(A) and (B) will be amended by deleting the phrase "prior to applying" and adding the phrase "preceding application to the State Board of Dental Examiners." The proposed amendments clarify language in the rule requiring that a dental hygienist licensed in another jurisdiction who applies for a Texas dental hygiene license by virtue of credentials, must have continuously practiced dental hygiene during the five years immediately preceding application. In the past some applicants interpreted current language to mean "five calendar years" rather than the five year period immediately prior to application.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of amending the rule is that the intent of the rule will be more easily understood. The language of the proposed amendment makes it clear that the five year period must have occurred immediately before the application.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §262.102 which authorizes the Board to make rules affecting the practice of dental hygiene; §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§103.2. Licensure by Credentials, Dental Hygienists.

The State Board of Dental Examiners will license dental hygiene applicants by credentials upon payment of a fee, in the amount set by the Board, who meet all SBDE and State of Texas minimum applicant requirements, general licensure qualifications, and all of the following criteria:

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

(3) Has practiced dental hygiene:

(A) For a minimum of five years immediately preceding application to the State Board of Dental Examiners [prior to applying]. An applicant has practiced dental hygiene for five years if he or she has been actively engaged in practice for at least 26 weeks in each of the past five years preceding application, and/or [.]

(B) As a dental educator at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for a minimum or five years immediately preceding application to the State Board of Dental Examiners [~~prior to applying~~].

(4)-(15) (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 January 31, 2001.

TRD-200100613
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.2

The State Board of Dental Examiners proposes amendments to §104.2, Providers in conjunction with its review of Chapter 104, Continuing Education and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The rule is amended to add the Western Regional Examining Board, the American Academy of Dental Hygiene, the American Dental Education Association, and the American Heart Association.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule is that there will be an expanded list of educational providers available for dental professionals to obtain the continuing education required for annual license renewal.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §257.005 which provides that the Board shall develop a mandatory Continuing Education program and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§104.2. Providers.

Continuing Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are either technical or scientific as related to clinical care and in content as certified by the following providers:

(1) American Dental Association--Continuing Education Recognition Program (CERP);

(2) American Dental Association, its component, and its constituent organizations;

(3) Academy of General Dentistry and its constituents and approved sponsors;

(4) Dental/dental hygiene schools and programs accredited by the Commission on Dental Accreditation of the American Dental Association;

(5) American Dental Association approved specialty organizations;

(6) American Dental Hygienists' Association, its component, and its constituent organizations;

(7) American Medical Association approved specialty organizations;

(8) American Medical Association approved hospital courses;

(9) National Dental Association, its constituent, and its component societies;

(10) National Dental Hygienist's Association, its constituent, and its component societies;

(11) Medical schools and programs accredited by the Standards of the Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification or the American Osteopathic Association;

(12) Western Regional Examining Board;

(13) American Academy of Dental Hygiene;

(14) American Dental Education Association;

(15) American Heart Association;

(16) [~~(12)~~] Other providers as approved by the Board.

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

Filed with the Office of the Secretary of State, on January 31, 2001.

TRD-200100614
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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CHAPTER 111. PROFESSIONAL CORPORATIONS

22 TAC §111.6

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

The State Board of Dental Examiners proposes the repeal of Chapter 111, Professional Corporations, §111.6, Requirements, as part of the rules review process and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The rule, last reviewed in 1984, impermissibly restricts the application of the Professional Corporations Act, Article 1528e, Texas Revised Civil Statutes. The rule as written limits the incorporators of a dental practice to licensed dentists. There is no basis for such a limitation in the statutes. Only a licensed dentist can be a director, officer or shareholder of a professional corporation formed by dentists, but any individual is allowed to be an incorporator. The role of the incorporator is largely limited to the act of execution of the articles of incorporation and restrictions on who may serve as incorporators have largely been eliminated.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the repealed rule is in effect there will be no fiscal implications for local or state government as a result of repealing the rule.

Mr. Hill also has determined that for each year of the first five years the repealed rule is in effect the public benefit anticipated as a result of repealing the rule will be the elimination of a rule that was without basis in law.

There will be no fiscal implications for small or large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The rule is proposed for repeal under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed repeal of the rule does not affect other statutes, articles, or codes.

§111.6. Requirements.

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

Filed with the Office of the Secretary of State, on January 31, 2001.

TRD-200100615

Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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CHAPTER 113. REQUIREMENTS FOR DENTAL OFFICES

22 TAC §113.2

The State Board of Dental Examiners proposes amendments to §113.2, X-Ray Laboratories, in conjunction with its review of Chapter 113, Requirements for Dental Offices, and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167.

The new language of subsection (a) clarifies that in-house dental laboratories are regulated by the Dental Practice Act and must be on the premises of a dental office. The new language substitutes the words "Texas licensed dentist" for "legally practicing dentist." The new language is more precise. The new language about supervision acknowledges that ultimate responsibility for those activities that occur in a dental office, such as the taking of x-rays, rests with a licensed dentist and eliminates confusion.

New subsection (b) adds the requirement that the lead apron have a thyroid collar and is also corrected for grammar.

New subsection (c) is also structured for grammatical consistency.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be a rule that is easier to read and understand and that reflects the realities of modern dental practices.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§113.2. X-Ray Laboratories.

(a) Dental x-ray laboratories must be located in the dental office of a Texas licensed dentist where the appropriate degree of supervision is exercised. [~~Laboratories such as X-ray laboratories must be in the dental office of a legally practicing dentist. All dental employees are subject to the dentist's supervision and control and such "laboratories" cannot be at a location where the dentist is not present and in control. All patients in the dental office must be protected during the time of direct exposure to x-rays with a lead apron and by equipment that is properly monitored by the authorized agency.~~]

(b) All dental patients must be protected by a lead apron with a thyroid collar while directly exposed to x-rays.

(c) X-ray equipment must be properly monitored by the authorized agency.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §113.3

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

The State Board of Dental Examiners proposes the repeal of §113.3, Office Leases, in conjunction with its review of Chapter 113, Requirements for Dental Offices and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Section 113.3 addresses a narrow segment of the spectrum of improper influence on the independent professional judgment of a dentist by persons other than dentists and is provided for in greater detail and clarity in §109.500(c)(1), Improper Influence on Professional Judgment, effective February 7, 2000. The intent of §113.3 was to prevent the improper sharing of dental fees with a non-dentist. The intent is still valid and is well served by the language of §109.500. Section 109.500 is proposed for repeal contemporaneously with adoption of new §108.70, which will supplant the current §109.500. Inasmuch as the language of §113.3 is unnecessarily duplicative it is proposed for repeal.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the repeal of the rule is in effect there will be no fiscal implications for local or state government as a result of repealing the rule.

Mr. Hill also has determined that for each year of the first five years the repeal of the rule is in effect the public benefit anticipated as a result of repealing the rule will be the elimination of a rule that was obsolete, irrelevant and unnecessarily duplicative.

There will be no fiscal implications for small or large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The rule is proposed for repeal under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed repeal of the rule does not affect other statutes, articles, or codes.

§113.3. Office Leases.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §113.4

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

The State Board of Dental Examiners proposes the repeal of §113.4, Retail Leases, in conjunction with its review of Chapter 113, Requirements for Dental Offices and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The intent of the language of §113.4 as written is exhaustively and adequately addressed in §109.103, Professional Responsibility, effective February 10, 1998. Section 109.103 is proposed for repeal, contemporaneously with the adoption of new §108.1, Professional Responsibility which will supplant §109.103. Section 113.4 was intended to prevent the unauthorized practice of dentistry by commercial establishments. A dental license is issued to a person who may structure the operation of his/her practice in any one of several business entities, including partnerships, associations and corporations so long as such structures are lawful. Section 113.4 is inappropriate, obsolete, irrelevant and unnecessarily duplicative and is proposed for repeal.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the repeal of the rule is in effect there will be no fiscal implications for local or state government as a result of repealing the rule.

Mr. Hill also has determined that for each year of the first five years the repeal of the rule is in effect the public benefit anticipated as a result of repealing the rule will be the elimination of an irrelevant and unnecessarily duplicative rule.

There will be no fiscal implications for small or large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The rule is proposed for repeal under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed repeal of the rule does not affect other statutes, articles, or codes.

§113.4. Retail Leases.

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

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TRD-200100618
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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CHAPTER 116. DENTAL LABORATORIES

22 TAC §116.2

The State Board of Dental Examiners proposes amendments to §116.2, Dental Technicians in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The reference to Article 4551, Section 1 has been changed to refer to Section 266.001, Occupations Code, reflecting the codification of the Dental Practice Act into the Occupations Code, effective September 1, 1999. ...". Language is also amended to comply with statutory language, which states that a dental technician may be certified by a nationally recognized board and does not specify a particular board.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know that statutory references are current.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102(b) which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.2. Dental Technician.

A "Dental Technician" is a person who performs the services as set out in Occupations Code, Section 266.001 [~~Texas Civil Statues Article 4551f Sec. 1~~] and includes, but is not limited to, all certified dental technicians who have a current certificate issued by a nationally recognized board of certification for dental technology [~~National Board For Certification For Dental Laboratory Technology~~], or its successor.

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §116.3

The State Board of Dental Examiners proposes amendments to §116.3, Requirements, in conjunction with its review of Chapter 116, Dental Laboratories, and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The references to articles in the former Dental Practice Act are changed to the Occupations Code, effective September 1, 1999. The 76th Legislature also enacted Senate Bill 964, referred to properly in the proposed amendment, which impacted on the former Dental Practice Act provisions dealing with registration of laboratories.

Amendments to subsection (c) are intended to clarify that, in order to satisfy the requirement for a certified dental technician, that person must be present at the dental laboratory and working as an employee of the laboratory. The former language was vague and difficult to interpret. The last sentence in subsection (c) is deleted. The requirement is that a certified dental technician work as an employee for a dental laboratory a minimum of 30 hours per week. It is conceivable, albeit doubtful, that a technician could serve more than one laboratory a minimum of 30 hours per week. It is not unheard of for employees to work 60 hour weeks and this restriction that a CDT may be the designated CDT for only one laboratory per year will not withstand constitutional scrutiny.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the requirements for registration and operation of a dental laboratory in Texas will be in compliance with the most recent legislation and reasonable and fair in their application.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 (b) which authorizes the Board to adopt rules affecting dental laboratories; §266.152 (d) which requires dental laboratories to have a CDT working on premise 30 hours per week and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.3. Requirements.

(a) A commercial dental laboratory and an in-house dental laboratory with more than two dental technicians shall be registered according to the provisions of Occupations Code, Subchapter D, Sections 266.151 through 266.154, amended by Acts 1999, 76th Leg., ch. 627 Section 25, effective September 1, 1999 [~~Texas Civil Statutes, Article 4551f (6) (a)-(c)~~], if it is a place where a person undertakes to perform or accomplish any act or service listed in Occupations Code Section 266.001 [~~Texas Civil Statutes, Article 4551f (1)~~]. Permitted services to be performed under a written prescription from a licensed dentist in addition to those described in Occupations Code Section 266.001 [~~Article 4551f(1)~~], include:

(1) Shade taking. Dental laboratories providing this service shall institute and maintain infection control procedures for in-laboratory shade verification to protect the patient and laboratory staff from infectious contamination. Each laboratory shall:

(A) Dedicate a specific area of the laboratory for performance of shade verification procedures.

(B) Maintain the area used for shade verification in a neat, clean, and clutter free state at all times.

(C) Disinfect areas of patient contact both before and after each patient.

(D) Provide a dedicated set of shade guides to be used only for patient shade verification. Disinfect shade guides before and after each use.

(E) Provide a patient hand mirror for extraoral use. Disinfect mirror before and after each patient use.

(F) Use a disinfecting agent for cleaning shade guides that are accidentally dropped.

(G) Require that the technicians taking the shade wear protective clothing, including gloves.

(2) Computer imaging as pertaining to the oral cavity by a registered laboratory. Computer imaging may be accomplished only when authorized by a written prescription from a licensed dentist. The result should be furnished to that dentist accompanied by a disclaimer to the patient that computer imaging is an artistic interpretation and does not guarantee exact results.

(b) A dental laboratory shall furnish each licensed dentist from whom prescriptions are accepted with its permanent registration number and expiration date of such registration, and shall maintain for a period of two years any work orders of any laboratory with which it contracts services. The work order shall reflect the Texas registration number and registration expiration date of the contracted laboratory. No work may be farmed out except to a Texas registered dental laboratory.

(c) All dental laboratories first registered after September 1, 1987 must have a certified dental technician employed by and working on the premises of the dental laboratory [~~on premises~~] a minimum of 30 hours per week. [~~The certified dental technician may be the designated CDT of record for only one laboratory per registration period~~].

(d) The Dental Laboratory Certification Council shall ensure that the following criteria are met for each new laboratory registration application and each renewal of any registration:

(1) application/renewal is complete and all required information is provided.

(2) Current and active CDT certification for designated CDT, or, for grandfathered laboratories, proof of continuing education hours as outlined in §116.4 of this title (relating to Continuing Education) is attached and current.

(3) appropriate fee is attached.

(e) Any laboratory owner applying for a new laboratory registration who has pending fees and/or penalties due from a previous laboratory registration when such laboratory was closed for non compliance with subsection (f) of this section must first remit to the SBDE the registration fee and penalties for each year such fees were not paid before the registration is approved and processed.

(f) It shall be the duty of each laboratory owner to notify the SBDE in writing within 60 days of a change in ownership of a laboratory, location of laboratory, closure of laboratory, the designated CDT or, in the case of a grandfathered lab, the designated employee. Changes of CDT's will require that proof of current CDT certification for the replacement CDT accompany said notification. Changes of designated employees for a grandfathered lab will require proof within six (6) months of the change that the designated employee meets continuing education requirements.

(g) A person owning or operating a laboratory in the State of Texas must maintain the entire laboratory in a clean and sanitary condition without any accumulation of trash, debris, or filth, and such premises shall be maintained in full compliance with all health requirements of the city or county, or both, in which such a laboratory is located and in conformity with the health laws of the State of Texas.

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

Filed with the Office of the Secretary of State, on January 31, 2001.

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §116.4

The State Board of Dental Examiners proposes amendments to §116.4 Continuing Education in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Amendments to §116.4 at subsection (b) are to correct grammar only. The phrase "...shall be comprised of..." is changed to read "...shall comprise...". Language in subsection (a) paragraph (1) and subsection (c) is amended to comply with statutory language, which states that a dental technician may be certified by a nationally recognized board and does not specify a particular board.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that language of the rule will be easier to read.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.4. Continuing Education.

(a) Any laboratory renewing a certificate must provide proof that:

(1) the designated CDT has met the continuing education requirements of a nationally recognized board of certification for dental technology[~~the National Board For Certification For Dental Laboratory Technology~~], or its successor, or;

(2) in the case of grandfathered laboratories that the employee working on the premises of the dental laboratory has completed at least 12 hours of continuing education during the preceding 12 month period. Continuing education hours may only be used for one renewal period.

(b) The continuing education shall comprise [~~be comprised of~~] business management, infection control, and technical competency courses presented in seminars or clinics as accepted by a nationally recognized organization of dentistry or dental technology. The designated employee must complete at least one course in infection control annually. No more than one course in business management taken annually may be applied toward the continuing education requirement. Self study in a course approved by a nationally recognized organization of dentistry or dental technology may be taken for not more than four hours of the annual requirement.

(c) In lieu of furnishing proof of continuing education as set forth in subsection (b) of this section, the dental laboratory may furnish proof that the designated dental technician has a current certification from a nationally recognized board of certification for dental technology [~~by the National Board For Certification For Dental Laboratory Technology~~] or its successor. Certification as retired does not qualify the technician.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §116.5

The State Board of Dental Examiners proposes amendments to §116.5 Exemption in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Subsection (a) is amended to comply with Senate Bill 964, Section 25, effective September 1, 1999. Paragraphs (1) and (2) are changed to modify the language to comply with statutory language. Subsection (b) is amended to make it clear that a dental technician must be present and working as an employee in the dental laboratory.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know that the language of the rule complies with statutory language and is easier to understand.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the

proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.5. Exemption.

(a) The owner of a dental laboratory that was registered with the State Board of Dental Examiners September 1, 1987, is not required to submit proof that the laboratory has at least one certified dental technician employed by and working on the premises provided that:

(1) the registration has been renewed each year and all registration fees have been paid [~~remains current and all registration fees for the succeeding year are paid prior to the expiration of the statutory renewal period~~];

(2) the beneficial ownership of at least 51% interest in the laboratory has not been[~~is not~~] transferred; and

(3) the owner is employed on the premises of the laboratory at least 30 hours per week.

(b) For this section, the designated employee of the dental laboratory must be employed by and working on the premises of the dental laboratory [~~work on the premise~~] a minimum of 30 hours per week.

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

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Jeffry R. Hill
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State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §116.20

The State Board of Dental Examiners proposes amendments to §116.20 Definitions and in conjunction with its review of Chapter 116 Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Changes in statutory references have been made to reflect the codification of the Dental Practice Act into the Occupations Code, effective September 1, 1999.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know will know that statutory references are current.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.20. Definitions.

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

(1) Designated CDT of a dental laboratory - the person so designated on the annual registration form of a CDT laboratory who meets the CDT certification requirement and minimum employment requirements of these rules.

(2) Designated employee of a dental laboratory - the person so designated on the annual registration form of a grandfathered dental laboratory who meets continuing education and minimum employment requirements of these rules.

(3) Employee of a dental laboratory - A person performing dental services in a dental laboratory registered under Occupations Code, Section 266.151. [~~Texas Civil Statutes Article 4551f.~~]

(4) Grandfathered laboratory - a laboratory that meets the provision of §116.5 of this title (relating to Exemption).

(5) Laboratory Work Order - a written description of the kind and type of act, service, or material ordered by and between one or more Texas registered laboratories, pursuant to a prescription issued by a licensed dentist.

(6) Prescription - a written description of the kind and type of act, service, or material ordered by a licensed dentist, as defined in Occupations Code, Section 266.202 [~~Article 4551f(3)(a).~~]

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

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State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §116.21

The State Board of Dental Examiners proposes amendments to §116.21, Dental Laboratory and in conjunction with its review of Chapter 116 Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Changes in statutory references have been made to reflect the codification of the Dental Practice Act into the Occupations Code.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know that statutory references are current.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.21. Dental Laboratory.

A "Dental Laboratory" is any place where a person performs, offers to perform or undertakes to perform any act or service listed in Occupations Code, Section 266.001. [~~Texas Civil Statutes Article 4551f Sec. 1.~~]

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

Filed with the Office of the Secretary of State, on January 31, 2001.

TRD-200100624

Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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22 TAC §116.22

The State Board of Dental Examiners proposes amendments to §116.22, In House Dental Laboratory in conjunction with its review of Chapter 116 Dental Laboratories and in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The language of the rule is changed to correct grammar and to reflect the changes in statutory references to the codification of the Dental Practice Act into the Occupations Code, effective September 1, 1999. The clause "...and the laboratory does not employ more than two dental technicians..." is changed to read "An in house laboratory may not employ more than two dental technicians."

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know that statutory references are current and that the language of the rule will be easier to understand.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.22. In House Dental Laboratory.

"In House Dental Laboratory" is a dental laboratory as described in §116.21 of this title (relating to Dental Laboratories) in which a dentist licensed in Texas and his/her employees performs, offers to perform or undertakes to perform any act or service listed Occupations Code, Section 266.001 [~~Texas Civil Statutes Article 4551f, §1~~] only for the patient(s) of that dentist or only for patient(s) of a professional corporation or partnership of which that dentist is an officer, partner, or employee. An in house dental laboratory must be located on the premises

where the dentist or dental organization practices dentistry and may [the laboratory does] not employ more than two dental technicians.

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

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Jeffry R. Hill
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State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §116.24

The State Board of Dental Examiners proposes amendments to §116.24, Registration Application and in conjunction with its review of Chapter 116 Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The language of the rule is amended to reflect changes in statutory references of the Dental Practice Act into the Occupations Code, effective September 1, 1999.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know statutory references are current.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.24. Registration Application.

The Dental Laboratory Certification Council (DLCC) shall review each application for registration or renewal of registration to determine if the applicant meets the requirements of Occupations Code, Chapter 266 [Article 4551f]. The DLCC shall provide the Board with a list of applicants who are eligible for registration with the Board. Applications will be forwarded with a recommendation to the State Board of Dental Examiners for registration if the provisions of Occupations Code, Chapter 266 [Article 4551f] and the rules in this section are met and the following criteria are met:

(1) application/renewal is complete and all required information is provided,

(2) current and active CDT certification for designated CDT, or, for grandfathered laboratories, proof of continuing education hours as outlined in Rule 116.4 of this title (relating to Continuing Education) is attached and current,

(3) appropriate fee is attached.

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

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TRD-200100626
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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22 TAC §116.25

The State Board of Dental Examiners proposes amendments to §116.25 Responsibility and in conjunction with its review of Chapter 116 Dental Laboratories in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The language of the rule is amended to reflect changes in statutory references of the Dental Practice Act into the Occupations Code, effective September 1, 1999.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know that statutory references are current.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, the Occupations Code §266.102 which authorizes the Board to adopt rules affecting dental laboratories and §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§116.25. Responsibility.

Both the owner and manager and each of them named in an application to register a dental laboratory, irrespective of the person signing the application, are responsible for the proper registration and operation of the laboratory pursuant to the Dental Practice Act and these rules. The provisions of Occupations Code, Chapter 266 [~~Article 4551(f) §7 and §8~~] providing that persons violating the Dental Practice Act are subject to criminal penalties and subject to loss of registration or refusal by the board to issue a registration, apply to the owner and manager of any dental laboratory having or seeking registration in Texas.

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

Filed with the Office of the Secretary of State, on January 31, 2001.

TRD-200100627
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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CHAPTER 119. SPECIAL AREAS OF DENTAL PRACTICE

22 TAC §119.6

The State Board of Dental Examiners proposes amendments to §119.6 Pediatric Dentistry and in conjunction with its review of Chapter 119 Special Areas of Dental Practice, in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The language of the rule is amended to comply with the definition of the specialty recommended and adopted in 1995 by the American Dental Association. The Board has determined that the new definition is a refinement of the original definition and contains more precise language.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know that the language of the definition of Pediatric Dentistry comports with an updated and acceptable interpretation of this special area of dental practice.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et. seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§119.6. Pediatric Dentistry.

Pediatric dentistry is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs. [~~The specialty of pediatric dentistry is the practice and teaching of comprehensive preventive and therapeutic oral health care of children from birth through adolescence. It shall be construed to include care for special patients beyond the age of adolescence who demonstrate mental, physical and/or emotional problems.~~]

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

Filed with the Office of the Secretary of State, on January 31, 2001.

TRD-200100628
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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22 TAC §119.7

The State Board of Dental Examiners proposes amendments to §119.7 Periodontology and in conjunction with its review of Chapter 119 Special Areas of Dental Practice in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. The language of the rule is amended to comply with the definition of the specialty recommended and adopted in 1995 by the American Dental Association. The Board has determined that the new definition is a refinement of the original definition and contains more precise language.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the public will know that the language of the definition of Periodontics comports with an updated and acceptable interpretation of this special area of dental practice.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et. seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§119.7. Periodontics [~~Periodontology~~].

Periodontics is that specialty [~~branch~~] of dentistry which encompasses [~~deals with~~] the prevention diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the[~~. The~~] maintenance of the health function and esthetics of these structures and tissues[~~, achieved through periodontal treatment procedures, is also considered to be the responsibility of the periodontist. The scope shall be limited to preclude permanent restorative dentistry~~].

This 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 January 31, 2001.

TRD-200100629
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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CHAPTER 125. APPLICATIONS FOR SPECIAL CONSIDERATION OR EXCEPTION TO BOARD RULES

22 TAC §125.1

The State Board of Dental Examiners proposes amendments to §125.1 Board to Rule on Requests for Exceptions to Rules, and in conjunction with its review of Chapter 125 Applications for Special Consideration or Exception to Board Rules in accordance with the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature 1997, §167. Rule 125.1 was adopted in 1976 at a time when the Board conducted adjudicative hearings under the Administrative Procedure and Texas Register Act. Hearings are now conducted by the State Office of Administrative Hearings (SOAH). The rule, as written, requires notice and hearing before an exception to the rules can be considered. Many of the former rules concerning practices and procedures before the agency have been supplanted by provisions of the Administrative Procedure Act and SOAH rules. The Board has determined that it is appropriate to have a vehicle for applicants to request an exception to the rules, so long as such appearance does not involve a discussion of the merits of a pending investigation or contested case that is scheduled for hearing at SOAH.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Hill also has determined that for each year of the first five years the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be an avenue to request exceptions to Board rules that is easily understood and followed.

There will be no fiscal implications for small or large businesses. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small businesses when compared to large businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the State Board of Dental Examiners on or before March 19, 2001.

The amended rule is proposed under Texas Government Code §2001.021 et. seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

The proposed amended rule does not affect other statutes, articles, or codes.

§125.1. Board to Rule on Requests for Exceptions to Rules.

Any person under the jurisdiction of the State Board of Dental Examiners may request the Board to consider and approve an exception to Board rules. The request will be considered at a regularly scheduled board meeting following receipt of a written request for appearance. The Board will not consider a request for exception from any party to a contested case or from a respondent in a pending complaint investigation. [~~The Texas State Board of Dental Examiners in its discretion after notice and hearing may approve exceptions to any portion of its rules and regulations upon application by a person under its jurisdiction.~~]

This 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 January 31, 2001.

TRD-200100630
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 463-6400

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.2

The Texas Funeral Service Commission proposes an amendment to §201.2, concerning Agreements To Be in Writing.

The Texas Funeral Service Commission proposes an amendment to delete the language "or unless it is dictated into the record during the course of a hearing." This amendment is proposed to insure that communication between all parties is in writing.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Robbins, Executive Director, Texas Funeral Service Commission, has determined that for each year of the first five years the section is in effect, there will be no effect on local government. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The amendment is proposed under Section 651.152 of the Texas Occupation Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this Section.

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

§201.2. Agreements To Be in Writing.

No stipulation or agreement between parties or their representatives regarding any matter involved in any proceeding before the commission may be enforced unless it is in writing and signed by the parties or their representatives [~~or unless it is dictated into the record during the course of a hearing~~].

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

Filed with the Office of the Secretary of State, on February 1, 2001.

TRD-200100681
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 936-2474

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22 TAC §201.3

The Texas Funeral Service Commission proposes an amendment to §201.3, concerning Appearances.

The Texas Funeral Service Commission proposes an amendment to change the language to read his/her instead of his. The language added is /her. This is a grammatical change and does not change the meaning of the rule.

O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Robbins, Executive Director, Texas Funeral Service Commission, has determined that for each year of the first five years the section is in effect, there will be no effect on local government. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704. (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The amendment is proposed under Section 651.152 of the Texas Occupation Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this Section.

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

§201.3. Appearances.

Any party may appear before the agency and be represented by an attorney at law. Any person may appear on his/her own behalf, or be represented by a bona fide full-time employee. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full time employee authorized to bind the corporation, partnership, or association to a legal contract.

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

Filed with the Office of the Secretary of State, on February 1, 2001.

TRD-200100682
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 936-2474

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PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 231. ADMINISTRATION

SUBCHAPTER A. DEFINITIONS

22 TAC §231.1

The Board of Vocational Nurse Examiners proposes amendment of §231.1 relating to definitions. The definition of Endorsement is amended for consistency with compact rules.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal

implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article, or code will be affected by this proposal.

§231.1. Definitions.

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

(1) Act - refers to Chapter 302 of the Texas Occupations Code which governs Vocational Nurses.

(2) Active License - a license is considered active only if the licensee has utilized their nursing knowledge, skills and/or abilities within the immediate past five years preceding renewal and met all other requirements for current licensure.

(3) Administrative Procedure Act - the Administrative Procedure Act.

(4) Agency - the Board of Vocational Nurse Examiners

(5) Applicant - a party making application for licensure.

(6) Application for Licensure - the process of making application for licensure as a Licensed Vocational Nurse in accordance with the provisions of the Act.

(7) Board - the Board of Vocational Nurse Examiners.

(8) Board Member - a person appointed by the Governor and confirmed by the State Senate to serve on the Board of Vocational Nurse Examiners.

(9) Complete Application - an application that has been received with fees, correctly completed and has all required documents.

(10) Current License - a license that reflects a date which has not expired.

(11) Delinquent Licensee - an individual holding a license to practice vocational nursing, whose license has expired for nonpayment of renewal fees, and whose license has not been suspended or revoked by disciplinary action.

(12) Direct Supervision - requires the vocational nurse holding a temporary permit to work under the direction of a Licensed Vocational Nurse, Registered Nurse, or licensed Physician who is physically present on the same unit and is readily available to provide immediate consultation and assistance.

(13) Division - one of the administrative units within the jurisdiction of the agency.

(14) Endorsement - process of recognition of and subsequent granting of licensure to an applicant who meets all Texas requirements [~~and holds a valid license to practice vocational/practical nursing in another state, District of Columbia, or territory of the United States~~].

(15) Hardship - a circumstance which results in failure to meet board requirements for examination due to natural disaster, personal illness, injury, or medical emergency of self or immediate family, death in immediate family or other extraordinary circumstances.

(16) Legitimate Excuse - a written statement meeting specified hardship criteria.

(17) License - a document issued evidencing the person has fulfilled requirements as stated in Chapter 302, Texas Occupations Code.

(18) Licensee - an individual whose license to practice vocational nursing is current and in force, and has not been suspended or revoked by disciplinary action of the board.

(19) Licensed Vocational Nurse - a person who is licensed under Chapter 302, Texas Occupations Code by the Board of Vocational Nurse Examiners.

(20) Licensing - the agency process respecting the granting, denial, renewal, revocation or suspension of a license.

(21) National Council Licensure Examination for Practical Nurses (NCLEX-PN) - the practical/vocational nurse licensure examination developed by the National Council of State Boards of Nursing, Inc., and used for licensure by those jurisdictions whose boards of nursing are National Council members.

(22) Nursing or Nursing Services - attending or caring for a person's illness or health for compensation.

(23) Peer Review - the process of evaluating the qualifications of the vocational nurse, evaluating the appropriateness and quality of vocational nursing services rendered within the scope of vocational nursing practice, merits of complaint against the vocational nurse and the efficacy of the complaint.

(24) Person - any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(25) Petitioner - any party making a formal written supplication or request to the board.

(26) Practical Nurse or Licensed Practical Nurse - the title used in some other states for nurses with licensure requirements similar to those for Licensed Vocational Nurses in this State.

(27) Register - the Texas Register.

(28) Rule - any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The definition includes substantive regulations.

(29) Vocational Nursing or Vocational Nursing Services - nursing services that generally require experience and education in biological, physical or social sciences sufficient to qualify for licensure as a Licensed Vocational Nurse.

This 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 February 1, 2001.

TRD-200100661
Mary M. Strange, RN, MSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 305-7653

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CHAPTER 233. EDUCATION
SUBCHAPTER B. OPERATION OF A VOCATIONAL NURSING PROGRAM

22 TAC §233.22, §233.23

The Board of Vocational Nurse Examiners proposes amendment of §233.22 relating to Instructors and 233.23 relating to Designate Supervisors. The rules are amended for consistency with the compact rules.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing the rules.

Mrs. Strange has also determined that for 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 consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article, or code will be affected by this proposal.

§233.22. Instructors.

Instructors shall be nurses licensed to practice in the State of Texas or in accordance with the rules of the Nurse Licensure Compact. Instructors shall have been actively employed in nursing for the past three years. If the instructor has not been actively employed in nursing for the past three years, the instructor's advanced preparation in nursing, education, and nursing administration, and prior relevant nursing employment may be taken into consideration by the Board staff in evaluating qualifications for the position. Instructors shall have had three years varied nursing experiences since graduation. Instructor qualifications forms shall be submitted to the Board office for approval prior to hiring. Instructors shall have no other responsibilities but the program. Instructors shall be responsible for all initial nursing procedures in the clinical area and ascertain that the student is competent before allowing the student to perform an actual nursing procedure independently. Instructors shall be responsible for developing, implementing, and evaluating curriculum; participating in development of standards for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling. Adjunct faculty are exempt from meeting the instructor qualifications as long as the courses taught are not nursing theory or clinical courses. Adjunct faculty shall not be included in the required clinical faculty/student ratio.

§233.23. Designate Supervisors.

Designate supervisors shall be nurses licensed to practice in the State of Texas or in accordance with the rules of the Nurse Licensure Compact. A designate supervisor shall have been actively employed in nursing for one year. A designate supervisor shall be responsible for providing clinical instruction and/or supervision when faculty is unavailable in clinical sites. The role of the designate supervisor is to augment the clinical instruction provided by the program faculty. While acting in that capacity, the designate supervisor shall be accountable for identified clinical objectives and will participate in student evaluation. It is the responsibility of the faculty to provide written clinical objectives, evaluation criteria, and a written description of expectations to the designate supervisor. The designate supervisor is mandatory in health care facilities whose census and number of students cannot support the assignment of a faculty member.

This 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 February 1, 2001.

TRD-200100662
Mary M. Strange, RN, MSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 305-7653

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CHAPTER 235. LICENSING
SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.6

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

The Board of Vocational Nurse Examiners proposes the repeal of §235.6 relating to Applications for Licensure by Endorsement. The rule is being repealed for consistency with compact rules.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing the rules.

Mrs. Strange has also determined that for 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 consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The repeal is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the

Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article, or code will be affected by this proposal.

§235.6. Applications for Licensure by Endorsement.

This 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 February 1, 2001.

TRD-200100663
Mary M. Strange, RN, MSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 305-7653

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The Board of Vocational Nurse Examiners proposes new §235.6 relating to Applications for Licensure by Endorsement. The rule is proposed for consistency with compact rules.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing the rules.

Mrs. Strange has also determined that for 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 consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The new rule is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article, or code will be affected by this proposal.

§235.6. Applications for Licensure by Endorsement.

An applicant for licensure in Texas by endorsement shall:

(1) have satisfactorily completed theory and clinical practice as identified in specific provisions of Section 233.58 (d) of this title (relating to Curriculum Requirements), as evaluated by professional staff of the Division of Education;

(2) be a graduate of an approved vocational/practical nursing program or have completed an acceptable level of education as determined by the Board in a nursing school approved by the State Board of Nurse Examiners of Texas or in some other state, the District of Columbia, a possession of the United States, or a foreign country.

(3) have possessed at the time of initial licensure as a vocational nurse the qualifications necessary to have been eligible for licensure at that time in this state;

(4) have completed training, education or examination requirements specified by the Board in lieu of the requirements of subsection (2) of this rule;

(5) have passed or achieved a passing score acceptable to Texas on the national examination for practical/vocational nurses;

(6) hold an active and current vocational/practical nurse license in another state;

(7) be subject to Chapter 239, Subsection E. Reinstatement Process, if applicants license has been voluntarily surrendered, suspended, or revoked in a Compact state.

(8) show employment in the nursing profession within the past five years or evidence of a completed refresher course or completion of supervised employment for a specified period and a copy of the job description;

(9) comply with additional Board staff specified training, education, or examination requirements if not employed as a licensed nurse within the past five years;

(10) file another application if original application is not completed within six months;

(11) not be refunded 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 February 1, 2001.

TRD-200100664
Mary M. Strange, RN, MSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 305-7653

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22 TAC §235.17

The Board of Vocational Nurse Examiners proposes amendment of §235.17 relating to Temporary Permits. The rule is amended for consistency with compact rules.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing the rules.

Mrs. Strange has also determined that for 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 consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article, or code will be affected by this proposal.

§235.17. Temporary Permits.

(a) Graduates of approved vocational nursing programs in this state, another state, or the District of Columbia.

(1) A permit will be issued for the first scheduled examination only;

(2) a permit will not be issued to an applicant who has previously failed an examination approved by the Board or by another state;

(3) the temporary permit will expire on the applicants receipt of a license or on receipt of notification of examination failure;

(4) distribution of permits may be assigned to a mutually agreeable agent to act on behalf of the Board.

(b) Professional nursing education applicants.

(1) A permit will be issued for the first scheduled examination only;

(2) temporary permits will expire on the applicants' receipt of a license or on receipt of notification of examination failure.

(c) Endorsement Applicants.

(1) Temporary permits shall be issued to endorsement applicants who meet licensure requirements;

(A) are approved by the Division of Education;

(B) are educated in the United States or its territories;

(C) hold a [~~active and current~~] license to practice vocational/practical nursing in another state; and

(D) present satisfactory sworn evidence of same.

(E) temporary permits will expire in 90 days or on receipt of a license, whichever comes first.

(2) Temporary permits may be issued to individuals who do not meet licensure requirements in order to meet additional Board staff specified training, education, or examination requirements. Temporary permits issued for the purpose of meeting Board staff requirements expire on the date indicated on the temporary permits.

(d) Restrictions on Temporary Permits

(1) Holders of temporary permits must practice under the direct supervision of a registered nurse, licensed vocational nurse, or a licensed physician.

(2) Temporary permits will not be issued to any examination or endorsement applicant under investigation.

This 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 February 1, 2001.

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Mary M. Strange, RN, MSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 305-7653

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CHAPTER 239. CONTESTED CASE PROCEDURE

SUBCHAPTER B. ENFORCEMENT

22 TAC §239.11

The Board of Vocational Nurse Examiners proposes amendment of §239.11 relating to Unprofessional Conduct. Subsection (9) of this rule is amended for consistency with compact rules.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article, or code will be affected by this proposal.

§239.11. Unprofessional Conduct.

Unprofessional or dishonorable conduct, likely to deceive, defraud, or injure the public, may include the following described acts or omissions:

(1) misappropriating supplies, equipment, or medications or personal items of the patient/client, employer, or any other person or entity;

(2) administering medications and treatments in a negligent manner;

(3) failing to accurately or intelligibly report and/or document a patient's/client's status including signs, symptoms, or responses and the nursing care delivered;

(4) failing to make entries, destroying entries, and/or making false entries in records pertaining to care of patients/clients;

(5) passing or attempting to pass forged, altered, falsified or unauthorized prescription(s) by electronic, telephonic, written communication or any other means;

(6) obtaining or attempting to obtain or deliver medication(s) through means of misrepresentation, fraud, forgery, deception, and/or subterfuge;

(7) knowingly falsifying and/or forging a physician's order/prescription;

(8) providing information which was false, deceptive, or misleading in connection with the practice of vocational nursing or failing to answer specific questions that would have affected the decision to license, employ, certify or otherwise utilize a vocational nurse;

(9) practicing vocational nursing in this state without a current [~~Texas~~] license from Texas or a compact state ;

(10) practicing as a vocational nurse holding a license or temporary permit or a graduate making application for licensure, and/or applying for employment or by virtue of being an LVN in an educational program, while the individual's ability to practice is impaired by alcohol, drugs, physical or mental disability and/or testing positive for alcohol, illicit drugs or other substances not prescribed.

(11) aiding and abetting the practice of vocational nursing by any person not licensed to practice vocational or practical nursing;

(12) impersonating a licensee, or permitting another person to use an individual's vocational nursing license for any purpose.

(13) failing to report to the Board or to a Board approved peer assistance program, if applicable, within a reasonable time of the occurrence, any violation or attempted violation of Chapter 302, Texas Occupations Code or duly promulgated rules, regulations or orders;

(14) failing to report the unauthorized practice of vocational nursing;

(15) failing to cooperate with the agency by:

(A) not furnishing any papers or documents requested; or

(B) not responding to subpoenas issued by the agency;

(16) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts before the agency or the Board, or by the use of threats or harassment against any patient/client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(17) knowingly engaging in a profession involving contact with the public while suffering from an infectious and communicable disease which presents a serious risk to public health;

(18) knowingly performing an exposure-prone procedure while suffering from an infectious and communicable disease which presents a serious risk to public health, without counsel from a personal physician with knowledge of infectious disease, infection control, the epidemiology of the disease and procedures performed by the licensed vocational nurse.

(19) knowingly failing to adhere to universal precautions for infection control as defined in subsection 239.1 of this title (relating to Definitions);

(20) refusing to treat a patient/client, or other person who suffers from an infectious and communicable disease involving serious risk to public health;

(21) disclosing confidential information or knowledge concerning the patient/client except where required or allowed by law;

(22) knowingly causing or permitting physical or emotional injury to any person, or engaging in sexual contact with a patient/client;

(23) physically, emotionally or financially exploiting the patient/client or the patient's/client's significant other(s);

(24) offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a patient/client in connection with the performance of professional services;

(25) failing to repay a guaranteed student loan, as provided in the Texas Education Code;

(26) failing to comply with board rules regarding continuing education, and/or knowingly providing false information regarding completion of educational programs;

(27) failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual injury to any person was sustained, including but not limited to:

(A) failing to assess and evaluate a patient's/client's status or failing to institute nursing intervention, including but not limited to basic life support measures, such as CPR, which might be required to stabilize a patient's/client's condition or prevent complications;

(B) accepting an assignment when one's physical or emotional condition prevents the safe and effective delivery of care or accepting an assignment for which one lacks the educational preparation, experience, knowledge or ability;

(C) failing to obtain instruction or supervision when implementing nursing procedures or practices for which one lacks the educational preparation, ability, knowledge and/or experience;

(D) performing or attempting to perform nursing techniques or procedures or both in which the nurse is untrained by education or experience;

(E) assigning nursing care functions or responsibilities to an individual lacking the ability or knowledge to perform the function or responsibilities in question;

(F) causing or permitting physical, sexual, emotional or verbal abuse or injury to the patient/client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing Board:

(G) knowingly or consistently failing to follow the policy and procedure for the wastage of medications(s) in effect at the facility at which the nurse is employed or working;

(H) abandoning patients/clients by terminating responsibility for nursing care, intervention, or observation without properly notifying another licensed medical professional and ensuring the safety of patients/clients;

(I) engaging in unnecessary violence towards any person in connection with the practice of vocational nursing;

(J) failing to comply with a supervisor's valid directives;

(K) negligently or intentionally violating a physician's order addressing patient care;

(L) failing to recognize and honor the professional interpersonal boundaries appropriate to any therapeutic relationship or health care setting.

(28) violating state or federal laws relative to drugs, including controlled substances and dangerous drugs;

(29) being convicted of a crime that relates to the practice of vocational nursing;

(A) those crimes which the Board considers to be directly related to the duties and responsibilities of a licensed vocational nurse shall include, but are not limited to:

(i) offenses against the person;

(ii) offenses against property;

(iii) offenses involving fraud, dishonesty or deceit;

(iv) offenses related to drugs/alcohol;

(v) offenses which include attempting or conspiring to commit any of the offenses in the subsection;

(B) In determining whether a crime not listed above relates to vocational nursing, the Board will consider:

(i) the nature and seriousness of the crime;

(ii) the relationship of the crime to the purposes for requiring a license to practice vocational nursing;

(iii) the extent to which a license might offer opportunities to engage in further criminal activity of the same type as that in which the person was previously engaged; and

(iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and to discharge the responsibilities of a vocational nurse.

This 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 February 1, 2001.

TRD-200100666
Mary M. Strange, RN, MSN
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 305-7653

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 73. CIVIL RIGHTS

The Texas Department of Human Services (DHS) proposes the repeal of §73.1, §73.2, §73.3, §73.4, §73.5, §73.6, §73.7, §73.8, §73.9, §73.10, §73.11, and §73.12, concerning civil rights administration and statement of compliance; §73.2107, concerning use of department facilities by public employees organization or association, §73.3001, §73.3002, §73.3003, and §73.3004, concerning legal basis; §73.3101, concerning agreements and contracts; §73.3201, §73.3202, §73.3203, and §73.3204, concerning dissemination of information and training; and §§73.3301-73.3311, concerning complaints; and new Subchapter A, Purpose and Application; Subchapter B, Discrimination Prohibited; Subchapter C, Civil Rights Responsibilities; Subchapter D, Dissemination of Information and Training; Subchapter E, Complaints of Discrimination; Subchapter F, Compliance Reviews and Standards; and Subchapter G, Contract Compliance, composed of new §§73.1, 73.2, 73.100, 73.101, 73.200-73.212, 73.300-73.302, 73.400- 73.413, 73.500, 73.501, and 73.600, in its Civil Rights chapter. The purpose of the repeals and new sections is to comply with required changes resulting from the passage of the Americans with Disabilities Act, the Civil Rights Restoration Act, and amendments and changes in the Code of Federal Regulations. The rules are being repealed and new rules proposed in accordance with §2001.039 of the Government Code.

Eric M. Bost, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of adoption of the proposed rules will be the deletion of obsolete rules and the adoption of applicable and updated rules regarding civil rights protections for DHS program applicants and recipients. There will be no adverse economic effect on small or micro businesses, because the rules do not add new requirements. There is no anticipated economic cost to persons who are required to comply with the proposed sections, because the rules do not add new requirements.

Questions about the content of this proposal may be directed to Mathis Hale at (512) 438-3705 in DHS's Civil Rights Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-021, 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.

SUBCHAPTER A. CIVIL RIGHTS ADMINISTRATION AND STATEMENT OF COMPLIANCE

40 TAC §§73.1 - 73.12

(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 Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§73.1. Documentation.
§73.2. Methods of Recording.
§73.3. Office Accessibility.
§73.4. Affirmative Action.
§73.5. Awareness of Special Needs.
§73.6. Cultural Awareness Training.
§73.7. Staff Education.
§73.8. Public Information.
§73.9. Statistical Data.
§73.10. Administrative Responsibilities and Referral Procedures.
§73.11. Complaint Procedure.
§73.12. Compliance by Contractors.

This 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 February 5, 2001.

TRD-200100710
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 438-3108

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40 TAC §73.1, §73.2

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.030.

§73.1. Purpose and Application.

These rules implement the federal and state civil rights laws and regulations that prohibit discrimination in all programs and services administered directly by or through contractual, licensing, or other arrangements with the Texas Department of Human Services (DHS).

§73.2. Definitions.

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

(1) Applicant:

(A) employment-related - A person who submits a written application for employment with the Texas Department of Human Services (DHS).

(B) service-related - A person or entity who submits a written application or orally requests participation in a DHS-assisted program.

(2) Civil rights complainant:

(A) employee-related - A person or group of persons who allege discrimination in employment on the basis of race, color, national origin, age, sex, disability, or religion.

(B) service-related - A person or group of persons who allege discrimination in the delivery of program benefits on the basis of race, color, national origin, age, sex, disability, political beliefs, or religion.

(3) Complaint - An allegation of discrimination made by a civil rights complainant.

(4) Contract - An agreement between two or more parties for services or goods in exchange for something of value.

(5) Contractor - An association, partnership, or other legal entity, with whom DHS has a written contract.

(6) Discrimination - Actions in violation of federal or state civil rights laws and regulations.

(7) External complaints - Complaints of discrimination that are filed with a federal agency by service applicants and recipients. These complaints are processed and coordinated by the state office Civil Rights Department.

(8) Facility - All or any portion of buildings, structures, sites, complexes, equipment, rolling stock, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. This includes a facility that is used by DHS directly or a facility that is used in an arrangement to provide services or benefits to applicants or recipients.

(9) Federal financial assistance - Any grant, loan, contract (other than a procurement contract or contract of insurance or guaranty), or other arrangement by which DHS receives federal funds to operate its programs.

(10) Non-compliance - The final determination that discrimination has occurred or a civil rights law or DHS civil rights policy or procedure has been violated. The non-compliance is established by a formal review or investigation of an allegation of discrimination or through a routine review or inspection of a DHS operation, or of entities that either contract or have another arrangement with DHS to provide services.

(11) Recipient - An applicant who has been determined as eligible to receive service or benefits from DHS's programs administered by DHS directly or through other arrangements.

(12) Regional civil rights office - An office located in one or more of the 10 DHS regions throughout the state that is responsible for the day to day civil rights functions in their respective regions.

(13) Retaliation - Discrimination against an individual because he or she filed a complaint of discrimination, participated in a discrimination complaint investigation, or has otherwise opposed an unlawful discriminatory practice.

(14) State office civil rights department - The responsible entity within DHS executive management that implements all aspects of program and policy development for federal and state civil rights laws and regulations within DHS.

This 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 February 5, 2001.

TRD-200100711
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 438-3108

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SUBCHAPTER B. DISCRIMINATION PROHIBITED

40 TAC §73.100, §73.101

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.030.

§73.100. Administrative Practices.

(a) The Texas Department of Human Services (DHS) will not, in administering its programs, directly or through contractual, licensing, or other arrangements, on the grounds of race, color, national origin, sex, age, disability, religion, or political belief unlawfully:

(1) deny an individual services or other benefits provided under its programs;

(2) provide services or other benefits to an individual that are different, provided in a different manner from services or benefits

provided to others under its programs, or not as effective as those provided to others;

(3) subject an individual to segregation or separate treatment in matters related to their receipt of services or other benefits provided under its programs;

(4) restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving services or other benefits provided under its programs;

(5) treat an individual differently from others in determining whether the individual satisfies any eligibility or other requirement or condition that individuals must meet in order to receive services or other benefits provided under its programs;

(6) deny an individual an opportunity to participate in a program through the provision of services or otherwise afford individuals an opportunity to do so which is different from that afforded others under its programs. This includes the opportunity to participate in the program as an employee where the primary objective of the federal financial assistance to the program is to provide employment, including a program under which the employment is provided to reduce unemployment;

(7) deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of its programs;

(8) provide significant assistance to an agency, organization, or person that discriminates on the basis of an individual's disability in providing any service to applicants and recipients of the program;

(9) otherwise limit a qualified individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving services; or

(10) select a site or location of facilities with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any of its programs.

(b) For purposes of these rules, services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and individuals without disabilities. To be equally effective, the services must afford individuals with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the person's needs.

(c) Despite the existence of separate or different programs or activities, DHS does not unlawfully deny a qualified individual with a disability the opportunity to participate in such programs or activities that are not separate or different.

(d) DHS does not, directly or through contractual, licensing, or other arrangements, use criteria or methods of administration that have the effect of subjecting qualified individuals with a disability to discrimination on the basis of their disability, that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of its programs with respect to individuals with a disability, or that perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

(e) In determining the site or location of a facility, DHS does not make selections that have the effect of unlawfully excluding individuals with a disability from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to individuals with disabilities.

(f) As used in this section, the services provided under a program receiving or benefiting from federal financial assistance include any service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with federal financial assistance.

(g) In programs limited by federal law, the exclusion of individuals without disabilities from the benefits of a program limited by federal statute or executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by federal statute or executive order to a different class of individuals with disabilities is not prohibited by these rules.

§73.101. Criteria and Methods of Administration.

The Texas Department of Human Services (DHS) does not, directly or through contractual, licensing, or other arrangements, use criteria or methods of administration which have the effect of subjecting individuals to discrimination. DHS does not:

(1) use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of a program because of discrimination; or

(2) make unlawful distinctions on the grounds of race, color, national origin, sex, age, disability, religion, or political belief, in relation to the use of physical facilities, intake and application procedures, caseload assignments, determination of eligibility, the amount and type of services, and other benefits under DHS's programs.

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

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TRD-200100712
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 18, 2001
For further information, please call: (512) 438-3108

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SUBCHAPTER C. CIVIL RIGHTS RESPONSIBILITIES

40 TAC §§73.200 - 73.212

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.030.

§73.200. Appointment of Civil Rights Director.

The commissioner of the Texas Department of Human Services (DHS) appoints a member of its management team to serve as the director of civil rights who will be responsible for DHS's Civil Rights Department. The civil rights director will be responsible for the implementation and compliance with, Title VI and Title VII of the Civil Rights Act of 1964

(Title VI and Title VII), the Americans with Disabilities Act of 1990 (ADA), §504 of the Rehabilitation Act of 1973, and other applicable civil rights laws and regulations.

§73.201. Documentation.

The Texas Department of Human Services (DHS) obtains and documents an assurance that each program is conducted and operated in compliance with all the requirements imposed by or pursuant to these rules prior to and as a condition of its implementation. This information is made available to United States Department of Health and Human Services (HHS), United States Department of Agriculture (USDA), and any federal-administrating agency with regulatory responsibility for DHS. Documentation includes consideration of the impact on applicants and recipients and ensure that services are provided without discrimination.

§73.202. Methods of Recording and Keeping Statistical Data.

Each Texas Department of Human Services (DHS) facility or local office participating in a program will have methods of recording and reporting the delivery of service by race, ethnicity, and disability. DHS uses information obtained to address service delivery needs. DHS collects and maintains racial, ethnic and disability data showing the extent to which recipients participate in its programs. This information will be supplied to federal administrating agencies upon request.

§73.203. Office Accessibility.

The sites of the offices and facilities of the Texas Department of Human Services (DHS) are accessible to all people regardless of race, color, national origin, sex, age, disability, religion, or political belief.

§73.204. Complaint Procedure.

The Texas Department of Human Services (DHS) establishes a comprehensive policy and procedures to handle civil rights complaints of discrimination.

§73.205. Program Participation.

The Texas Department of Human Services (DHS) takes affirmative steps to overcome the effects of conditions that result or have resulted in discriminatorily limiting participation in any program by applicants (even in the absence of prior discrimination).

§73.206. Service Accessibility and Awareness of Special Needs.

(a) The Texas Department of Human Services (DHS) takes affirmative steps to ensure that applicants and recipients are assigned staff trained to have an awareness of the cultural and linguistic needs of the service population. This is not to imply that the staff member should be of the same race or national origin as the client.

(b) Where there are applicants and recipients who cannot express themselves fluently in English, DHS and its contractors must provide alternative methods for ensuring access to services.

§73.207. Civil Rights Training.

The Texas Department of Human Services (DHS) provides ongoing civil rights training to staff. The training is designed to instill awareness of ethnic, cultural and linguistic differences of diverse populations, including persons with physical and mental disabilities, which may have an impact on the delivery of services. The training is designed to develop the capability of the staff to respond to the unique needs of applicants and recipients.

§73.208. Dissemination of Information to Staff.

The Texas Department of Human Services (DHS) makes information available to staff (including information provided orally, in writing, or through other alternative means) about the protections against discrimination ensured by state and federal civil rights laws and regulations.

§73.209. Public Information.

(a) The Texas Department of Human Services (DHS) informs applicants, recipients, and the general public of applicable civil rights laws and regulations and that its program benefits and services are provided on a nondiscriminatory basis.

(b) DHS disseminates information to the public regarding applicable civil rights laws and regulations, including information regarding DHS's civil rights policies and procedures, the right to file complaints and the addresses of DHS's civil rights offices. DHS provides similar information about contacting the United States Department of Health and Human Services, Office of Civil Rights, and the United States Department of Agriculture, Civil Rights Office, to file complaints.

(c) DHS provides its civil rights policies in appropriate languages in areas where there are applicants and recipients who have limited English proficiency and provides similar information through alternative means to applicants and recipients who are deaf, or hard-of-hearing.

§73.210. Employment Practices.

The Texas Department of Human Services (DHS) develops comprehensive policies and procedures assuring that DHS's recruitment and employment practices do not cause discrimination. DHS applies equal employment practices to assure equal opportunity to and nondiscriminatory treatment of applicants and recipients.

§73.211. Administration and Compliance.

(a) The Texas Department of Human Services' (DHS's) Civil Rights Department provides each DHS facility, institution, and local office participating in a program with a set of civil rights compliance standards.

(b) Personnel who have supervisory responsibility for offices or facilities of DHS or its contractors addresses compliance issues as they relate to Title VI and other applicable civil rights laws and regulations in their supervisory actions and reports.

(c) The state office civil rights department monitors each DHS office and facility for compliance with civil rights compliance standards.

(d) The director of civil rights uses expertise, knowledge of the state, and analysis of prevailing racial and ethnic conditions and other relevant factors to determine the offices or facilities that will be monitored and the time frame in which they will be monitored.

(e) Upon discovery of a possible discriminatory act or an issue of non-compliance with civil rights compliance standards, the appropriate civil rights office representative notifies the appropriate manager of the program or office. The notification is in writing and indicates the need for an investigation to determine the facts or the need to take correct action to resolve any issue of non-compliance.

(f) If it is determined that discrimination or issue of non-compliance with civil rights compliance standards exists, the appropriate civil rights office representative initiates efforts to seek corrective action within a reasonable time.

(g) The state office civil rights department takes follow-up action to determine that corrective action was completed.

(h) The state office civil rights department prepares a complete report of the entire review and makes it a part of agency files for review by appropriate officials.

§73.212. Compliance by Contractors.

(a) The Texas Department of Human Services (DHS) requires any entity with which DHS contracts or has another arrangement to

provide services, to provide assurance that they will operate the program and provide services and benefits in a nondiscriminatory manner in compliance with this chapter and all applicable civil rights laws and regulations.

(b) The state office Civil Rights Department informs contractors that their compliance with Title VI of the Civil Rights Act of 1964 and other applicable civil rights laws and regulations is a condition of their initial and continued participation in any part of a DHS program.

(c) DHS will not participate in a contractual or other relationship that has the effect of subjecting applicants, recipients, or employees to discrimination.

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

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SUBCHAPTER D. DISSEMINATION OF INFORMATION AND TRAINING

40 TAC §§73.300 - 73.302

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.030.

§73.300. Information Given Clients and Public.

The Texas Department of Human Services (DHS) provides information to the public, to applicants, recipients, participants in all DHS's programs (including any other agency, institution, or organization participating in a program through contractual, licensing, or other arrangements), state and local staff, and other interested persons in the following manner:

(1) DHS gives applicants and recipients information regarding their rights during the intake process.

(2) Whenever applicable, all public informational material published by DHS reflects nondiscriminatory practices.

(3) The appropriate civil rights office gives information about the Civil Rights Act of 1964 and other applicable civil rights laws and regulations to institutions, organizations, contractors, and individuals.

(4) When people are pictured in publications that are distributed to the public, DHS ensures representation from minority, nonminority, and disability populations, when appropriate or content permitting.

§73.301. Information Given Agency Staff.

The Texas Department of Human Services (DHS) disseminates its discrimination policy by:

(1) including discrimination policy material in DHS's civil rights handbook;

(2) publishing the discrimination policy in agency newsletters, annual reports, and other media;

(3) including discrimination policy material in employee orientation, in-service training, management training, and supervisor training programs; and

(4) representing minority, non-minority, and people with disabilities in brochures, employee handbooks, or similar publications when appropriate or content permitting.

§73.302. Civil Rights Training.

Civil rights training includes, but is not limited to:

(1) the requirements of Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act of 1973, and other applicable civil rights laws and regulations;

(2) civil rights compliance review policies and procedures;

(3) procedures for investigating complaints of discrimination; and

(4) information regarding diversity awareness and the special needs occasioned by the culture of applicants and recipients.

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

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SUBCHAPTER E. COMPLAINTS OF DISCRIMINATION

40 TAC §§73.400 - 73.413

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.030.

§73.400. Establishment of Procedures.

The civil rights discrimination complaint procedure, at a minimum, specifies the following.

(1) A complaint of discrimination may be filed with either the Texas Department of Human Services (DHS), United States Department of Health and Human Services (HHS), Office of Civil Rights (OCR), United States Department of Agriculture (USDA), or with all said agencies, by an applicant or recipient or his or her designated representative. If the complaint is filed with DHS, the complaint must be brought to the attention of the commissioner of DHS or his or her designee.

(2) The information contained in the complaint must describe the type of discrimination alleged, indicate when and where such discrimination took place, and describe pertinent facts and circumstances surrounding the alleged discrimination.

(3) The civil rights office ensures that a prompt and thorough investigation is made of a complaint if the civil rights office determines that the complaint will be investigated. The complaint investigation may include, but is not limited to:

(A) interviewing the complainant to get details of the complaint;

(B) interviewing community leaders, representatives of local civil rights groups, or others in positions to provide further information about either the complaint incident or the delivery of services by DHS relevant to the complaint;

(C) visiting offices or facilities where the alleged discrimination took place, interviewing staff and other persons who may have information about the complaint, incident, or the delivery of services by DHS relative to the complaint;

(D) interviewing individuals in the their homes or other locations, when appropriate; and

(E) obtaining copies of and reviewing appropriate documents, records, or statistics.

(4) After the complaint has been investigated, the appropriate agency staff will determine whether discrimination occurred. When appropriate, DHS staff take corrective action to prevent recurrence of such discrimination. DHS will monitor the corrective measures taken to eliminate the conditions that may have contributed to the discriminatory act or acts.

(5) The civil rights office advises the complainant will be advised in writing of the agency's findings within 100 days from the receipt of the complaint. In the same written notice the complainant that if he or she is not satisfied with the decision, it may be appealed to HHS, OCR, and/or the USDA.

(6) DHS maintains records pertaining to the complaint that include the details of the investigation, and the action taken by DHS. If discrimination occurred, the records will indicate the nature of the corrective action taken. DHS makes all complaint records available for review by appropriate federal and state officials.

(7) Information pertaining to the complaints of discrimination and the investigation will only be disclosed by the civil rights office when necessary for the investigation, in resolving the complaint, and in accordance with the Public Information Act. DHS will not directly or through contractual, licensing, or other arrangements, intimidate, retaliate, threaten, coerce, or discriminate against any applicant or recipient because he or she has made a complaint, testified, assisted, or participated in any manner in a civil rights investigation, proceeding, or hearing. Staff, applicants, and recipients will be advised that actions of this kind are prohibited and will be investigated according to established agency policies and procedures.

§73.401. Filing Complaints.

The complaint may be filed with any the Texas Department of Human Services (DHS) employee or contract agency. The complaint may be filed by personal contact, letter, or other means. A complaint must be filed within 180 days after the alleged discriminatory act. When a DHS employee or contract agency staff receives a complaint it must be forwarded to a DHS civil rights office for processing.

§73.402. Procedure for Filing.

(a) Any employee of the Texas Department of Human Services (DHS) or entity with whom DHS has a contract or other arrangement to provide services may accept a complaint made in person. Complaints made in person will be referred to persons at a worker level or above. However, if no professional staff member is available and the complainant insists on filing a complaint, a complaint of discrimination form must be supplied. Whenever possible, a person of the rank of worker or above will explain the complaint procedure prior to offering complaint of discrimination forms for signature. Complaints received by a contract agency must be referred to the appropriate agency contract management staff.

(b) Applicants or recipients who believe they have been subject to discrimination may file a written complaint with the Food and Nutrition Service (FNS), United States Department of Agriculture (USDA), the United States Department of Health and Human Services (HHS), Office of Civil Rights (OCR), or with DHS. The applicants or recipients may file with DHS or one of the federal agencies mentioned above or with both a federal agency and DHS.

(c) The procedures for filing discrimination complaints will be explained to each individual who expresses an interest in filing a discrimination complaint. In addition, DHS advises the individual of the right to file a complaint file with either or both the federal agencies mentioned above and DHS. Complaints filed must contain the following information:

(1) the applicant's or recipient's name, address, and telephone number or other means for contacting the person alleging discrimination;

(2) the location and name of the office that is accused of discriminatory practices;

(3) the nature of the incident or action or the aspect of program administration that led the person to allege discrimination;

(4) the basis on which the complainant feels discrimination exists (race, color, national origin, age, sex, disability, political beliefs, or religion).

(5) the names, titles (if appropriate), and addresses of persons who may have knowledge of the alleged discriminatory acts; and

(6) the date or dates on which the alleged discriminatory actions occurred.

(d) After the applicant or recipient makes known his or her intention of filing a civil rights complaint, a DHS representative assists the complainant in the preparation and mailing of the complaint of discrimination form if needed. After completion, the complainant will sign the complaint of discrimination form. If the complainant does not complete the complaint of discrimination form, DHS staff complete the form for the complainant and forward it to the appropriate civil rights office.

§73.403. Handling Complaints.

(a) The state office or regional civil rights office determines whether the complaint is subject to investigation and is responsible for investigating the complaint. In determining the staff responsible for the investigation, the following factors will be considered:

(1) where the complaint originated;

(2) whether state office or regional office staff are involved or mentioned in the complaint; or

(3) whether representatives of a contractor or other entity with which DHS contracts are involved or mentioned in the complaint.

(b) The Texas Department of Human Services (DHS) commissioner is notified by the appropriate federal agency when service applicants, recipients, and DHS employees file external complaints of discrimination. The state office Civil Rights Department processes and coordinates all external complaints. Any external complaints received in the region must be forwarded within five workdays to the state office civil rights department.

§73.404. Acknowledgment of Complaint.

The civil rights office will acknowledge in writing that the complaint has been received by the Texas Department of Human Services (DHS) within twelve workdays of receipt. The notice of complaint investigation must be sent to the complainant at least seven days in advance of the date set for the investigation.

§73.405. Records.

(a) A file containing information used to investigate the complaint and make a determination regarding the allegations includes, but is not limited to:

(1) the complaint of discrimination form;

(2) an acknowledgement of complaint;

(3) a notice of investigation;

(4) a report of investigation of civil rights complaint; and

(5) a notice of closing of complaint.

(b) The regional civil rights office maintains the investigative file. When the regional civil rights office conducts the investigation, they forward a copy of the results and other relevant documentation to the Texas Department of Human Services (DHS) state office civil rights director or his or her designee, who maintains the documentation.

(c) The state office civil rights office retains records for a period of three years from date of origin and makes them available to representatives of the United States Department of Health and Human Services (HHS) or United States Department of Agriculture (USDA), or both.

§73.406. Investigation Procedure.

(a) The investigation begins within 10 workdays from the date the civil rights office received the complaint and determined it to be subject to investigation. The investigation will be completed within 90 workdays from the date that the complaint was filed.

(b) A representative of the state office Civil Rights Department or the regional civil rights office investigates complaints.

(c) All data collected by the representative are subject to the Public Information Act and subject to release to the public unless it fails within one of the exceptions in the act.

(d) Unauthorized disclosure of information is subject to disciplinary action by the Texas Department of Human Services (DHS).

§73.407. Regional Report of Investigation of Complaint of Discriminations.

(a) When the complaint of discrimination involves regionally administered programs, the appropriate regional civil rights office representative will complete an investigation report. The report will contain a summary of factual information obtained by the civil rights investigator in the process of preparing for and conducting the complaint investigation. The report may include recommended action to be taken by the appropriate staff.

(b) Possible outcomes of the investigation may be any one or a combination of the following:

(1) the claim cannot be substantiated;

(2) the claim is substantiated and discrimination is or will be corrected;

(3) the claim is substantiated but cannot be corrected at the regional level. Assistance will be required from the Civil Rights Department; or

(4) the claim is substantiated in part.

(c) After the regional civil rights office representative completes the report of investigation, a regional civil rights review committee reviews the report.

§73.408. Regional Review of Complaints and Reports of Investigation.

(a) Regional civil rights review committee may be composed of the following members:

(1) the regional administrator or designee, as chairperson;

(2) the regional civil rights director or his/her representative;

(3) a legal representative of the Texas Department of Human Services (DHS); and

(4) a representative of the appropriate program area wherein the complaint falls, as appointed by the chairperson.

(b) If the review committee concurs with the outcome of the investigation, the committee sends the report of investigation to the state office Civil Rights Department for a final review.

(c) If the regional review committee does not concur with the outcome of investigation the report of investigation is sent back with recommendations to the regional civil rights representative.

(d) If the regional review committee cannot reach a decision or state office civil rights department assistance is requested, the committee sends the report to the state office civil rights review committee for review.

§73.409. State Office Review Committee for Regional Complaints and Reports of Investigation.

(a) The state office civil rights review committee may be composed of:

(1) the director of the state office Civil Rights Department or designee, as chairperson;

(2) the deputy commissioner for the affected program, or his or her designee;

(3) a representative from the Office of the General Counsel;

(4) a representative of the appropriate department or program area, as appointed by the chairperson; and

(5) a representative from the Office of the Deputy Commissioner for Regional Operations.

(b) The review committee records its concurrence or non-concurrence with the original decision. If there is concurrence, the matter is closed. If there is non-concurrence, the state office review committee recommends further action, if needed, and sends the report to the regional civil right representative.

(c) The committee records the decision of the state office review committee will be recorded in a report of investigation.

(d) Either the regional or state office review committee will forward the results of their review to the state office civil rights director

or his or her designee for a final decision. The state office civil rights director or his or her designee will indicate his or her decision to the appropriate civil rights representative.

§73.410. State Office Reports of Investigation of Complaint of Discrimination.

When the complaint of discrimination involves programs administered directly by state office, when the civil rights department is directed to investigate a case, or has jurisdiction to investigate a allegation of discrimination, then the appropriate state civil rights office representative will conduct an investigation and complete a report of investigation. The state office civil rights director or his or her designee will review the report of investigation. If the state office civil rights director or his or her designee does not concur with the results of the investigation he or she will forward the report of investigation to the state office review committee.

§73.411. State Office Review Committee for Programs Administered by State Office Civil Rights Department.

(a) When a report of investigation, involving programs administered directly by the Texas Department of Human Services (DHS) state office, is forwarded to the state office review committee, the state office review committee may include other DHS staff associated with the program involved as follows:

(1) director of the Long Term Care-Regulatory (LTC-R) Investigations Unit or designee, if nursing facilities are involved;

(2) director of the LTC-R Certification, Provider Enrollment, Billing Unit, or designee if nursing facilities are involved; and

(3) a representative of state office civil rights department.

(b) The state office review committee records its concurrence or non-concurrence. If there is concurrence, the matter is closed. If there is non-concurrence, the state office review committee recommends further action, if needed, and forwards the report of investigation to the state office civil rights director.

§73.412. Action Taken.

(a) If the claim cannot be substantiated, no further action is taken other than to complete the required investigative reports.

(b) If the claim is substantiated in any part, the civil rights representative recommends to appropriate Texas Department of Human Services (DHS) management the action to be taken. The civil rights representative secures a statement as to the steps that have been or will be taken to take corrective action. If the complaint is against a staff member of DHS, the statement comes from the immediate supervisor of the person complained against and describe the actions taken toward correcting the cause for complaint. All corrective action taken to resolve issues related to the complaint must be documented and the documents forwarded to the civil rights office for review and inclusion into the investigative file.

(c) State office civil rights director or his or her designee forwards all complaints of discrimination within the Food Stamp program to the United States Department of Agriculture, Food and Nutrition Service, for their review and concurrence.

§73.413. Discrimination Complaint Closure.

The civil rights office completes a closure letter summarizing the allegation(s) and the results of the investigation. The civil right representative sends the closure letter to the complainant or his or her designated representative, the alleged discriminating official (ADO), the supervisor of the ADO, and the state office civil rights department. All closure information will be filed in the investigative file.

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

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SUBCHAPTER F. COMPLIANCE REVIEWS AND STANDARDS

40 TAC §73.500, §73.501

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001-22.030.

§73.500. Definition.

A compliance review is a systematically planned and regularly initiated review or investigation of a program administered by the Texas Department of Human Services (DHS) directly or through a contract or other arrangements. The compliance review consists, at a minimum, of an assessment and evaluation of the civil rights policies, procedures, and practices of the entity being reviewed.

§73.501. Compliance Standards.

(a) The director of the Civil Rights Department uses expertise, knowledge of the Texas Department of Human Services (DHS) eligibility programs and their operations, and analysis of prevailing racial and ethnic conditions and other relevant factors to determine the selection of offices or facilities that will be reviewed and the time frame in which they will be reviewed. The compliance reviews that are conducted by DHS staff include, but are not limited to, the following:

(1) discussion with clients, former clients, employees, other members of the community, civil rights groups and others who are familiar with the facility or office;

(2) review of data and records, a conference with the facility head or his/her representative, and a tour of the facility;

(3) review of contractual and licensing agreements with contractors, subcontractors and licensees;

(4) review of the publication of nondiscrimination policies; and

(5) review of facts related to:

(A) desegregation of physical facilities;

(B) availability of notices to applicants and recipients, and the public concerning the facility's policy of compliance with the Civil Rights Act and other applicable civil rights laws and regulations;

(C) extent of minority participation in programs;

(D) procedures for the delivery of services;

(E) uniform use of courtesy titles;

(F) inclusion of minority group staff members;

(G) referral practices;

(H) employment practices as related to delivery of services;

(I) the bilingual and bicultural capability of the staff for delivery of services;

(J) staff's awareness of cultural differences; and

(K) periodic Title VI and other civil rights-related training of staff.

(b) Upon discovery of a suspected discriminatory act, the appropriate civil rights office representative notifies the appropriate manager of the program, office, or facility in writing of the need for an investigation to determine the facts. If it is found that discrimination exists, the appropriate civil rights office representative initiates negotiations to seek corrective action taken within a reasonable time.

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

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SUBCHAPTER G. CONTRACT COMPLIANCE

40 TAC §73.600

The new section is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new section implements the Human Resources Code, §§22.001-22.030.

§73.600. Assurances and Compliance Standards.

(a) The Texas Department of Human Services (DHS) provides written information to each contractor regarding the requirements of Title VI and other applicable civil rights laws and regulations.

(b) When services and benefits will not be provided by DHS directly but through a contract or other arrangement with another entity, DHS staff include a requirement in each DHS contract or arrangement assuring that services and benefits must be provided without discrimination.

(c) DHS obtains from each service delivery contractor, such as a nursing facility, a written assurance that it will comply with Title VI and other applicable civil rights laws and regulations. In all contracts or written agreements, a nondiscrimination clause will be included. Vouchers and bills submitted to DHS from non-institutional contractors will include a certification that the services were rendered regardless of race, color, national origin, sex, age, disability, religion, or political belief.

(d) The director of civil rights or his or her designee shall uses expertise, knowledge of the state, and analysis of prevailing racial and ethnic conditions and other relevant factors to determine the monitoring criteria and schedule by which contractors, licensees, and other entities with which DHS has an arrangement to provide services are reviewed. Civil rights contractor compliance reviews, which are conducted by DHS staff, will include a review of civil rights compliance within the terms of their contract and all applicable civil right laws and regulations.

(e) DHS instructs agency staff who regularly visit contracted service facilities and have contact with families of applicants and recipients to notify DHS's civil rights department of any suspected discriminatory act, or any discrepancies in the intake, processing, and treatment of applicants and recipients.

(f) A complete report of reviews becomes a part of agency files for review by appropriate HHS officials or other federal administrative agencies.

(g) When discrimination was found to exist and a contractor does not take corrective action within a designated period, the appropriate program executive in coordination with the director of civil rights may take appropriate action, including, but not limited to, terminating the contract or other arrangement.

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

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SUBCHAPTER V. USE OF DEPARTMENT FACILITIES BY PUBLIC EMPLOYEE ORGANIZATIONS

40 TAC §73.2107

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

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeal implements the Human Resources Code, §§22.001-22.030.

§73.2107. Use of Departmental Facilities by a Public Employee Organization or Association.

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

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SUBCHAPTER EE. LEGAL BASIS

40 TAC §§73.3001 - 73.3004

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§73.3001. Applicability of Civil Rights Law.
§73.3002. Discriminatory Practices.
§73.3003. Administrative Practices.
§73.3004. Handicapped Individuals.

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

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SUBCHAPTER FF. COMPLIANCE BY CONTRACTED AGENTS

40 TAC §73.3101

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

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeal implements the Human Resources Code, §§22.001-22.030.

§73.3101. Agreements and Contracts.

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

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SUBCHAPTER GG. DISSEMINATION OF INFORMATION AND TRAINING

40 TAC §§73.3201 - 73.3204

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§73.3201. Information Given Clients and Public.
§73.3202. State and Local Staff.
§73.3203. Department Policies.
§73.3204. Title VI and Cultural Awareness Training.

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

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SUBCHAPTER HH. COMPLAINTS

40 TAC §§73.3301 - 73.3311

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§73.3301. Definition.
§73.3302. Who May File Complaints.
§73.3303. Procedure for Filing.
§73.3304. Handling Complaints.
§73.3305. Acknowledgment of Complaint and Confidentiality.
§73.3306. Records.
§73.3307. Investigation Procedure.

§73.3308. Report of Investigation of Civil Rights Complaint.

§73.3309. Complaints Review.

§73.3310. Action Taken.

§73.3311. Review by Other Staff.

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

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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 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER K. MODEL PROGRAM STANDARDS FOR MENTAL RETARDATION PROGRAMS

25 TAC §§411.501-411.506

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new sections, submitted by the Texas Department of Mental Health and Mental Retardation have been automatically withdrawn. The new sections as proposed appeared in the July 28, 2000, issue of the *Texas Register* (25 TexReg 7071).

Filed with the Office of the Secretary of State on February 5, 2001.

TRD-200100702

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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 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

1 TAC §155.45

The State Office of Administrative Hearings (SOAH) adopts amendments to §155.45 concerning the procedure for requesting participation by telephone or videoconferencing in hearings before SOAH with changes to the proposed text. While SOAH does not yet have the ability to videoconference, reference to videoconferencing has been retained in the rule, so that a process will be in place when the videoconferencing capability is obtained. The proposed text was published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12873).

No comments were received regarding the proposed amendments.

The only changes SOAH made to the proposed language are substitution of the word "judge" for the acronym "ALJ" in subsections (a), (b), and (d), the acronym "SOAH" for the word "Office" in subsection (d), and the word "ten" for the numeral "10" in subsection (e) as part of an ongoing process of simplifying and making uniform the terminology used in SOAH's rules. The following is a restatement of the rule's factual basis: The amendments to §155.45 accomplish a number goals derived from SOAH's experience with the current rule for almost three years. First, they eliminate the four factors movants must address under the current rule, because the overwhelming majority of such motions are uncontested, and, therefore, addressing the four factors is an unnecessary burden on the movants. Second, the amendments eliminate the sentence following the four factors in the current rule, because it is redundant. Third, the amendments substitute a requirement that movants state the reasons for the request, eliminating the stronger "good cause" requirement in the current rule because it places an unnecessary burden on the movants. Finally, the amendments provide that uncontested requests will be granted without the necessity of issuing orders, while preserving the judge's discretion to deny such requests.

The amended rule is proposed under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of hearings procedural rules, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments affect Government Code, Chapters 2001 and 2003.

§155.45. Participation by Telephone.

(a) A party may request to appear by telephone or videoconferencing or to present the testimony of a witness by such methods, upon timely motion stating the reason(s) for the request and containing the pertinent telephone number(s). A timely motion that is unopposed will be deemed granted without the necessity of an order, unless denied by order of the judge.

(b) The judge may conduct a prehearing conference by telephone or videoconferencing upon adequate notice to the parties, even in the absence of party motion.

(c) All substantive and procedural rights apply to telephone and videoconferencing rehearings and hearings, subject only to the limitations of the physical arrangement.

(d) Documentary evidence to be offered at a telephone or videoconferencing prehearing conference or hearing shall be served on all parties and filed with SOAH at least three days before the prehearing or hearing unless the judge, by written order, amends the filing deadline.

(e) For a telephone or videoconferencing hearing or prehearing conference, the following may be considered a failure to appear and grounds for default if the conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference:

(1) failure to answer the telephone or videoconference line;

(2) failure to free the line for the proceeding; or

(3) failure to be ready to proceed with the hearing or prehearing conference as scheduled. 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.

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 February 2, 2001.

TRD-200100688

Paul Elliott
Director of Hearings
State Office of Administrative Hearings
Effective date: February 22, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 475-4931

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER D. LICENSE

7 TAC §§1.401, 1.403, 1.404

The Finance Commission of Texas (the commission) adopts amendments to 7 TAC §§1.401, 1.403, and 1.404 pertaining to the technical correction of legal citations as a result of the recodification by the 76th Legislature of the *Texas Credit Code*, Texas Civil Statutes, Article 5069, into the Texas Finance Code. The amendments are adopted without changes to the proposal as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12877).

The agency received no comments on the amendment proposal.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected Chapter 342, Texas Finance 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 February 5, 2001.

TRD-200100703
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: February 25, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 936-7640

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.4

The Public Utility Commission of Texas (commission) adopts an amendment to §25.4, relating to Statement of Nondiscrimination with changes to the proposed text as published in the September 29, 2000 *Texas Register* (25 TexReg 9794). The amendment is necessary to implement the provisions of the Public Utility Regulatory Act (PURA) §17.004(a)(4) and §64.004(a)(4), which add "income level" and "source of income" as protected categories, and add a prohibition on "unreasonable discrimination on the basis of geographic location." The amendment expands the application of the rule to all electric utilities and retail electric providers. This amendment was adopted under Project Number 21232.

The commission received no comments on the proposed amendment.

The commission amends the proposed rule to replace the term electric service provider with retail electric provider to be consistent with the customer protection rules (§§25.471 - 25.475, 25.477 - 25.485, 25.491, and 25.492 relating to Customer Protection Rules for Retail Electric Service), as adopted. The reference to electric service provider in proposed §25.471(d)(8) of this title (relating to Generic Provisions of Customer Protection Rules) no longer exists.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; 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), and 64.004(a)(4).

§25.4. Statement of Nondiscrimination.

(a) No electric utility or retail electric provider shall discriminate on the basis of race, nationality, color, religion, sex, marital status, income level, or source of income.

(b) No electric utility or retail electric provider shall unreasonably discriminate on the basis of geographic location.

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 February 2, 2001.

TRD-200100690
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 22, 2001
Proposal publication date: September 29, 2000
For further information, please call: (512) 936-7308

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CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

16 TAC §27.31

The Public Utility Commission of Texas (commission) adopts new §27.31, relating to Historically Underutilized Businesses with no changes to the proposed text as published in the November 17, 2000 *Texas Register* (25 TexReg 11361). The commission received no comments on the proposed rule. The rule is necessary to comply with Texas Government Code §2161.003, which requires the commission to adopt the General Services Commission rules for Historically Underutilized Businesses. The new rule adopts by reference the rules of the Texas General Services Commission in 1 Texas Administrative Code (TAC), §§111.11, 111.13, 111.14, 111.26, and 111.27, relating to the historically underutilized business (HUB) program for state purchases. This new section was adopted under Project Number 23025.

This section 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 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; and 1 Texas Administrative Code §§111.11, 111.13, 111.14, 111.26, and 111.27.

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 February 2, 2001.

TRD-200100689
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 22, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 936-7308

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SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

The Public Utility Commission of Texas (commission) adopts new Subchapter C, relating to Negotiation and Mediation of Certain Contract Disputes, in new Chapter 27, Rules for Administrative Services with no changes to the proposed text as published in the November 17, 2000 *Texas Register* (25 TexReg 11362). The commission received no comments on the proposed rules. The new rules are necessary to comply with Texas Government Code, §2260.052, which requires the commission to develop rules to govern the negotiation and mediation of certain contract claims against the state. These new sections were adopted under Project Number 23026.

The following sections have been adopted: In Division 1, General, §27.61, Purpose, §27.63, Applicability, §27.65, Definitions, §27.67, Prerequisites to Suit, §27.69, Sovereign Immunity; Division 2, Negotiation of Contract Disputes, §27.81, Notice of Claim of Breach of Contract, §27.83, Agency Counterclaim, §27.85, Request for Voluntary Disclosure of Additional Information, §27.87, Duty to Negotiate, §27.89, Timetable, §27.91, Conduct of Negotiation, §27.93, Settlement Approval Procedures, §27.95, Settlement Agreement, §27.97, Cost of Negotiation, §27.99, Request for Contested Case Hearing; Division 3, Mediation of Contract Disputes, §27.111, Mediation Timetable, §27.113, Conduct of Mediation, §27.115, Agreement to Mediate, §27.117, Qualifications and Immunity of the Mediator, §27.119, Confidentiality of Mediation and Final Settlement Agreement, §27.121, Costs of Mediation, §27.123, Settlement Approval Procedures, §27.125, Initial Settlement Agreement, §27.127, Final Settlement Agreement, §27.129, Referral to the State Office of Administrative Hearings (SOAH); Division 4, Assisted Negotiation Processes, §27.141, Assisted Negotiation Processes, §27.143, Factors Supporting the Use of Assisted Negotiation Processes, and §27.145, Use of Assisted Negotiation Processes.

DIVISION 1. GENERAL

16 TAC §§27.61, 27.63, 27.65, 27.67, 27.69

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and under Texas Government Code, Chapter 2260, regarding Resolution of Certain Contract Claims with the State; and specifically §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Civil Practice & Remedies Code, Chapters 107 and 152 and §§154.023, 154.053, and 154.055; Texas Government Code, Chapters 552, 2001, 2009, 2260, and §2166.001; and Transportation Code §201.112.

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 February 2, 2001.

TRD-200100684
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 22, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 936-7308

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DIVISION 2. NEGOTIATION OF CONTRACT DISPUTES

16 TAC §§27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.95, 27.97, 27.99

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and under Texas Government Code, Chapter 2260, regarding Resolution of Certain Contract Claims with the State; and specifically §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Civil Practice & Remedies Code, Chapters 107 and 152 and §§154.023, 154.053, and 154.055; Texas Government Code, Chapters 552, 2001, 2009, 2260, and §2166.001; and Transportation Code §201.112.

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

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 22, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 936-7308

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DIVISION 3. MEDIATION OF CONTRACT DISPUTES

16 TAC §§27.111, 27.113, 27.115, 27.117, 27.119, 27.121, 27.123, 27.125, 27.127, 27.129

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and under Texas Government Code, Chapter 2260, regarding Resolution of Certain Contract Claims with the State; and specifically §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Civil Practice & Remedies Code, Chapters 107 and 152 and §§154.023, 154.053, and 154.055; Texas Government Code, Chapters 552, 2001, 2009, 2260, and §2166.001; and Transportation Code §201.112.

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 February 2, 2001.

TRD-200100686
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: November 17, 2000
For further information, please call: (512) 936-7308

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DIVISION 4. ASSISTED NEGOTIATION PROCESSES

16 TAC §§27.141, 27.143, 27.145

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and under Texas Government Code, Chapter 2260, regarding Resolution of Certain Contract Claims with the State; and specifically §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Civil Practice & Remedies Code, Chapters 107 and 152 and §§154.023, 154.053, and 154.055; Texas Government Code, Chapters 552, 2001, 2009, 2260, and §2166.001; and Transportation Code §201.112.

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 February 2, 2001.

TRD-200100687
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 22, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

The State Board of Dental Examiners adopts new Chapter 108, Professional Conduct that includes Subchapter A, Professional Responsibility, §§108.1 through 108.11, Subchapter B, Sanitation and Infection Control, §§108.20 through 108.25, Subchapter C, Anesthesia and Anesthetic Agents, §§108.30 through 108.35, Subchapter D, Mobile Dental Facilities,

§§108.40 through 108.43, Subchapter E, Business Promotion, §§108.50 through 108.61, and Subchapter F, Contractual Agreements, §§108.70 and 108.71. Section 108.8 of Subchapter A, Professional Responsibility and §§108.40, 108.41, 108.42 and 108.43 of Subchapter D, Mobile Dental Facilities were adopted with changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25TexReg9311). All other sections were adopted without changes.

Chapter 108, Professional Conduct, is adopted as a replacement for Chapter 109, Conduct which was repealed and a complete explanation of the disposition of each rule in Chapter 108 follows.

Subchapter A, Professional Responsibility covers Rules 108.1 through 108.11.

Section 108.1, Professional Responsibility. Language of this rule was formerly found in Rule 109.103, which fixed professional responsibility in the provision of dental services and enumerated a list of prohibited actions. The preamble was modified by adding an admonition for honesty, integrity and fair dealing. The Board elects to retain the language found in paragraphs (1) through (6), because that language continues to serve a useful purpose in the regulation of a dentist's conduct. Paragraph (7) is amended to conform with the intent of the language found in the preamble. The words "without first" are substituted for the words "only after" in Rule 109.103 (7). The words "but are not limited to" have been eliminated because the words "shall include" make them unnecessary. The review of repealed rule 109.103 confirms that the reasons for initially adopting the language and intent of that rule still exist.

No comments were received regarding adoption of the proposal.

Section 108.2, Fair Dealing, language was derived from former Rules 109.105, 109.122, 109.141 and 109.211. Those four rules dealt with the same subject matter and the Board decided it would be more efficient to combine them into one rule. The language of 108.2 (a) adds the words "...of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions" to the preamble, which was found in Rule 109.122. This is based on the American Dental Association's guidelines for ethical behavior. The language of 108.2 (b) derived from former Rule 109.122 and is repeated verbatim. The language of 108.2 (c) repeats that found in former Rule 109.141 (b). Subsection (d) of Rule 108.2 repeats the language of former Rule 109.141 (a), with the exception of the first sentence of that section. The language of 108.2 (e) derives from Section 101.203 of the Texas Occupations Code and Rule 109.211 (17), which defines "overcharging." Section 108.2 (f) repeats verbatim the language of former Rule 109.105 and states that a dentist cannot ask an auxiliary to perform a procedure that he or she cannot perform. The Board has determined that the language and intent of repealed rules 109.105, 109.122, 109.141 and 109.211 continues to exist and has been supplanted by new rule 108.2. The Board has determined that the reasons for initially adopting the language and the intent of the repealed rules 109.105, 109.122, 109.141 and 109.211 continue to exist and have been supplanted by new rule 108.2.

No comments were received regarding adoption of the proposal.

Section 108.3, Consumer Information, repeats almost verbatim the language found in repealed rule 109.10. The former paragraph (4) of Rule 109.10 has been eliminated because it is unnecessary verbiage and unnecessary. The former paragraph (5) is now paragraph (4) of Rule 108.3. The Board chooses to retain the language and intent of repealed rule 109.10 for the benefit of consumers.

No comments were received regarding adoption of the proposal.

Section 108.4, Names of Dentists, combines provisions of repealed rules 109.2, 109.6, 109.7, 109.201 and Sections 259.002 and 259.003 of the Texas Occupations Code. Section 259.002 requires that the names of, degrees received by and school attended by each dentist in a dental office shall be listed. This requirement is repeated in Subsection (a) of 108.4. Subsection (b) combines language of Section 259.003, Occupations Code and subsection (b) of former rule 109.2. Subsection (c) derives from former rule 109.6 (a) and requires that only the name(s) of a dentist(s) actually practicing at a particular location shall be displayed there. Subsection (d) derives from former rule 109.6 (a), second sentence. The third sentence of that rule is deleted, because it places an open-ended burden on dentists who have left that location. Subsection (e) derives from former rule 109.6 (b), with minor grammatical changes. Subsection (f) derives from former rule 109. 81, with a change in the language from "employing dentist" to "supervising dentist," to reflect a change in the practice requirements for dental hygienists. The review of the repealed rules, as well as the cited statutes, confirms that the reasons for the language and intent of the rules still exists.

No comments were received regarding adoption of the proposal.

Section 108.5, Termination of Relationship, is adopted as a replacement for Rule 109.121, which was repealed. The new rule clarifies that a dental patient's oral health should not be jeopardized by termination of the dentist-patient relationship. The Board found that it was called upon frequently to explain the requirements for termination and the new rule is intended to provide guidelines and prevent confusion. Rule 108.5 provides detailed instructions that a dentist can follow in terminating a dentist-patient relationship. Paragraph (1) directs a minimum 30-day notice period and the methods to deliver the notice. Paragraph (2) lists the elements of a proper written notice and paragraph (3) states that a dentist shall continue to render appropriate care for at least 30 days from the date the notice was mailed.

In response to publication for comment, the Board received written comments from a representative of the University of Texas Medical Branch, which provides dental services to the Texas Department of Criminal Justice and the Texas Youth Commission.

The written comments expressed concern that a dentist working in a correctional institution might be found to have improperly terminated dental services for a patient who was transferred to another institution. An inmate who is a dental patient may be transferred to a different facility, at any time. The transfer is outside the control of the treating dentist, who, it is feared, might be held accountable for terminating the dentist-patient relationship. The new rule only applies to a situation when a dentist terminates the relationship. Rule 108.8 provides that a dentist may transfer original records to another dentist "who will provide treatment. The Board is of the opinion that a transfer of an inmate who is a dental patient does not trigger the application of Rule 108.5.

On the other hand, the Board recognizes that there may be times when a treating dentist wishes to terminate the dentist-patient relationship with an inmate. The fact that the relationship occurred in an institutional setting does not seem to be an impediment to compliance with the rule. If a patient is transferred within the 30-day notice period, treatment can be assumed by a dentist at the new location, who will be informed of the termination by referral to the patient's dental records.

The Board is of the opinion that the language of Rule 108.5 is appropriate and should not be changed.

Section 108.6, Report of Patient Death or Injury Requiring Hospitalization, replaces repealed rule 109.177, which was difficult to interpret, because of ambiguous language. Rule 108.6 is an attempt to clarify the circumstances under which a dentist must report an adverse incident arising as a consequence of dental treatment. Under repealed rule 109.177, any time a dental patient died, a dentist who had rendered dental services to that person had to report the death, no matter how remote in time or circumstances from the dental treatment. Paragraph (1) makes it clear that the death of a dental patient must be reported if the death was a consequence of the receipt of dental services from the reporting dentist. Likewise, the conditions under which an injury to a dental patient must be reported have been clarified, in paragraph (2). Rule 108.6 as stated requires that an injury requiring admission to a hospital must be reported, if the injury was a consequence of receiving dental services from the reporting dentist. The new rule also eliminates a confusing, unclear definition of "morbidity." All reports of death or injury will be evaluated by the Enforcement Committee, to determine whether the circumstances should be investigated by the Board. The Board has determined that the intent of the repealed rule continues to be valid and has been supplanted by new rule 108.6.

No comments were received regarding adoption of the proposal.

Section 108.7, Minimum Standard of Care, General, repeats verbatim the language of the repealed rule 109.173. The intent of new rule 108.7 is to establish a minimum standard of care for all dentists practicing in Texas. Because of the location of repealed rule 109.173 in Subchapter L, Anesthesia and Anesthetic Agents, many dentists were unaware of the rule, because they do not hold anesthesia permits. Rule 108.7 in new Subchapter A, Professional Responsibility, makes it clearer that the standard applies to all dentists. The Board has determined that the intent of the language of repealed rule 109.173 is still valid and has been supplanted by new rule 108.7.

No comments were received regarding adoption of the proposal.

Section 108.8, Records of the Dentist is adopted as a replacement for Rule 109.144, which was repealed. The new rule expands the provisions of the former rule pertaining to dental records and recognizes the effect of new legislation, effective September 1, 1999, that provides dental patients with a privilege against disclosure of personal information found in those records. In response to publication for comment, the Board received written comments from a representative of the University of Texas Medical Branch (UTMB), which provides dental services to the Texas Department of Criminal Justice and Texas Youth Commission.

Section 108.8 clarifies the requirements for record keeping and provides guidelines about responsibility for the custody of patient records. Subsection (a) provides a definition of "adequate records." Subsection (b) provides a listing of documents and tangible objects that can be considered "dental records." Subsection (c) requires compliance with DEA and DPS prescription programs. Subsection (d) requires compliance with the Texas Controlled Substances Act. Subsection (e) clarifies that dental records belong to the dentist who provided treatment. The language also permits transfers of records under certain circumstances. Some minor grammatical changes are made for consistency. Subsection (f) explains what a dentist should do with records when he or she leaves a practice or location. It also clarifies the requirements for the possible transfer of records in an employment situation. Subsection (g) recognizes the new privilege against disclosure and provides that compliance with a request for records by Board investigators does not violate that privilege. Subsection (h) spells out the procedure for a patient to follow in order to obtain copies of dental records. It also clarifies that copies may not be withheld because of a past due account.

Written comments received in response to publication expressed concern about the possible impact of the rule on state agencies which employ dentists. UTMB commented about subsections (b) (e) and (h) of the rule. Requirements to retain bulky objects such as study models, casts, molds and impressions, found in the definition of "dental records" in subsection (b), would require additional expenditures to increase warehouse space. The agency archives paper records but has no guidelines to retain the other items. The commenter suggested that the Board adopt additional language permitting state agencies to establish rules for maintenance of health records.

The rule governs the conduct of individual dentists in the provision of dental services to patients. As such, the rule is intended to protect dental patients and dentists who treat them. The rule does not mandate how an organization that employs dentists should conduct its business.

The Board is not insensitive to the unique environment in which correctional institutions operate and the requirements placed upon them by federal and state law. However, in the event of a claim of unsatisfactory dental services, it is essential to have thorough documentation of procedures performed on dental patients. Dentists who practice in institutional settings are held to the same standard of care as sole practitioners in private practice. Regrettably, the impact of the requirement to keep study models, casts, molds and impressions increases significantly in magnitude for a large population, such as residents of correctional institutions. The Board, while sensitive to the additional burden placed on such organizations, is of the opinion that subsection (b) is appropriate and should not be changed.

UTMB also expressed concern about the application of subsection (e). This subsection states that dental records belong to the treating dentist. The records of offenders are maintained in a centralized depository. He suggested language that would permit a different interpretation of the responsibility for dental records. The Dental Practice Act at §255.051(a) provides that dental records belong to the dentist who performs a dental service and the Board by rule cannot change the effect of that provision.

Concerning subsection (h), the commenter pointed out that his agency does provide dental records to patients who request them, but that fees charged for copies should be established internally. The Board recognizes that dentists employed in correctional institutions work under different circumstances than private practitioners. They are paid by salary and do not personally incur costs for reproduction of records. Offenders are paid according to institutional standards. All costs and fees addressed in subsection (h) are paid, ultimately, from tax revenue. Fees to be paid will come from the same source.

The Board approves the suggested language and Rule 108.8 at subsection (h) is amended by adding the following language in new paragraph (4): "state agencies and institutions will provide copies of dental health records to patients who request them following applicable agency rules and directives."

Section 108.9, Dishonorable Conduct, provides that the listed conduct constitutes a violation of the law. It is derived from repealed rule 109.211, which, by contrast, merely defined the types of conduct that could be considered dishonorable. Paragraph (1) combines the language found in former paragraphs (2) and (3). Paragraph (2) modifies former paragraph (4) and states a clearly identifiable course of conduct related to the provision of dental services that constitutes a violation. Paragraph (3) derives from former paragraph (8) and provides that a dentist is prohibited from grossly over administering drugs as well as grossly over prescribing and dispensing. Paragraph (4) derives from former paragraph (9) but changes the former language from "...or not for a dental or maxillofacial surgery problem" to "...or not for a dental purpose." The words "dental purpose" encompass "maxillofacial surgery problem." Paragraph (5) repeats former paragraph (10), except that the new section uses the active voice. Paragraph (6) addresses conduct that might not be capable of precise classification by referring to the statutes or rules but is, nonetheless, accepted by the profession as dishonorable. An example might be inappropriate sexual contact with a dental patient. This language replaces paragraph (1) of repealed rule 109.211. Paragraph (1) of former rule 109.211 is unnecessary, in view of the language contained in new paragraph (5). Former paragraph (6) is addressed in Sections 251.003 and 256.001 of the Occupations Code and is repealed as unnecessary. Former paragraph (7) is repealed as unnecessary, because its subject matter is covered in Sections 102.001 through 102.011 and 259.008 of the Occupations Code. The intent of former paragraphs (11), (12) and (13) of former Rule 109.211 is addressed in new rule 108. 1 (1) and is repealed as unnecessary. Former paragraph (14) is addressed in Chapter 53 of the Occupations Code, as well as Sections 263.001, 263.002 and Rule 101.8. Former paragraph (15) is repealed as unnecessary because its intent is contained in Section 251.003 of the Occupations Code and new rule 108.70, formerly rule 109.500. Former paragraph (16) and (17) are repealed because their intent is found in the language of new rule 108.2 (e). The Board has determined that the reasons for initially adopting the language and the intent of repealed rule 109.211 still exist and are supplanted with modifications in new rule 108.9.

No comments were received regarding adoption of the proposal.

Section 108.10, Educational or Other Requirement, derives from repealed rule 109.181 and is repeated verbatim, except that the words "...and must not have been convicted of any felony offense during the term of retired status." have been deleted. This language is unnecessary because such a situation is addressed by Chapter 53 of the Occupations Code, as well as Sections 263.001, 263.002 and rule 101.8, pertaining to the effect of a felony conviction. The Board has determined that the reasons for initially adopting the language and intent of repealed rule 109.181 continue to exist and the language regarding felony convictions is contained in another rule and statutes.

No comments were received regarding adoption of the proposal.

Section 108.11, Display of Registration is adopted to comply with new legislation effective September 1, 1999 in Senate Bill 964, Section 6. The new legislation amended former article 4548d, now Section 256.103 of the Occupations Code, which required display of a license by a dentist. The legislation requires that dentists and dental hygienists display a current registration certificate in each office where they practice. It recognizes that dental hygienists as well as dentists must annually renew their registration with the Board. It was possible that a practitioner could have received a dental license at some time in the past, but might not be current with the Board. The requirement to display a current registration certificate expands application of the rule to dental hygienists and assures the public that they are receiving dental services from practitioners who are properly registered with the Board,. The new rule implements the recent legislation.

The Board received a written comment from the University of Texas Medical Branch, which provides dental services to the Texas Department of Criminal Justice and the Texas Youth Commission. Dentists and dental hygienists employed in correctional institutions may provide dental treatment at several facilities and the requirement to display duplicate registration certificates could place a financial burden on the agency, which would have to pay the fee for duplicate certificates.

The Board is sensitive to the unique circumstances that dentists and dental hygienists who work in an institutional setting face, but the Board is bound by the new enabling legislation. Such a change is within the province of the State Legislature. The Board suggests, in response, that dentists and dental hygienists could carry their registration certificates with them, to display in each location where they practice. The language of the rule will not be changed.

New Subchapter B, Sanitation and Infection Control covers new rules 108.20 through 108.25. The new Subchapter is made up of rules previously found in repealed Chapter 109, Conduct, Subchapters H and Q, which are discussed as follows.

Section 108.20, Purpose, is a repeat of repealed rule 109.220 with no changes except that a statutory reference has been changed to refer to the appropriate section of the Occupations Code that became effective September 1, 1999. The rule sets forth the purpose of the subchapter, to establish proper infection control procedures. That purpose has not changed and the need to state it continues.

No comments were received regarding adoption of the proposal.

Section 108.21, Requirement, is a repeat of repealed rule 109.131 with non-substantive language changes. The rule requires dentists to maintain clean and sanitary conditions in their offices. Superfluous language concerning filth, trash and debris was dropped from this rule. The intent of the rule remains valid and the Board proposes that it continues to exist.

No comments were received regarding adoption of the proposal.

Section 108.22, Access to Dental Office, repeats verbatim the language of the repealed rule 109.132, effective February 5, 1999, and which was repealed as part of the rule review process, to be supplanted by new rule 108.22. No comments were received when former rule 109.132 was published for comment. Written comments concerning rule 108.22 have been received from a representative of the University of Texas Medical Branch, which provides dental services to the Texas Department of Criminal Justice and the Texas Youth Commission. The purpose of the rule clarifies that an unsanitary dental office may present a threat to the public health and welfare. Accordingly, refusal to grant access to Board investigators acting pursuant to an allegation of unsanitary conditions is considered serious enough to call into play the provisions of the law that allow a temporary suspension of a dental license.

A dentist working in a correctional institution might be held accountable for refusing to grant access to an institutional dental facility which is subject to security regulations and restrictions to access of the institution. The Board recognizes the problems

attendant to maintaining security in an institutional setting, and Board investigators are instructed to work with authorities when investigating complaints occurring on institutional premises. The rule is intended to regulate the conduct of individual dentists not other state agencies. A dentist who is willing to grant access to dental facilities but encounters difficulty in complying because of security considerations of the correctional institution need not fear reprisal from the Board. The Board is of the opinion that the language of the rule is reasonable and should not be changed.

Section 108.23, Definitions, is a repeat of repealed rule 109.221 with minor non-substantive language changes. The Board has determined that the reasons for initially adopting the language and intent of repealed rule 109.221 still exist and it is supplanted by new rule 108.23.

No comments were received regarding adoption of the proposal.

Section 108.24, Required Sterilization and Disinfection. The language of this rule is taken verbatim from repealed rule 109.222, Required Sterilization and Disinfection. The Board has determined that the language and intent should be continued unchanged in new rule 108.24.

No comments were received regarding adoption of the proposal.

Section 108.25, Dental Health Care Workers. Subsections (a) and (b) of this rule are taken verbatim from subsections (a) and (b) of repealed rule 109.223, Dental Health Care Workers. Subsections (c) (d) and (e) of Rule 109.223 are deleted on the basis of Attorney General Opinion DM-136 which held that adoption by the State Board of Dental Examiners of these sections was not authorized by the Health and Safety Code §85.204 et.seq., 1991. A new subsection (c) is added requiring a dental health care worker who knows he/she is HbeAg positive to report his/her status to an expert review panel pursuant to THSC §85.204, 1991. Further, repealed rule 109.223(f), now rule 108.25(d) is amended to require dental health care workers who are HbeAg positive to notify prospective patients of that status and to get patient consent before performing an exposure-prone procedure. The new language is a more clear statement of requirements.

No comments were received regarding adoption of the proposal.

New Subchapter C, Anesthesia and Anesthetic Agents which covers rules 108.30 through 108.34 replaces repealed rules 109.171 through 109.175. With the exception of Rule 108.32, Minimum Standard of Care, Anesthesia, discussed in detail below, the rules in this Subchapter are repeated verbatim from repealed rules 109.171 through 109.175. The agency adopted amendments to all the rules in September, 1999 after several public hearings and over two years of discussion. The Board has determined that the reasons for initially adopting the language and intent of these repealed rules continue to exist and is supplanted in the new rules 108.30 through 108.34.

Section 108.30, Effective Date, is a verbatim repeat of repealed rule 109.171, Effective Date.

No comments were received regarding adoption of the proposal.

Section 108.31, Definitions, is a verbatim repeat of repealed rule 109.172, Definitions.

No comments were received regarding adoption of the proposal.

Section 108.32, Minimum Standard of Care, Anesthesia, is changed from repealed rule 109.173, Minimum Standard of Care, by adding the word Anesthesia to the title and by changing the introductory paragraph to limit the reach of the rule to dentists who utilize anesthesia or anesthetic agents. The prior rule by its terms affected all dentists. The remainder of the rule is a verbatim repeat of repealed rule 109.173.

No comments were received regarding adoption of the proposal.

Section 108.33, Sedation/Anesthesia Permit, is a verbatim repeat of repealed rule 109.174.

No comments were received regarding adoption of the proposal.

Section 108.34, Permit Requirements and Clinical Provisions, is a verbatim repeat of repealed rule 109.175.

No comments were received regarding adoption of the proposal.

Section 108.35, Authority to Demonstrate Anesthesia, is a repeat of repealed rule 109.176 with minor language changes. The effect of the rule is unchanged in that clinical demonstrations of sedative/anesthetic techniques must be approved by the Board except those provided by a recognized school of dentistry. The Board has determined that the reasons for initially adopting the language and intent of repealed rule 109.176 continues to exist and it is supplanted by new rule 108.35.

No comments were received regarding adoption of the proposal.

Subchapter D, Mobile Dental Facilities contains all new rules. Repealed rules addressing Mobile or Moveable Offices, rules 109.151 through 109.155 affected operations provided on a "no fee" basis required prior approval in thirty day increments and required prior designation of all locations to be visited.

The new rules require registration for a permit for all mobile and portable dental operations unless an exception is provided in the rules. Since the current rules apply only to mobile operations where no fee is charged and since almost all dental operations are provided in exchange for a fee paid by Medicaid or other governmental programs, there are no rules affecting most mobile and portable operations. As a result most mobile and portable facilities providing dental services in Texas are doing so without having provided any information to the Board concerning operations. Thus, when the Board receives inquiries from legislators, local officials, other state agencies or the public regarding any mobile or portable dental operations it is not in a position to provide reliable information. Of great concern to the Board is whether the services are provided in a manner to meet standard of care requirements, whether arrangements have been made for follow-up care, especially in emergency situations, and whether records of treatment provided will be available to the patients. It is to meet theses concerns that the Board proposed new Subchapter D, which consists of four rules. They are:

Section 108.40, Permit Required, provides that mobile and portable dental operations must be permitted and provides five exception categories.

Section 108.41, Definitions, defines terms needed to make rules clear.

Section 108.42 Obtaining a Permit

Section 108.43, Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units describes operating and reporting requirements.

Changes were made to rules as published for purposes of clarification, even though there were no comments on those points. Rule 108.40, Permit Requirement, at subsection (a) was amended to add an effective date of September 1, 2001 for the rules. Rule 108.42 (a) was also amended to replace a

reference to board rules with a reference to the Dental Practice Act, which is a more appropriate reference. Also, the words "or educational" was added to the last sentence of subsection (a) to make it clear that one permit fee will be required of governmental and educational entities.

A number of written comments were received and a number of individuals requested a public hearing to present their comments. The Board conducted a public hearing on November 10, 2000. Comments made at the hearing will be addressed first.

Appearing at the public hearing were representatives of the Texas Dental Association, Texas Academy of General Dentistry, University of Texas Health Science Center, San Antonio, San Antonio Dental Society, Dentists Who Care, and National Heritage Insurance Corporation. Also, six persons appeared on their own behalf.

Three speakers addressed the Board and suggested that rule 108.40 should be amended to include an exception to allow a dentist to take equipment to another dentist's office and provide dental services without having to first obtain a permit under the rule. At that point staff circulated proposed changes that would address this issue. The speakers reviewed the language and agreed that it addressed their concerns. As a result only the representatives from the Texas Dental Association, Dentists Who Care, and University of Texas Health Science Center, San Antonio chose to speak as they had other concerns; all the remainder of those who appeared did not speak as their concerns had been addressed.

The Board agrees that the concerns expressed by the speakers and by those who made written comments on this point are well taken. Services provided in the office of a licensed dentist do not pose the risks that the Board is addressing by adoption of these rules. Accordingly, the rules as published are amended as follows:

Section 108.40 (5) the term "only" is deleted and the section now reads "anesthesia/sedation services are provided and the licensee is permitted to provide portable anesthesia service under the provisions of Rule 108.33 of this title (relating to Sedation/Anesthesia Permit); or,".

Paragraph (6) is added to read "the service is provided in an office of another licensed dentist."

Section 108.41 (2) is amended by deleting the phrase "other dentists' offices", to read "Portable Dental Unit - any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out-of-office location including, but not limited to, patients' homes, schools, nursing homes, or other institutions."

Next a representative of Dentists Who Care spoke and raised two concerns. The first was that Dentists Who Care, which is a non-profit organization that provides dental care through a mobile van using area dentists who volunteer their time may not be an appropriate entity to seek a mobile permit. The rules contemplate that either licensed dentists or organizations by which dentists legally may be employed must obtain a permit. Dentists Who Care is not such an organization; it does not hire dentists, and as the rules are proposed there is no method for the organization to obtain a permit. Since the dentists who operate the van do so on a voluntary basis it would not be reasonable to require each of them to obtain permits. The Board in discussing the matter agreed that the rules should be amended to allow the Board to consider special situations such as that of Dentists Who Care and when appropriate to issue a permit. Accordingly the proposed rules are amended. Rule 108.41 (3) is amended by adding the phrase, "or an organization not otherwise included herein that demonstrates to the SBDE that it is an appropriate entity to provide mobile or portable dental services." Rule 108.42 is amended by including the phrase, "or other organizations as defined by Rule 108.41 (3) of this title (relating to Definitions) and approved by the SBDE."

The Dentists Who Care representative also raised a concern about the amount of paper work these rules would require. He pointed out that under the rules, written approval from all government units such as counties and cities in which the mobile unit will provide services would be required. The rules require that applicants state in writing that they are in compliance with all applicable governmental requirements. Even though there is some burden imposed on permittees, it is not so heavy as to require permittees to appear before all government units in which they may operate to obtain permits especially to comply with these rules. For purposes of obtaining a permit the SBDE will accept the applicant's statement of compliance.

Next, a representative of the University of Texas Health Science Center, San Antonio spoke and repeated concerns raised in written comments. Those comments will be addressed below. Finally, a representative of the Texas Dental Association spoke and in general terms praised the rules and the efforts of the State Board of Dental Examiners.

Written comments were filed by four individuals who all requested that an exception be added to allow dentists to provide treatment in other dentists' offices. Those requests have been met as described above. One commenter also pointed out that reporting requirements for obtaining the permits are onerous. The proposed rules included a requirement for quarterly reporting by all permittees setting forth all locations served and the dates, the number of patients served and the types and quantity of services provided. The adopted rules require annual reporting rather than quarterly of all the matters set out above. Further, the Board is of the opinion that requirements for obtaining a permit for most applicants (see discussion below for governmental and educational entities) should be maintained. Permitting and reporting requirements are maintained in order for the Board to have some assurance that concerns set forth at the beginning of this justification are met. Because mobile and portable dental operations are transient in nature and there is only limited contact with patients there is no longstanding and continuing doctor-patient relationship and there is a strong possibility that a sense of accountability may be reduced or even non-existent in rare cases. The Board must provide some mechanism to maintain such accountability, permitting and reporting requirements are intended to fill that need.

Written comments were filed by San Antonio Metro Health District, University of Texas Health Science Center, San Antonio, Texas Department of Health, Texas Academy of General Dentistry, Dallas County Dental Society, University of Texas Health Science Center, Houston, and San Antonio District Dental facility urging an exemption for dentists practicing in other dentists' offices, objecting to quarterly reporting requirements and objecting to requirements for permitting, all of which have been addressed above. Further, the educational and governmental entities requested that they either be exempted from the rules or that requirements for them be adjusted concerning permitting fees, permitting requirements and reporting requirements. The Board is of the opinion that such organizations should not

be exempt from permitting requirements. The rules already address the concern about the negative impact that permitting fees could have on organizations that operate multiple mobile and portable facilities. They provide that governmental and educational entities may obtain one permit for all their vans and facilities. Even though the amount of the permitting fee has not been set at this time, it will be in an amount intended to cover administrative costs and will be minimal. It, however, does agree that the accountability issues discussed above do not apply to them. Therefore rules 108.42 and 108.43 are amended to reduce permitting and operating requirements for governmental and educational entities. The substantive effect of the changes is to reduce permitting and reporting requirements. Now governmental and educational entities must meet very limited permitting and operating requirements while all other permittees must continue to meet such requirements set forth in the rules as proposed, except that as noted above annual rather than quarterly reports are required. To accomplish this a structural change was required. Rather than detailing the changes here the reader is referred to the rules themselves.

New Subchapter E, Business Promotion covers new rules 108.50 through 108.61 and deals with efforts to obtain business, including advertising, professional announcements and referral services. The former rules addressing these subject matters were found in several subchapters of the now repealed Chapter 109. New subchapter E represents an effort to reorganize and update the language previously found in these repealed rules and to reflect the realities of modern-day business practices.

Subsection (a) announces that purpose. Subsection (b) is based on the American Dental Association's guidelines for ethical behavior.

Section 108.50, Objective of Rules, serves as an introduction to the subchapter. Subsection (a) announces the purpose of the rules. Subsection (b) is based on the American Dental Association's Guidelines for Ethical Behavior.

No comments were received regarding adoption of the proposal.

Section 108.51, Advertisements, is a new rule that provides a definition of the term "Advertisements." The former rules contained only scanty references to the several media available to communicate a practitioner's qualifications to those members of the public who are searching for a qualified professional. The Board adopts this new rule as a necessary explanation of the term "Advertising".

No comments were received regarding adoption of the proposal.

Section 108.52, False or Misleading Communications derives from repealed rule 109.204 and the American Dental Association's guidelines for ethical behavior, and provides some examples of communications that could be considered to be false or misleading in a material respect. The intent of the language contained in paragraphs (1) through (6) and (8) of repealed rule 109.204 is found in paragraphs (1) through (5) of the new rule. The intent of the language of paragraph (7) of repealed rule 109.204 is contained in Section 101.201 (4) of the Occupations Code. The intent of the language of repealed rule 109.204, paragraph (9), is found in Section 259.005 (10) of the Occupations Code. The intent of the language of paragraph (10) of repealed rule 109.204 is contained in Sections 254.002 and 259.005 of the Occupations Code. The intent of the language of paragraph (11) of repealed rule 109.204 is found in new rules 108.54, 108.55 and 108.58. The Board has determined that the reason for initially adopting the language and intent of these repealed rules continues to exist and is now contained in new rule 108.52.

No comments were received regarding adoption of the proposal.

Section 108.53, Professional Announcements, derives from repealed rule 109.107, subsection (c) and provides that a dentist may announce the availability of any dental service as prescribed by the Texas Dental Practice Act, found in the Occupations Code. . The Board has determined that the reason for initially adopting the language and intent of the repealed rule continues to exist and is now contained in new rule 108.53.

No comments were received regarding adoption of the proposal.

Section 108.54, Announcement of Services, derives from repealed rule 109.107, subsection (e) and provides that general dentists may announce the services available in their practice so long as they do not express or imply specialization and so long as they announce that the services are provided by a general dentist. The Board has determined that the reason for initially adopting the language and intent of the repealed rule continues to exist and is now contained in new rule 108.54.

No comments were received regarding adoption of the proposal.

Section 108.55, Announcement of Credentials in Non-Specialty Areas, derives from repealed rule 109.109 and the American Dental Association's guidelines for ethical behavior and provides that a general dentist may announce the attainment of additional credentials in an area of practice not recognized as a specialty by the American Dental Association. The dentist must announce that the services are provided by a general dentist. The Board has determined that the reason for initially adopting the language and intent of the repealed rule continues to exist and is now contained in new rule 108.55.

No comments were received regarding adoption of the proposal.

Section 108.56, Specialty Announcement, derives from repealed rule 109.107, subsection (a) and American Dental Association guidelines for ethical behavior and provides that a dentist who is a specialist in a specialty recognized by the American Dental Association may announce that status. The Board has determined that the reason for initially adopting the language and intent of the repealed rule continues to exist and is now contained in new rule 108.56.

No comments were received regarding adoption of the proposal.

Section 108.57, Specialist Announcement of Credentials in Non-Specialty Areas, derives from repealed rule 109.109 and the American Dental Association's guidelines for ethical behavior and provides that a dentist who is a specialist in one of the specialties recognized by the American Dental Association and who also has obtained additional credentials in an area of practice not recognized as a specialty by the American Dental Association, may announce those credentials as long as specialization in the non-recognized area is not implied. The Board has determined that the reason for initially adopting the language and intent of the repealed rule continues to exist and is now contained in new rule 108.57.

No comments were received regarding adoption of the proposal.

Section 108.58, Degrees. Subsection (a) of this rule finds its origin in repealed rule 109.145. The words "A Texas dental licensee, in any professional communication..." are changed to

read "A licensed Texas dentist, in any professional communication..." These changes make it clearer that the subsection applies to dentists and that the requirements apply to all professional communications, not just those that are written. Subsections (b) and (c) of this rule derive from repealed rule 109.191. The initials "D.O" are added as initials that can be used in addition to "D.D.S." and "M.D." Doctors of Osteopathy and Doctors of Medicine are both regulated by the same state agency and this change acknowledges Osteopathy as a recognized area of medical practice. The Board has determined that the reason for initially adopting the language and intent of the repealed rule continues to exist and is now contained in new rule 108.58.

No comments were received regarding adoption of the proposal.

Section 108.59, Testimonials, derives from the repealed rule 109.142, and is repeated, except for minor changes in the interest of grammatical consistency. The rule prohibits testimonials from Texas dentists except under certain prescribed conditions and the intent of the rule remains valid.

No comments were received regarding adoption of the proposal.

Section 108.60, False, Misleading or Deceptive Referral Schemes. The subject matter of this rule was formerly found in repealed rule 109.108. The new rule more closely tracks the provisions of Sections 102.001 through 102.011 and 259.008 (8) of the Occupations Code, prohibiting and defining false, misleading referral schemes. The Board has determined that the language and intent of the repealed rule remains valid and is now contained in new rule 108.60.

No comments were received regarding adoption of the proposal.

Section 108.61, Unlicensed Clinicians, replaces former Rule 109.161, which is repeated verbatim, providing guidelines for situations when an unlicensed clinician may teach and demonstrate procedures for the administration of anesthesia, provided that advance approval is obtained from the Board. The intent of the repealed rule remains valid.

No comments were received regarding adoption of the proposal.

New Subchapter F, Contractual Arrangements, covers Rules 108.70 and 108.71. Section 108.70, Improper Influence on Professional Judgment is a verbatim repeat of repealed rule 109.500. The Board adopted rule 109.500 in February, 2000. The rule was passed to ensure that a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease or disorder is not influenced by anyone other than a dentist. The Board has determined that the language and intent of the repealed rule remains valid and is now contained in new rule 108.70.

No comments were received regarding adoption of the proposal.

Section 108.71, Providing Copies of Certain Contracts, is a verbatim repeat of repealed rule 109.300 which was originally adopted by the Board in December 1997. The rule was passed so that contracts entered into between dentists and management professionals would be subject to review, to ensure that a dentist's independent professional judgment was not improperly influenced by non-dentists. The subject matter of the rule is also closely related to that of repealed rule 109.500. The Board has determined that the intent of repealed rules 109.300 and 109.500 remains valid and that language is now found in rules 108.70 and 108.71 of new Subchapter F.

No comments were received regarding adoption of the proposal.

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §§108.1 - 108.11

The new rules are adopted under Texas Government Code §2001.021 et.seq., Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§108.8. Records of the Dentist.

(a) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate records of the diagnoses made and the treatments performed for and upon each dental patient for reference, identification, and protection of the patient and the dentist. Adequate records are records from which diagnoses can be made and which clearly and accurately document all of the facts related to the treatment of a dental patient, including diagnoses, services, treatments and progress of care. Records shall be kept for a period of not less than five (5) years.

(b) The term "dental records" includes, but is not limited to documentation of: identification of practitioner providing treatment; medical and dental history; limited physical examination; x-rays and radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, impressions; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.

(c) The dispensing, administering, or prescribing of narcotic drugs, dangerous drugs, or controlled substances to or for a dental patient shall be made a part of such patient's dental record. The entry in the patient's dental record shall be in addition to any record keeping requirements of the DPS or DEA prescription programs. All such drugs and substances which are kept in the dental office or under the control of the dentist are to be maintained by a centralized inventory which shall indicate dates acquired, description and quantity of drugs, date, method, quantity dispensed, and the patient to whom the drug is dispensed.

(d) All records pertaining to Controlled Substances and Dangerous Drugs shall be maintained in accordance with the Texas Controlled Substances Act.

(e) Dental records are the sole property of the dentist who performs the dental service. Such records shall be available for inspection by the patient after and upon appointment with a dentist. This shall not prohibit the transfer of a copy of records to the patient, or to an agreed designated consultant for ascertainment of facts, nor transfer of original records to another Texas dental licensee who will provide treatment to the patient. The transferring dentist shall retain a copy of the written record if such original transfer is made.

(f) A dentist who leaves a location or practice, whether by retirement, sale, transfer, termination of employment or otherwise, shall either maintain all dental records belonging to him or her, make a written transfer of records to the succeeding dentist, or make a written agreement for the maintenance of records, and the State Board of Dental Examiners shall be notified within fifteen (15) days of any such event, giving full information concerning the dentists and location(s) involved. A maintenance of records agreement shall not transfer ownership of the dental records, but shall require: that the dental records

be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners; and that the dentist(s) performing the service(s) recorded shall have access to and control of the records for purposes of inspection and copying. A transfer of records may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(g) Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act.

(h) A dentist shall furnish copies of dental records to a patient who requests his or her dental records. Requested copies including radiographs shall be furnished within thirty (30) days of the date of the request, provided however, that copies need not be released until payment of copying costs has been made. Records may not be withheld based on a past due account for dental care or treatment previously rendered to the patient.

(1) A dentist providing copies of patient dental records is entitled to a reasonable fee for copying which shall be no more than $25 for the first 20 pages and $0.15 per page for every copy thereafter.

(2) Fees for radiographs, which if copied by an x-ray duplicating service, may be equal to actual cost verified by invoice.

(3) Reasonable costs for radiographs duplicated by means other than by an x-ray duplicating service shall not exceed the following charges:

(A) a full mouth series: $15.00;

(B) a panoramic x-ray: $15.00;

(C) a lateral cephalogram: $15.00;

(D) a single extra-oral x-ray: $5.00;

(E) a single intra-oral x-ray: $5.00.

(4) State agencies and institutions will provide copies of dental health records to patients who request them following applicable agency rules and directives.

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 January 31, 2001.

TRD-200100571
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: February 20, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 463-6400

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SUBCHAPTER B. SANITATION AND INFECTION CONTROL

22 TAC §§108.20 - 108.25

The new rules are adopted under Texas Government Code §2001.021 et.seq., Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice 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 January 31, 2001.

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SUBCHAPTER C. ANESTHESIA AND ANESTHETIC AGENTS

22 TAC §§108.30 - 108.35

The new rules are adopted under Texas Government Code §2001.021 et.seq., Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

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TRD-200100574
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: February 20, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 463-6400

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SUBCHAPTER D. MOBILE DENTAL FACILITIES

22 TAC §§108.40 - 108.43

The new rules are adopted under Texas Government Code §2001.021 et.seq., Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§108.40. Permit Required.

(a) Beginning September 1, 2001, every mobile dental facility, and, except as provided herein, every portable dental unit operated in

Texas by any entity must have a permit as provided by this title (relating to Mobile Dental Facilities).

(b) Licensees who do not have a permit for a portable dental unit or who are employed by a dental organization not having a portable dental unit permit may provide dental services through use of dental instruments and equipment taken out of a dental office without a permit if;

(1) the service is provided as emergency treatment;

(2) a patient of record of the licensee or organization is treated outside of the dental office;

(3) treatment is provided to residents of nursing homes or convalescent facilities; or

(4) treatment is provided without charge to patients or to any third party payer, so long as such treatment is not provided on a regular basis.

(5) anesthesia/sedation services are provided and the licensee is permitted to provide portable anesthesia services under the provisions of Rule 108.33 of this title (relating to Sedation/Anesthesia Permit); or

(6) the service is provided in an office of another licensed dentist.

§108.41. Definitions.

The following words and terms, when used in Subchapter D, Mobile Dental Facilities, shall have the following meanings, unless the context clearly indicates otherwise;

(1) Mobile Dental Facility - any self-contained facility in which dentistry will be practiced which may be moved, towed, or transported from one location to another.

(2) Portable Dental Unit - any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out-of-office location including, but not limited to, patients' homes, schools, nursing homes, or other institutions.

(3) Permit Holder - a licensed Texas dentist or an organization authorized by the Dental Practice Act to employ licensed Texas dentists to whom the permit is issued as provided by this title (relating to Mobile Dental Facilities and Portable Dental Units), or an organization not otherwise included herein that demonstrates to the SBDE that it is an appropriate entity to provide mobile or portable dental services.

(4) Session - a period of time during which personnel associated with a permitted facility or unit are available to provide dental services at a location.

§108.42. Obtaining a Permit.

(a) A licensed Texas dentist, an organization authorized by the Dental Practice Act or other organization as defined by rule 108.41 (3) of this title (relating to Definitions) and approved by the SBDE wishing to operate a mobile dental facility or a portable dental unit, shall apply to the State Board of Dental Examiners (SBDE) for a permit on a form provided by the Board and pay an application fee in an amount set by the Board. A governmental or educational entity may obtain a single permit, respectively, for all facilities; or all units listed on an application.

(b) A completed application form submitted to the SBDE with all questions answered will be reviewed and if all the requirements listed in this section are met, a permit will be issued. All applications must include:

(1) an address of record that is not a Post Office Box; and,

(2) the name and address of the permit holder.

(c) All applicants except governmental and higher educational entities must also include:

(1) the name and address, and when applicable, the license number of each dentist, dental hygienist, laboratory technician, and dental assistant associated with the facility or unit for which a permit is sought;

(2) a copy of a written agreement for the emergency follow-up care for patients treated in the mobile dental facility, or through a portable dental unit, and such agreement must include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area;

(3) a statement that the mobile dental facility or portable dental unit has access to communication facilities which will enable dental personnel to contact assistance as needed in the event of an emergency;

(4) a statement that the mobile dental facility or portable dental unit conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction standards, including required or suitable access for disabled individuals, sanitation, and zoning;

(5) a statement that the applicant posses all applicable county and city licenses or permits to operate the facility or unit;

(6) either a statement that the unit will only be used in dental offices of the applicant or other licensed dentists, or a list of all equipment to be contained and used in the mobile dental facility or portable dental unit, which must include:

(A) dental treatment chair;

(B) a dental treatment light;

(C) when radiographs are to be made by the mobile dental facility or portable dental unit, a stable portable radiographic unit that is properly monitored by the authorized agency;

(D) when radiographs are to be made by the mobile dental facility or portable dental unit, a lead apron which includes a thyroid collar;

(E) a portable delivery system, or an integrated system if used in a mobile dental facility

(F) an evacuation unit suitable for dental surgical use; and

(G) a list of appropriate and sufficient dental instruments including explorers and mouth mirrors, and infection control supplies, such as gloves, face masks, etc., that are on hand.

§108.43. Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units.

(a) A permit holder is required to operate a permitted Mobile Dental Facility or Portable Dental Unit in compliance with all state statutes and regulations. Further, all permit holders shall;

(1) in writing, notify the SBDE of a change in any address required in Rule 108.42 (b) (1) of this title (relating to Obtaining a Permit) within 60 days of the change;

(2) prominently display all dental and dental hygienist licenses and current registration certificates, Mobile Dental Facilities or Portable Dental Unit permits, or copies of permits if one permit is issued for multiple facilities or units, a consumer information sign as described in Rule 108.5 of this title (relating to Consumer Information)

in compliance with the Dental Practice Act and/or the Rules and Regulations of the SBDE, provided, however, that a licensee may display a duplicate registration certification obtained from the SBDE;

(3) maintain, in full compliance with all record-keeping requirements contained in these rules, all dental records and official records at the official address of record for the facility or unit.

(b) All permit holders except, governmental and higher education entities, shall:

(1) in writing, notify the SBDE of a change in personnel listed as required by Rule 108.42(b)(2) of this title (relating to Obtaining a Permit) within 30 days of any such change;

(2) before beginning a session at any location, arrange for;

(A) access to a properly functioning sterilization system;

(B) ready access to an adequate supply of potable water; and

(C) ready access to toilet facilities.

(3) on the 10th work day of September of each year, file with the SBDE a written report for the preceding year ending August 31, detailing the location, including a street address, the dates of each session, and the number of patients served and the types of dental procedures and quantity of each service provided.

(4) insure that all written or printed materials available from or issued by the Mobile Dental Facility or Portable Dental Unit contain the official address of record for the facility or unit;

(5) operate a Mobile Dental Facility or Portable Dental Unit only when all requirements described in Rule 108.42 of this title (related to Obtaining a Permit) are being met.

(c) A permit to operate a Mobile Dental Facility or Portable Dental Unit expires one (1) year after the issuance date, or on the date when the permit holder is no longer associated with the Mobile Dental Facility or Portable Dental Unit, which ever is first.

(d) A permit holder may renew a permit by submitting an annual application which shall include a list of all locations served during the past year, and payment of required fee.

(e) Upon cessation of operations by the Mobile Dental Facility or Portable Dental Unit, the permit holder shall notify the SBDE of the final disposition of patient records and charts.

(f) A permit to operate a Mobile Dental Facility or Portable Dental Unit is not transferable.

(g) The SBDE may cancel a permit if upon investigation and after opportunity for a hearing, a determination is made of non-compliance with the Dental Practice Act or the SBDE Rules and Regulations.

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 January 31, 2001.

TRD-200100575

Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: February 20, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 463-6400

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SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §§108.50 - 108.61

The new rules are adopted under Texas Government Code §2001.021 et.seq., Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

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Jeffry R. Hill
Executive Director
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For further information, please call: (512) 463-6400

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SUBCHAPTER F. CONTRACTUAL AGREEMENTS

22 TAC §108.70, §108.71

The new rules are adopted under Texas Government Code §2001.021 et.seq., Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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Proposal publication date: September 22, 2000
For further information, please call: (512) 463-6400

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CHAPTER 109. CONDUCT

The State Board of Dental Examiners adopts The repeal , Title 22, Texas Administrative Code, Part 5, Examining Board, including Subchapter A, Professional Signs, §§109.1, 109.2 and 109.6 - 109.10; Subchapter B, Telephone Directory Listings, §§109.43 and 109.44; Subchapter C, Listings of Auxiliary Personnel, §109.81; Subchapter D, Gifts and Premiums, §109.91; Subchapter E, Prohibitions, §§109.102 -109.105 and 109.107 - 109.109; Subchapter F, Suspended or Revoked Licenses, §109.111; Subchapter G, Termination of Relationship, §§109.121 and 109.122; Subchapter H, Sanitation, §§109.131 and 109.132; Subchapter I, Fair Dealing, §§109.141 - 109.145; Subchapter J, Mobile or Moveable Offices, §§109.151 - 109.155; Subchapter K, Visiting Clinicians - Courses Seminars, §109.161; Subchapter L, Anesthesia and Anesthetic Agents, §§109.171 - 109.177; Subchapter M, Retired Status, §109.181; Subchapter N, Double Degrees, §109.191; Subchapter O, Advertising, §§109.201, 109.203, 109.204; Subchapter P, Definitions, §109.211; Subchapter Q, Infection Control, §§109.220 - 109.224; Subchapter R, Providing Copies of Certain Contracts, §109.300 and Subchapter T, Agreements with Non-Dentists, §109.500 without changes to the proposed text published in the September 22, 2000 issue of the *Texas Register* (25 TexReg 9332). The repeal et. seq. is adopted without changes and therefore will not be republished.

Pursuant to the rule review process, the General Appropriations Act of 1997, Article IX, §167, Acts of the 75th Legislature Regular Session, 1997, the State Board of Dental Examiners determined that many of the rules found in Chapter 109, Conduct, were duplicative, obsolete and irrelevant. Many of the rules had not been visited for several years and were found to be inapplicable to agency policies and procedures and the realities of dental practice in the 21st century. Rules pertaining to particular subject matter, such as Advertising, were scattered throughout the chapter, creating confusion. The process of reorganizing, amending, repealing and readopting the rules found in Chapter 109 would have created an administrative and logistical nightmare. The Board determined that it is more efficient to propose The repeal , Conduct, in its entirety and replace it with the proposed new Chapter 108. The conceptual content of the rules governing conduct found in Chapter 109 will not cease to exist, but will be supplanted by the rules in new Chapter 108 adopted by the Board on January 26, 2001 and published in the Adopted Rules section of this issue of the *Texas Register*.

No comments were received regarding the proposal to repeal Chapter 109 et.seq.

SUBCHAPTER A. PROFESSIONAL SIGNS

22 TAC §§109.1, 109.2, 109.6 - 109.10

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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SUBCHAPTER B. TELEPHONE DIRECTORY LISTINGS

22 TAC §109.43, §109.44

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
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For further information, please call: (512) 463-6400

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SUBCHAPTER C. LISTINGS OF AUXILIARY PERSONNEL

22 TAC §109.81

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
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For further information, please call: (512) 463-6400

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SUBCHAPTER D. GIFTS AND PREMIUMS

22 TAC §109.91

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
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For further information, please call: (512) 463-6400

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SUBCHAPTER E. PROHIBITIONS

22 TAC §§109.102 - 109.105, 109.107 - 109.109

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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For further information, please call: (512) 463-6400

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SUBCHAPTER F. SUSPENDED OR REVOKED LICENSES

22 TAC §109.111

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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For further information, please call: (512) 463-6400

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SUBCHAPTER G. TERMINATION OF RELATIONSHIP

22 TAC §109.121, §109.122

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
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For further information, please call: (512) 463-6400

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SUBCHAPTER H. SANITATION

22 TAC §109.131, §109.132

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
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For further information, please call: (512) 463-6400

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SUBCHAPTER I. FAIR DEALING

22 TAC §§109.141 - 109.145

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
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For further information, please call: (512) 463-6400

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SUBCHAPTER J. MOBILE OR MOVEABLE OFFICES

22 TAC §§109.151 - 109.155

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
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For further information, please call: (512) 463-6400

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SUBCHAPTER K. VISITING CLINICIANS-COURSES: SEMINARS

22 TAC §109.161

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
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For further information, please call: (512) 463-6400

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SUBCHAPTER L. ANESTHESIA AND ANESTHETIC AGENTS

22 TAC §§109.171 - 109.177

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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For further information, please call: (512) 463-6400

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SUBCHAPTER M. RETIRED STATUS

22 TAC §109.181

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to

perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
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For further information, please call: (512) 463-6400

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SUBCHAPTER N. DOUBLE DEGREES

22 TAC §109.191

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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SUBCHAPTER O. ADVERTISING

22 TAC §§109.201, 109.203, 109.204

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: February 20, 2001
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For further information, please call: (512) 463-6400

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SUBCHAPTER P. DEFINITIONS

22 TAC §109.211

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: February 20, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 463-6400

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SUBCHAPTER Q. INFECTION CONTROL

22 TAC §§109.220 - 109.224

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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SUBCHAPTER R. PROVIDING COPIES OF CERTAIN CONTRACTS

22 TAC §109.300

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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SUBCHAPTER T. AGREEMENTS WITH NON-DENTIST

22 TAC §109.500

The repeal is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry.

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

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Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: February 20, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 463-6400

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §§221.1-221.15

The Board of Nurse Examiners for the State of Texas adopts the repeal of §§221.1-221.15, relating to Advance Practice Nurses without changes to the proposed repeal published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11821).

The rules are repealed due to the adoption of new rules §§221.1-221.17 made in response to the Board's effort to implement House Bill 1, §167, Article IX, passed by the 75th Legislative Session, which requires that each rule adopted by an agency be reviewed and revised, if necessary, within four years of the date of its adoption. The new rules are being adopted simultaneously with this notice.

No comments were received concerning the repeal, and therefore the repeal will be adopted without changes and will not be republished.

The repeal is authorized under the authority of the Texas Occupations Code, §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurses who are approved, or seeking approval, as advanced practice nurses.

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 February 5, 2001.

TRD-200100706
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: February 25, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 305-6811

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22 TAC §§221.1-221.17

The Board of Nurse Examiners for the State of Texas adopts new §§221.1-221.17, relating to Advance Practice Nurses. Section 221.16 and §221.17 are adopted with changes to the proposed text as published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11821). Sections 221.1-221.15 are adopted without changes and will not be republished.

The new rules are adopted in response to the Board's effort to implement House Bill 1, §167, Article IX, passed by the 75th Legislative Session, which requires that each rule adopted by an agency be reviewed and revised, if necessary, within four years of the date of its adoption.

Section 221.16(a)(1) was slightly modified in response to a comment received. The Texas Association of Nurse Anesthetists (TANA) submitted a recommendation that proposed §221.16 (relating to the Provision of Anesthesia Services by Nurse Anesthetists in Outpatient Settings) include language requiring certified registered nurse anesthetists administering any inhaled anesthetic, including nitrous oxide, to register with the Board when doing so in outpatient settings. It is TANA's position that patient response to these anesthetic agents can vary significantly. As a result, the anesthesia provider must be prepared to handle complications or side effects by meeting the minimum standards as addressed in Proposed §221.16.

Inclusion of the recommended language would further provide for the safety of patients in these settings.

The Board of Nurse Examiners agrees with the comment made by the Texas Association of Nurse Anesthetists and the rationale for the amendment to the rule as proposed. This amendment is consistent with the Board's intention to include registration of nurse anesthetists administering inhaled anesthetics in these settings. The adoption of this additional language will allow the Board to better promote and protect the welfare of the people of Texas and clarify the requirement as intended. Therefore, the Board, in adopting Chapter 221, has included the specific language requested by TANA's comment in §221.16(a)(1).

Section 221.16(a)(1) was slightly modified in response to a comment received and does not reflect a substantive variation from the proposed text, and therefore republication of the proposed amendment is not required.

The new §§221.1-221.17 are adopted under the authority of the Texas Occupations Code, §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurses who are approved, or seeking approval, as advanced practice nurses.

§221.16. Provision of Anesthesia Services by Nurse Anesthetists in Outpatient Settings.

(a) Purpose. The purpose of these rules is to identify the roles, and responsibilities of certified registered nurse anesthetists authorized to provide anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings.

(1) On or after August 31, 2000 certified registered nurse anesthetists shall comply with subsections (b)(2)-(e) of this section in order to be authorized to provide general anesthesia, regional anesthesia, or monitored anesthesia care in outpatient settings. This requirement shall include certified registered nurse anesthetists administering any inhaled anesthetic agents, including, but not limited to, nitrous oxide, due to the significant variability in patient response to such drugs.

(2) Subsections (b)(2)-(e) of this section do not apply to the registered nurse anesthetist who practices in the following:

(A) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(B) an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes;

(C) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;

(D) a licensed ambulatory surgical center;

(E) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479-1 or as listed under a successor federal statute or regulation

(F) a facility maintained or operated by a state or governmental entity;

(G) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(H) an outpatient setting accredited by

(i) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(ii) the American Association for the Accreditation of Ambulatory Surgery Facilities,

(iii) the Accreditation Association for Ambulatory Health Care.

(b) Roles and Responsibilities

(1) Certified registered nurse anesthetists shall follow current, applicable standards and guidelines as put forth by the American Association of Nurse Anesthetists (AANA) and other relevant national standards regarding the practice of nurse anesthesia as adopted by the AANA or the Board.

(2) Certified registered nurse anesthetists shall comply with all building, fire, and safety codes. A two-way communication source not dependent on electrical current shall be available. Each location should have sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply. Sites shall also have a secondary power source as appropriate for equipment in use in case of power failure.

(3) In an outpatient setting, where a physician has delegated to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by a physician, a certified registered nurse anesthetist may select, obtain and administer drugs, including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status. This order need not be drug-specific, dosage specific, or administration-technique specific. Pursuant to a physician's order for anesthesia or an anesthesia-related service, the certified registered nurse anesthetist may order anesthesia-related medications during perianesthesia periods in the preparation for or recovery from anesthesia. In providing anesthesia or an anesthesia-related service, the certified registered nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.

(c) Standards

(1) The certified registered nurse anesthetist shall perform a pre-anesthetic assessment, counsel the patient, and prepare the patient for anesthesia per current AANA standards. Informed consent for the planned anesthetic intervention shall be obtained from the patient/legal guardian and maintained as part of the medical record. The consent must include explanation of the technique, expected results, and potential risks/complications. Appropriate pre-anesthesia diagnostic testing and consults shall be obtained per indications and assessment findings.

(2) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum monitoring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry and EKG continuously and non-invasive blood pressure to be measured at least every five minutes. If general anesthesia is utilized, then an O_2 analyzer and end-tidal CO_2 analyzer must also be used. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per current AANA standards. An audible signal alarm device capable of detecting disconnection of any component of the breathing system

shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure by the certified registered nurse anesthetist. Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable by a licensed health care provider. Monitoring and observations shall be documented per current AANA standards. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored.

(3) All anesthesia-related equipment and monitors shall be maintained to current operating room standards. All devices shall have regular service/maintenance checks at least annually or per manufacturer recommendations. Service/maintenance checks shall be performed by appropriately qualified biomedical personnel. Prior to the administration of anesthesia, all equipment/monitors shall be checked using the current FDA recommendations as a guideline. Records of equipment checks shall be maintained in a separate, dedicated log which must be made available upon request. Documentation of any criteria deemed to be substandard shall include a clear description of the problem and the intervention. If equipment is utilized despite the problem, documentation must clearly indicate that patient safety is not in jeopardy. All documentation relating to equipment shall be maintained for a period of time as determined by board guidelines.

(4) Each location must have emergency supplies immediately available. Supplies should include emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation. This must include a defibrillator, difficult airway equipment, and drugs and equipment necessary for the treatment of malignant hyperthermia if "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia. Equipment shall be appropriately sized for the patient population being served. Resources for determining appropriate drug dosages shall be readily available. The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply checks shall be maintained in a separate, dedicated log and made available upon request. Records of emergency supply checks shall be maintained for a period of time as determined by board guidelines.

(5) Certified registered nurse anesthetists shall maintain current competency in advanced cardiac life support and must demonstrate proof of continued competency upon re-registration with the Board. Competency in pediatric advanced life support shall be maintained for those certified registered nurse anesthetists whose practice includes pediatric patients. Certified registered nurse anesthetists shall verify that at least one person in the setting other than the person performing the operative procedure maintains current competency in basic life support (BLS) at a minimum.

(6) Certified registered nurse anesthetists shall verify that the appropriate policies or procedures are in place. Policies, procedures, or protocols shall be evaluated and reviewed at least annually. Agreements with local emergency medical service (EMS) shall be in place for purposes of transfer of patients to the hospital in case of an emergency. EMS agreements shall be evaluated and re-signed at least annually. Policies, procedures, and transfer agreements shall be kept on file in the setting where procedures are performed and shall be made available upon request. Policies or procedures must include, but are not limited to:

(A) Management of outpatient anesthesia-At a minimum, these must address:

(i) Patient selection criteria

(ii) Patients/providers with latex allergy

(iii) Pediatric drug dosage calculations, where applicable

(iv) ACLS algorithms

(v) Infection control

(vi) Documentation and tracking use of pharmaceuticals: including controlled substances, expired drugs and wasting of drugs

(vii) Discharge criteria

(B) Management of emergencies to include, but not be limited to:

(i) Cardiopulmonary emergencies

(ii) Fire

(iii) Bomb threat

(iv) Chemical spill

(v) Natural disasters

(vi) Power outage

(C) EMS response and transport--Delineation of responsibilities of the certified registered nurse anesthetist and person performing the procedure upon arrival of EMS personnel. This policy should be developed jointly with EMS personnel to allow for greater accuracy.

(D) Pursuant to §217.11(16) of this title (relating to Standards of Professional Nursing Practice), adverse reactions/events, including but not limited to those resulting in a patient's death intraoperatively or within the immediate postoperative period shall be reported in writing to the Board and other applicable agencies within 15 days. Immediate postoperative period shall be defined as 72 hours.

(d) Registration.

(1) Beginning April 1, 2000, each certified registered nurse anesthetist who intends to provide anesthesia services in an outpatient setting must register with the board and submit the required registration fee, which is non-refundable. The information provided on the registration form shall include, but not be limited to, the name and business address of each outpatient setting(s) and proof of current competency in advanced life support.

(2) Registration as an outpatient anesthesia provider must be renewed and the registration renewal fee paid on a biennial basis, at the time of registered nurse licensure renewal.

(e) Inspections and Advisory Opinions.

(1) The Board may conduct on-site inspections of outpatient settings, including inspections of the equipment owned or leased by a certified registered nurse anesthetist and of documents that relate to provision of anesthesia in an outpatient setting, for the purpose of enforcing compliance with the minimum standards. Inspections may be conducted as an audit to determine compliance with the minimum standards or in response to a complaint. The Board may contract with another state agency or qualified person to conduct these inspections.

Unless it would jeopardize an ongoing investigation, the board shall provide the certified registered nurse anesthetist at least five business days' notice before conducting an on-site inspection.

(2) The Board may, at its discretion and on payment of a fee, conduct on-site inspections of outpatient settings in response to a request from a certified registered nurse anesthetist for an inspection and advisory opinion.

(A) The Board may require a certified registered nurse anesthetist to submit and comply with a corrective action plan to remedy or address current or potential deficiencies with the nurse anesthetist's provision of anesthesia in an outpatient setting.

(B) A certified registered nurse anesthetist who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding by the board to impose an administrative penalty or assess a monetary fine. The board shall take proof of reliance on an advisory opinion into consideration and mitigate the imposition of administrative penalties or the assessment of a monetary fine accordingly.

(C) An advisory opinion issued by the board is not binding on the board and the board except as provided for in subsection (a) of this section, may take any action in relation to the situation addressed by the advisory opinion that the Board considers appropriate.

§221.17. Enforcement.

(a) The board may conduct an audit to determine compliance with §221.4 of this chapter (relating to Requirements for Full Authorization to Practice), §221.8 of this chapter (relating to Maintaining Active Authorization as an Advanced Practice Nurse), and §221.16 of this chapter (relating to Provision of Anesthesia Services by Nurse Anesthetists in Outpatient Settings).

(b) Any nurse who violates the rules set forth in this chapter shall be subject to disciplinary action and/or termination of the authorization by the board under Texas Occupations Code, §301.452.

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 February 5, 2001.

TRD-200100707
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: February 25, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 305-6811

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CHAPTER 222. ADVANCED PRACTICE NURSES WITH LIMITED PRESCRIPTIVE AUTHORITY

22 TAC §§222.1-222.7

The Board of Nurse Examiners for the State of Texas adopts the repeal of §§222.1-222.7, relating to Advance Practice Nurses without changes to the proposed repeal published in the December 1, 2000, issue of the *Texas Register* (25 TexReg. 11829).

The rules are repealed due to the adoption of new rules §§222.1-222.9 made in response to the Board's effort to implement House Bill 1, §167, Article IX, passed by the 75th Legislative Session, which requires that each rule adopted by an agency be reviewed and revised, if necessary, within four years of the date of its adoption. The new rules are being adopted simultaneously with this notice.

No comments were received concerning the repeal, and therefore the repeal will be adopted without changes and will not be republished.

The repeal is authorized under the authority of the Texas Occupations Code, §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurses who are approved, or seeking approval, as advanced practice nurses.

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

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Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
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Proposal publication date: December 1, 2000
For further information, please call: (512) 305-6811

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CHAPTER 222. ADVANCED PRACTICE NURSES AND LIMITED PRESCRIPTIVE AUTHORITY

22 TAC §§222.1-222.9

The Board of Nurse Examiners for the State of Texas adopts the new §§222.1-222.9, relating to Advance Practice Nurses without changes to the proposed text published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11830).

The rules are adopted in response to the Board's effort to implement House Bill 1, §167, Article IX, passed by the 75th Legislative Session, which requires that each rule adopted by an agency be reviewed and revised, if necessary, within four years of the date of its adoption.

No comments were received and new sections will be adopted without changes and will not be republished.

The rules are adopted under the authority of the Texas Occupations Code, §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurses who are approved, or seeking approval, as advanced practice nurses.

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

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Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER S. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT CLAIMS AGAINST TDMHMR

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§417.901 - 417.925 of new Chapter 417, Subchapter S, concerning negotiation and mediation of certain contract claims against TDMHMR, without changes to the proposed text as published in the November 10, 2000, issue of the *Texas Register* (25TexReg11237-11241).

Texas Government Code, §2260.052(c) requires that the units of state government with rulemaking authority adopt rules to establish provisions for negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas. Section 2260.052(c) directs the Office of the Attorney General (OAG) and the State Office of Administrative Hearings (SOAH) to provide model rules for negotiation and mediation that units of state government with rulemaking authority may voluntarily adopt or modify as they deem appropriate. The new rules are a modified version of the model rules provided by the OAG and the SOAH.

No written comment on the proposal was received.

DIVISION 1. GENERAL

25 TAC §§417.901 - 417.905

The new rules are adopted under the Texas Government Code, §2260.052(c), which requires that the units of state government with rulemaking authority adopt rules to establish provisions for negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas.

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

Filed with the Office of the Secretary of State on February 2, 2001.

TRD-200100691
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 22, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 206-5216

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DIVISION 2. NEGOTIATION

25 TAC §§417.906 - 417.915

The new rules are adopted under the Texas Government Code, §2260.052(c), which requires that the units of state government with rulemaking authority adopt rules to establish provisions for negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas.

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

Filed with the Office of the Secretary of State on February 2, 2001.

TRD-200100692
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 22, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 206-5216

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DIVISION 3. MEDIATION

25 TAC §§417.916 - 417.925

The new rules are adopted under the Texas Government Code, §2260.052(c), which requires that the units of state government with rulemaking authority adopt rules to establish provisions for negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas.

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

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TRD-200100693
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 22, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 206-5216

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES
SUBCHAPTER R. VIATICAL AND LIFE SETTLEMENTS

28 TAC §§3.1701 - 3.1717

The Commissioner of Insurance adopts amendments to §§3.1701 - 3.1703, 3.1705, 3.1707 - 3.1715, and new §§3.1704, 3.1706, 3.1716, and 3.1717 concerning regulation of viatical and life settlements. The sections are adopted with changes to the proposed text as published in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7465).

The amendments and new sections are necessary to implement the provisions of Texas Insurance Code Article 3.50-6A, as amended by Acts 1999, 76th Legislature, in House Bill (HB) 792. Prior to HB 792, Code Article 3.50-6A applied only to viatical settlements, the sale of a life insurance policy on an individual with a catastrophic or life-threatening illness or condition. House Bill 792 amended Article 3.50-6A by addressing life settlements, which are defined as the sale of life insurance policies on individuals who do not have a catastrophic or life-threatening illness or condition. The adopted rule adds language to address life settlements, clarifies filing requirements, and requires additional disclosures, contract provisions, and reporting requirements.

The adopted sections are necessary to provide additional consumer protections; establish requirements for registration, disclosure, and form approval for persons engaged in the business of viatical and life settlements; streamline the process for renewal and registration, disclosure, and form approval; more clearly define prohibited practices; ensure that a viator's, life settlor's, and owner's rights remain protected in the event the life insurance policy or certificate is re-sold or transferred to another person, or when the viatical or life settlement provider, provider representative, or broker elects to no longer engage in the business; protect the confidentiality of the personal information of viators, life settlors, and owners; designate the responsibilities of viatical or life settlement providers, provider representatives, and brokers; and provide enforcement mechanisms to ensure compliance with the Insurance Code and this subchapter.

While all of the adopted sections (§§3.1701 - 3.1717) become effective 20 days after the date the rule is filed with the office of the Secretary of State, the department recognizes the need for preliminary actions to be undertaken by viatical and life settlement providers, provider representatives, and brokers to implement the reporting requirements of §3.1705, and to implement other sections of the rule including, but not limited to §§3.1706 - 3.1710, that will require changes to some forms used to effect viatical or life settlements. Therefore, providers, provider representatives, and brokers must begin collecting data pursuant to §3.1705 not later than May 1, 2001, and include such data in any report filed on or after May 1, 2001, as well as file any such report in the format prescribed by §3.1705. Additionally, any forms used, issued, or delivered on or after May 1, 2001, must comply with the new regulations. Filings received by the department on or after May 1, 2001 must be accompanied by the completed transmittal checklist prescribed by the department.

The commissioner held a public hearing on the proposed rule on September 27, 2000, under Docket No. 2460.

In response to comments, the following changes have been made to the sections: §3.1702 - The term "captive broker" has been deleted throughout the rule and has been replaced with the term "viatical or life settlement provider representative," and a definition of that term has been added. This change necessitated deletion of the term "independent broker" which was previously needed due to the existence of "captive broker" in the rule. The terms "viatical settlement company" and "life settlement company" have been changed throughout the rule to "viatical settlement provider" and "life settlement provider." The definition of "business of viatical or life settlements" has been changed to include language addressing persons who perform the acts of a viatical or life settlement provider, provider representative, or broker. The definition of "catastrophic or life-threatening illness" was changed to be more consistent with similar definitions relating to viatical and life settlements in the Internal Revenue Code. The definition of "certificate holder" was changed for clarification. The definition of "mature or matured" was changed to remove the word "matured," and to add language to the definition necessitated by changes in §3.1704(e) - (g). The definition of "owner" was changed to more accurately describe the rights that an owner has under a policy or certificate. The definition of "referral agent" was reinstated and changed to address persons who make viatical or life settlement referrals, including referrals for a fee. This change also necessitated a change to §3.1703(a) to recognize that a person is not required to obtain a certificate of registration with the department when that person's sole involvement in a viatical or life settlement is restricted to the acts of a referral agent, and any fee received for the referral consists of a nominal, fixed, one-time fee that is not contingent upon the purchase or sale of the product for which the referral is made. The definition of "viatical or life settlement broker" was changed to include language that indicates that brokers represent the viator, life settlor, or owner in a viatical or life settlement, and negotiate the settlement on the viator's, life settlor's or owner's behalf. Language relating to referring or introducing a viator, life settlor, or owner was removed. The definition of "viatical or life settlement provider" was changed to recognize that an authorized or eligible insurer that issues stop loss coverage to a viatical or life settlement provider is not included within the definition of "viatical or life settlement provider." A definition of "provider representative" was added in response to comments to delete the term "captive broker". Many of the definitions in this section were renumbered in response to removal and addition of other definitions. §3.1703 - Language was added to subsection (j) to clarify that the secretary of state is the applicant's domiciliary secretary of state. Subsections (l) and (m) were changed to clarify that the secretary of state in those provisions means the Texas Secretary of State, and to simplify the application process by requesting a copy of the applicant's certificate of existence from the Texas Secretary of State. §3.1704 - Subsection (e) was changed to give viatical or life settlement providers the option to appoint a Texas registered broker or one of their provider representatives when the provider has viatical or life settlements that will not mature by the date the provider's current certificate of registration expires, or is surrendered, and the provider does not intend to renew its registration. Language was also added where necessary regarding brokers and provider representatives when they surrender or nonrenew their certificate of registration. §3.1705 - Subsections (a) and (c) were changed to require persons submitting a report under §3.1705 to only file an electronic copy. Subsection (c)(1)(C) was changed to require the A.M. Best rating "at the time of settlement contract." Subsections (c)(1)(M) and (c)(2)(H) were changed to require the primary ICD Diagnosis Code "at the

time of settlement contract." Subsection (c)(4) was added to require the name and address of any person who was given a fee for a referral. Subsection (c)(9) was changed to allow a viatical or life settlement provider conducting in-house tracking to use the abbreviation "IH" in the report. §3.1706 - Subsection (g) was changed to remove language referring to a company or broker being "lawfully registered in this state to conduct both viatical and life settlement business," as such language is no longer necessary since the department will not issue separate registrations, but will only distinguish between registrations for providers, provider representatives, and brokers. The phrase "to the best of their knowledge" was added to this subsection and §3.1709(c)(11) since it will not always be apparent when some forms are used whether the transaction will be a viatical settlement or life settlement. §3.1708 - Subsection (b)(2)(E) was changed to permit a general description or identification of the type of person to whom confidential information will be released, as opposed to the specific name or identity of the person to whom such information may be released. A similar change was made to §3.1714(a) since financing entities could ultimately obtain confidential information pursuant to a consent form. Subsection (b)(2)(F) was changed to require disclosure that a medical release form may be used to track ongoing health status of the viator, life settlor, or owner, and that the viator, life settlor, or owner may withdraw their consent pursuant to applicable law. Subsection (b)(2)(M) was changed to remove language referring to a future increase in the death benefit. This change was necessary to remain consistent with model laws which allow future increases in the death benefit to be purchased as part of a viatical or life settlement. Similar changes were made to §§3.1709(e) and 3.1710(d). In lieu of a prohibition of the sale of such a benefit, the department opted for disclosure in paragraph (L) informing a viator, life settlor, or owner that he/she may wish to inquire if his/her policy contains such a provision, and whether the price paid for the policy includes the value of the provision. Remaining paragraphs were renumbered. Paragraph (P) was changed to use language that is more consistent with the definitions of "viatical or life settlement broker," and "viatical or life settlement provider representative." §3.1709 - The reference to "executive officer" in subsection (c)(1) was changed to recognize executive officer "designated in the settlement contract with authority to bind the provider." Subsection (c)(7) was changed to only require a viatical or life settlement provider to disclose that the provider has the right to assign, sell, or otherwise transfer the policy without the viator's, life settlor's, or owner's consent. Language was added to subsection (f) to clarify that viatical and life settlement contracts must contain the name of the insurance company underwriting the policy "at the time of contract." A similar change was made to subsection (g) in relation to escrow/trust agreements. §3.1710 - Subsection (c)(2) was changed to recognize that a viatical or life settlement provider, provider representative, or broker may need to obtain the name of a viator's, life settlor's, or owner's family member (for later use to obtain a death certificate) by removing the prohibition against obtaining such information. In lieu of an outright prohibition against obtaining such information, the department instead prohibited use of the information to directly or indirectly contact such family members unless the family member is designated as a contact person under §3.1709(c)(5). A change was made to subsection (c)(6) to clarify that the criteria used to determine if a payment is "just" includes data that is submitted in the reports required by §3.1705. Subsection (c)(12) was changed to allow use of a power-of-attorney form if the form is a special or limited power-of-attorney and is restricted only to purposes related to the settlement. §3.1712 - A change was made to subsection (b) to remove reference to the language "as determined at the time of viatical or life settlement contract" since a viator's or life settlor's life expectancy may change. §3.1713 - Language was added to subsection (b) to allow providers to continue to track a viator's or life settlor's health status, even after assigning, selling, or otherwise transferring its interest in a policy. §3.1714 - Subsection (b) was changed to remove a restriction prohibiting written consent forms from providing for the release of information for any period greater than 12 months, and prohibiting the use of such forms for tracking purposes. In lieu of a prohibition, the department has opted for a disclosure requirement in this section and in §3.1708(b)(2)(F). §3.1715 - The prohibitions in subsections (b) and (c) concerning escrow agent licensure were deleted. §3.1717 - Subsection (b) was changed to require providers, provider representatives, and brokers to maintain records of each viatical or life settlement in which it participates, until three years after the "date the viatical or life settlement has matured."

The department has determined that the following grammatical or clarification changes are also necessary.§3.1702 - The definition of "escrow agent or trustee" was changed to more accurately address persons who are licensed to provide escrow or trust services. §3.1703 - Language was added to subsection (e) to clarify that any name, not just such persons' assumed names, used by a viatical or life settlement provider, provider representatives, or broker is subject to the requirement of §19.901. §3.1706 - The date of December 1, 2000 was changed to May 1, 2001. §§3.1708(b) and 3.1709(c) - Changes were made to clarify that if the viator or life settlor dies at any time prior to the end of the rescission period, the viatical or life settlement contract will be deemed to have been rescinded. §3.1709 - The word "owner" was added to subsection (c)(10) where it had been inadvertently omitted. §3.1710 - A change was made to subsection (c)(8) to clarify that a provider, provider representative, or broker is prohibited from entering into any settlement with a viator, life settlor, or owner in this state in which any form used to effect the settlement contains a provision requiring or limiting such person to specify a particular city, county, or locality in Texas or elsewhere as the legal forum for resolving a dispute. As elderly persons and sick persons are commonly solicited for viatical and life settlements, it was the department's intent to prohibit forms that contain clauses that require viators, life settlors, or owners to resolve a legal dispute in a locality far removed from their residence at the time of contract. Other non-substantive changes were made throughout the rule for grammar, consistency, or clarity. Contemporaneous with the adoption of these amendments and new sections, the repeal of §§3.1704, 3.1706, and 3.1716 - 3.1718 is published elsewhere in this issue of the Texas Register.

Section 3.1701 applies the subchapter to life settlors, life settlements, and owners. Section 3.1702 adds, deletes, or modifies various definitions. The definition of "owner" in this section clarifies that, in some situations, the owner, viator, or life settlor are separate persons under an insurance policy. Section 3.1703 sets forth requirements for obtaining a certificate of registration to operate as a viatical or life settlement provider, provider representative, or broker, including doing business under an assumed name, or having more than one business location. Amendments to this section create a new structure for paying fees to obtain a certificate of registration, and change the certificate of registration from a one-year certificate to a two-year certificate. Prior to the amendment fees were paid annually at a rate of $250.00 for

company registrations and $125.00 for broker registrations. Under the amendments, the same fee is charged, but payment of the fee is made every two years since the certificate will be valid for two years. As such, a provider will pay $500.00 every two years and a provider representative or broker will pay $250.00 every two years. The amendment also sets forth requirements for notifying the department of a change in information both during the application process and any time a change occurs in the application thereafter. Section 3.1704 sets forth the requirements for renewing, nonrenewing, or surrendering a certificate of registration. Amendments to §3.1705 modify the content and format of the reports required to be filed with the department.

Section 3.1706 sets forth the requirements for the filing of viatical or life settlement forms, and the process for departmental action on forms filed with the department. Section 3.1707 addresses life settlements in the filing requirements for advertising, sales, and solicitation materials. Section 3.1708 modifies existing requirements, and adds new required disclosure materials. The amendments to §3.1709 both modify existing, and add new, mandatory contract and application provisions, including those provisions that allow the owner of a policy to retain an interest in the policy. The section also addresses acknowledgement forms, escrow and/or trust agreements, and the provisions that must be contained in those forms.

Additional prohibitions are added in §3.1710 to the current list of prohibited practices related to advertising and solicitation of applications and contracts for viatical and life settlements. The amendments to §3.1711 address prohibited practices relating to the payment of commissions and other forms of compensation, modify the section to add life settlement terminology, and create a fiduciary duty between a viatical or life settlement broker and the viator, life settlor, or owner whom the broker represents.

Section 3.1712 sets forth new guidelines outlining prohibited practices when contacting a viator, life settlor, or owner for personal information, including contacts for health status inquiries after the settlement contract has been entered into and the proceeds have been paid to viators, life settlors, or owners. Section 3.1713 is amended to address the assignment, sale, or transfer of insurance policies subsequent to the initial purchase of the policy by the viatical or life settlement provider. Amendments to §3.1714 set forth the limits and practices relating to obtaining confidential information, such as prohibiting the disclosure of an owner's, viator's, or life settlor's confidential information without first obtaining proper written consent.

Section 3.1716 sets forth the authority and the procedures for the commissioner to deny, suspend, or revoke a certificate of registration, or take other enforcement action. Section 3.1717 authorizes the department to examine the business and affairs of any provider, provider representative, or broker engaged in the business of viatical or life settlements in this state, with expenses for such examinations to be paid by such persons.

In conjunction with these amendments and new sections, the commissioner is repealing existing §§3.1704, 3.1706 and 3.1716 - 3.1718. Adoption of the repeal is published elsewhere in this issue of the Texas Register.

General

Comment: Two commenters requested additional time to submit additional comments.

Agency Response: The 30-day comment period ended September 11, 2000, and a hearing on the rules was held September 27, at which time additional comments were received. It is not appropriate to extend the comment deadline past the time already provided.

Comment: Commenters supported the proposed rule generally, and appreciated the work done by the department. A commenter requested the department consider providing an exemption from regulations for life settlements for policies with a face value in excess of $250,000 as these policies are usually owned by financially sophisticated individuals or by corporations as "key-man" policies. The commenter believed these persons may not require the same level of protection as individuals with policies below the suggested amount, and may desire more flexibility than is permitted under the proposed rule.

Agency Response: The department disagrees, as it is the department's position that Article 3.50-6A does not provide regulatory authority to exempt certain policies or persons from the consumer protection provisions of the statute.

Comment: A commenter suggested that the rule contain a provision requiring a non-captive broker to present an offer to the seller within a reasonable time (five to seven days). The commenter also suggested a provision requiring a non-captive broker to seek counter-offers from lower bidders to ensure that the viator, life settlor, or owner is receiving the highest offer from the market.

Agency Response: The department understands the commenter's concerns regarding brokers, but disagrees with the commenter's suggested remedy. The department agrees that brokers must present all offers to the owner, viator, or life settlor within a reasonable time after the offer is made, which will vary depending upon circumstances. The department has not received, and is not aware of, any complaints regarding this issue and does not agree that a specific time frame be established at this time. The department will monitor this matter, and if a time frame is needed, one will be proposed. Section 3.1711(c) imposes a fiduciary duty upon brokers. The department interprets this fiduciary duty to require brokers to exercise due diligence to obtain the best offer possible for the owners, viators, or life settlors, and to present all offers to viators, life settlors, or owners in a timely manner.

Comment: A commenter urged the department to adopt a program or procedure for extensive searching into the background of companies' officers and directors, including the parent and ultimate parent of all applicant companies.

Agency Response: All applicants, including all officers, directors, and shareholders with 10% or more ownership interest who are required to be listed in the application for a certificate of registration provided to the department, are submitted for a criminal background check through both the Texas Crime Information Center and the National Crime Information Center. The department will continue to research the potential use of any other background searches as they are made available.

Public Benefit/Cost Note

Comment: A commenter, referencing §3.1706, stated that the projected costs of $9 - $11 for annual report preparation and filing are highly understated, and estimated the number of hours required per year for form filing activities to be 200 hours.

Agency Response: As stated in the preamble to the proposed rule, the hourly projected costs of $9 - $11 were in relation to submitting reports pursuant to §3.1705 and not form fillings under §3.1706. The estimated cost to file forms was $1 - $5 per

page. Article 3.50-6A requires the commissioner to adopt rules relating to approval of contract forms. The form filing requirement has been in effect since initial adoption of the viatical settlement rule in 1996. This rule will reduce the costs associated with form approval by streamlining the process for filing and approval, setting forth provisions which must be included in each settlement contract, and providing certain sample forms for use which will reduce form development time and which are not required to be filed for approval.

§3.1701

Comment: A commenter questioned whether deletion of the word "scope" in the title of this section affects the rule. The commenter also questioned the difference between "enacting rules" and "implementing subchapters" and whether these phrases have different significance in Texas.

Agency Response: The word "purpose" in the title encompasses "scope" and thus does not substantively affect the rule. There is no difference between the two phrases regarding "implementing" and "enacting". The department made the changes to conform to Texas Register general style and format requirements.

§3.1701(a)(1)

Comment: A commenter stated that the death benefit assigned by the owner is the entire gross benefit, not a "net" benefit. The commenter also stated that the reference to "life" insurance policy should not be deleted, and suggested addition of the following language: "transfers a life insurance policy or certificate issued pursuant to a group life insurance policy, or who attempts to do so."

Agency Response: The department understands the commenter's reasoning behind the suggested language, but the commenter's concerns are addressed in the definitions of "net death benefit" and "policy" when read in conjunction with §3.1701(a). The benefit assigned is not a gross amount, but rather the amount or value of the policy less any outstanding debts or liens already encumbering the policy amount that could be viaticated or sold. The intent is to address the actual amount assignable.

§3.1701(a)(3)

Comment: A commenter asked what effect the broader meaning of the phrase "or life" has on the scope of this regulation.

Agency Response: The intent of this subsection is to include "life settlements" as added by Acts 1999, 76th Legislature, HB 792.

§3.1701(a)(4) and (5)

Comment: A commenter believed that although the insured has a continuing right to privacy and to reasonable tracking parameters, the owner has no further rights in the policy after it is sold, and is in fact giving up all rights in the policy for an agreed upon cash amount.

Agency Response: The department disagrees, as Article 3.50-6A provides for consumer protection for a person who may sell or otherwise transfer the person's life insurance policy including maintenance of appropriate confidentiality of personal and medical information. This section addresses the purpose of the subchapter and summarizes the requirements of Article 3.50-6A. §§3.1701(a)(6), 3.1703(n), and 3.1710(a)

Comment: Several commenters suggested that the department delete the phrase, "or the United States," because the department does not have authority to enforce a federal law. A few commenters requested that the reference to "other applicable law" specify the applicable laws so that industry participants may comply. Another commenter requested that the department replace the phrase, "...or any other applicable law," with "or any other State of Texas applicable law."

Agency Response: The department disagrees with the commenters' suggested changes. The phrase "other applicable law" is needed to encompass new laws or modifications to existing laws that affect the viatical or life settlement industry. Reference to "laws of the United States" and "other applicable law" both in the sections referenced by the commenters and elsewhere in the rule are included to address those state and federal laws, both present and future, which may apply to the viatical and life settlement industry. Additionally, the department notes that these types of phrases are commonly used in statutes and regulations. §3.1702(a)(1)

Comment: Three commenters questioned the definition of "advertisement," and requested that the questioned language be deleted. One commenter stated that prepared sales talks are often created with limited notice. Another commenter questioned the meaning of the phrase, "and those representations made to members of the public." Another commenter asked what constitutes "direct or indirect communications."

Agency Response: The department disagrees that the questioned language should be deleted. The definition of "advertisement" is almost identical to the definition of "advertisement" in the department's advertising rules, 28 TAC Chapter 21, Subchapter B, and has been applicable to the viatical settlement industry since 1996. The use of this definition is also appropriate because Chapter 21, Subchapter B is written under the authority of Insurance Code Article 21.21 which is made expressly applicable to the viatical and life settlement industry by Article 3.50-6A, §3. The adopted definition, as compared to the definition in Chapter 21, varies only by those changes necessary to apply to the viatical and life settlement industry, and to confirm applicability of the term to the Internet and Internet advertisements. The meaning of the phrase for which the commenters requested clarification will vary depending upon the facts of a given situation. The department does not believe the phrases are ambiguous, over-broad, or vague. This definition is also necessary to provide adequate consumer protection, a requirement of Article 3.50-6A. To apply a lesser definition to the viatical or life settlement industry than to the insurance industry would result in an unequal application of the law.

Comment: A commenter stated that for clarity, the language, "materials used to solicit policies for viatical or life settlements" should read, "materials used to solicit viatical or life settlements."

Agency Response: The department agrees and has made the commenter's suggested change.

Comment: Another commenter stated that the phrase, "material included with a viatical or life settlement," should be "material included with the solicitation of a viatical or life settlement."

Agency Response: The department disagrees. The rule's subsequent language, "or any application for a viatical or life settlement, when the settlement is solicited or when the contract is delivered," clarifies that this material is not limited solely to material utilized during the solicitation of the settlement, but also to material utilized in the delivery of the settlement contract. §3.1702(a)(2) and (26)

Comment: A few commenters believed that the definitions for "business of viatical or life settlements" and "viatical or life settlement brokers" contain language that includes persons that should not otherwise be required to obtain a certificate of registration. One commenter believed the language includes persons engaged in "tracking" services. By way of example, the commenter asked if a viatical or life settlement company that does tracking must be licensed as a broker as well. If not, the commenter believed tracking entities must be expressly excluded. Similarly, a few commenters stated that it should be sufficient if the contact person is a full-time employee of the company or broker under an administrative contract to perform tracking services on behalf of the viatical or life settlement company.

A few commenters suggested adding language to the definition of "business of viatical or life settlements" to include those companies that track the health status of viators or life settlors for companies. Another commenter believed this definition is unnecessary and confusing, because it is a restatement of definitions covered by other definitions in the rule. These commenters stated that under the National Association of Insurance Commissioners (NAIC) model act, these aforementioned activities are included within the definition of the "business of viatical or life settlements" because they are integral to it. A commenter pointed out that the Texas definition of "viatical settlement broker" delegated the "tracking services" tasks to brokers, which is inconsistent with the NAIC model definition.

Agency Response: The department understands the commenters' concerns, and has made a change to address tracking in the definitions of "business of viatical or life settlements," and "viatical or life settlement provider representative." The department clarifies that the definition of "viatical or life settlement broker" at §3.1702(a)(26) does not limit the performance of tracking functions to persons who do broker activities. Providers, provider representatives, and brokers are all permitted to perform tracking in accordance with the rule. §§3.1702(a)(26) and (28); 3.1703(h) and (i); 3.1708(b)(2)(P); and 3.1710(c)(1)

Comment: Several commenters expressed concern with the use of the term, and the concept of, "captive broker" in the proposed rule. These commenters stated that inherent in the industry is the idea that a "broker" represents the owner and has a fiduciary duty to the owner in his or her effort to sell a policy. The commenters stated that this is the national model, and that the Texas rules will confuse Texas consumers regarding their representation and rights. These commenters suggested use of the term "representative" instead. Two commenters stated that if a captive broker is to only deal with one company, these brokers should operate under the company's license. One commenter stated these individuals should not have to hold individual broker licenses as this would not only prevent confusion between captive and independent brokers, but would also reduce a regulatory burden on both the captive broker and TDI. A commenter felt the provision at §3.1708(b)(2)(P) would be unnecessary if the commenter's suggestions regarding removing the concept of "captive broker" are implemented.

Agency Response: The department agrees in part and disagrees in part. The department has changed the term "captive broker" to "provider representative" in this section and throughout the rule as necessary. The definition of "independent broker" has also been deleted because it is encompassed by the definition of "broker." The department does not agree that a captive broker (now provider representative) should operate under the viatical or life settlement provider's license. Article 3.50-6A requires TDI to provide consumer protection, which is accomplished in part by registering individuals engaged in the business of viatical or life settlements. The department has made no other changes to §3.1708(b)(2)(P) because disclosures are needed for consumer protection. Viators, life settlors, and owners need to understand the difference between brokers and provider representatives, in that brokers have a duty to offer the policy to more than one provider, whereas representatives secure an offer exclusively from the provider with whom they are employed or contracted.

Comment: A commenter asked: Does a captive broker become an independent broker when an appointment is terminated or withdrawn, and then revert back to a captive broker upon another appointment? When a designation is terminated, does the captive broker lose the registration and thus require such reporting to other states?

Agency Response: If a person holds a certificate of registration as a captive broker (now provider representative), and the provider he or she exclusively represents terminates his/her contract or appointment, the certificate of registration is considered "in suspense" until either the individual submits a new notice of exclusive representation with another registered viatical or life settlement provider, or the person submits a change to his or her certificate of registration to reflect registration as a broker, as required by §3.1703.

§3.1702(a)(3)

Comment: A few commenters stated that the definition of "catastrophic or life-threatening illness" is ambiguous, and suggested that it be modified. One commenter suggested using a definition relating to the inability to perform two activities of daily living to indicate "catastrophic illness," and death within 24 months to indicate "terminal illness." Another commenter suggested that the definition be altered to correspond to the federal tax code definition.

Agency Response: The department agrees in part and disagrees in part. Article 3.50-6A uses the terminology "catastrophic or life-threatening illness," whereas the Internal Revenue Code (26 USC §101(g)(4)) (IRC) uses "terminally ill" and "chronically ill." The department has changed the definition for "catastrophic or life-threatening illness" to be consistent with the IRC. As a result of changing the definition of "catastrophic or life-threatening illness," and in an effort to streamline the licensing process, the department has combined registration for doing both the business of viatical and life settlements.

§3.1702(a)(4)

Comment: Two commenters stated that the certificate holder of a group life insurance policy is the only person with the power to dispose of the certificate, and that including dependents in the definition complicates the categories. One of the commenters suggested a definition.

Agency Response: The department agrees with the commenters' suggestion, and has changed the definition to include the commenter's language with modification.

§3.1702(a)(5)

Comment: A commenter expressed concern that the definition of "confidential information" is in conflict with recent federal privacy legislation. The commenter suggested removing the current wording and relying on the more detailed federal requirements.

Agency Response: The department recognizes that non-public personal information is a category of information that must be afforded specific treatment by financial institutions subject to Title V of the Gramm Leach Bliley Act (GLBA). However, the department has the authority, as a result of the consumer protection provisions of Article 3.50-6A, to protect the confidentiality of medical and personal information utilized in viatical and life settlement transactions. The department will continue to monitor GLBA and other developments in state and federal law for any potential impact on the viatical and life settlement industry.

§3.1702(a)(10)

Comment: A few commenters stated that the definition of "financing entity" should be revised to include the possibility of financing transactions involving certificates under a group policy, and suggested that the correct phrasing would be "purchaser of a policy or a certificate issued pursuant to a group insurance policy." Another commenter stated that the definition of "financing entity" is extremely broad and wanted to confirm that the definition does not create a large loophole for individual non-accredited investors.

Agency Response: The department disagrees because the language pertaining to group certificates is included within the definition of "policy." The definition of "financing entity" is designed to comply with Article 3.50-6A's prohibition that the commissioner may not adopt rules that regulate the actions of an investor providing funds to a viatical or life settlement provider. The department believes the definition is adequate.

§3.1702(a)(16) and (30)

Comment: Several commenters stated that the definitions of "life settlor" and "viator" must be modified to reflect the fact that the owner enters into the life settlement contract, and suggested "insured under" should be replaced with "owner of."

Agency Response: The department disagrees. The definition of "owner" takes into consideration the fact that the owner and life settlor may not always be the same person under the policy.

§3.1702(a)(17)

Comment: Some commenters stated that it was confusing to have two different definitions for the words "mature and matured," depending on whether or not the words are used in connection with brokers or companies, and suggested using a single definition to address when the insured under the subject policy has died and the proceeds are payable.

Agency Response: The department agrees that both words are unnecessary, and has deleted the words "or matured" from the definition. The department disagrees with the suggestion to use a different single definition because "mature" has different meanings depending upon where the term is used in the rule. The department has also made other changes to the definition to avoid any confusion with use of the terms in §§3.1704(e) and 3.1717(b).

§3.1702(a)(19)

Comment: A commenter suggested that, for clarification, the definition of "owner" should read: "The person who has the right to assign, sell or otherwise transfer the life insurance policy or certificate issued pursuant to a group life insurance policy." The commenter also stated that the exclusionary language in the definition should be clearer, and noted that the definition contains the statement, "the definition recognizes that, in some cases, the owner and viator or life settlor may not be the same person," but does not allow for differentiation of the treatment of individuals who fall into one category or the other.

Agency Response: The department agrees that owners under a policy have the right to assign, sell, or transfer their rights and benefits, and has clarified the definition by using the commenter's suggested language, with modification. The department notes that the differentiation between owners and viators or life settlors is addressed throughout the rule, and is not needed in the definition.

§3.1702(a)(22)

Comment: Several commenters stated that the removal of the definition of "referral agent," when read in conjunction with the proposed definition of "viatical or life settlement broker," will require a person (a neighbor or a life insurance agent assisting their customer) who refers just one owner for a settlement (with or without a fee being paid) to be licensed as a broker. Several suggestions were submitted to address this issue, including: (1) reinstating the definition of "referral agent;" (2) allowing life insurance agents to make referrals without requiring a broker's license; and (3) allowing life insurance agents to broker less than five transactions in a calendar year without being required to obtain a broker's license. One of these commenters suggested that the life insurance agent be required to submit a report to the department within 30 days of each transaction.

Agency Response: The department agrees in part and disagrees in part. The department has reinstated the definition of "referral agent" with deletion of the limitation of five "free" referrals, and has added language to §3.1703(a) to recognize the allowance of payment of nominal, fixed, one-time referral fees not contingent on the purchase or sale of the product. The department does not agree with providing for an outright exclusion of any person, including a life insurance agent, who actually negotiates a transaction because the department believes that such an exclusion is in conflict with the consumer protection provisions of Article 3.50-6A. In addition, the life insurance agent's licensing law does not authorize an agent to conduct the business of viatical or life settlements as a line of business under that license. Therefore, all persons performing the acts of a broker or provider representative, whether licensed as an insurance agent or not, are required to obtain a certificate of registration from the department.

§3.1702(a)(25)

Comment: A commenter stated that the definition of "trust" is too narrow and excludes other more common trust documents involved in a viatical or life settlement. The commenter suggested that the defined term be "viatical or life settlement trust" to avoid this confusion. The commenter believed that this concept is amply covered in the "escrow account" definition.

Agency Response: The department disagrees, and directs the commenter to the definition of "escrow account," which is almost identical to the definition of "trust," both of which are broad enough to address the commenter's concerns.

§§3.1702(a)(26) and 3.1712(a) and (b)

Comment: Several commenters stated that the process for licensing a life insurance agent as a broker should be streamlined. One commenter stated that if a life insurance agent wishes to become a broker, the procedure should be simple and require only completion of an application and payment of necessary fees. Another commenter stated that, when applying for a life insurance agent's license, if one pays the fees and provides the required

information to the department, a broker's license could be issued at the same time. Commenters stated this would be consistent with the current policy of the department to streamline licensing procedures and consolidate licenses. One commenter stated that this would draw qualified insurance professionals into the broker's market, and that any conflict-of-interest or fraud concerns could be dealt with under current law. A few commenters suggested the department consider consolidation of viatical and life settlement licenses as is being "done with agent licenses in Texas. " One of these commenters also requested clarification of when a person is acting as a referral agent and when a person is acting as a broker.

Agency Response: The department agrees that the process of applying for a viatical or life settlement certificate of registration should be simple, and believes part of the commenters' concerns are already addressed in the rule and application process. A Texas life insurance agent may obtain registration as a broker by completing applicable sections of the viatical/life settlement application provided by the department, and by paying the necessary fee(s). An agent, like any person doing the acts of a viatical or life settlement broker or provider representative, is required to comply with applicable requirements of the rule (e.g. obtain registration, have forms approved by the department, provide required disclosures, etc.). The department disagrees that life insurance agents should be exempt from these requirements. Although life insurance agents have knowledge about the needs and concerns of consumers purchasing life insurance, viators and life settlors do not have the same financial or insurance needs as persons purchasing insurance. Therefore, persons acting as brokers and provider representatives are required to obtain registration and meet the applicable rule requirements before engaging in the business of viatical or life settlements. The department is committed to amending the application process to allow for application of both agents licensure and viatical/life settlement registration at the same time. The difference between a referral agent and a broker is outlined in the definitions of each.

Comment: A commenter noted that the definition of "viatical and life settlement broker" is triggered by the word "hope" which is ambiguous. Additionally, the commenter noted that subparagraphs (A) through (D) are not identified by either "and" or "or." The commenter stated that if it is the intent to have the definition apply only when any of these items apply, the word "or" should be inserted.

Agency Response: The department has changed "hope" to "intent," along with other grammatical changes. In response to other comments to retain a definition of referral agent, the department has deleted proposed paragraph (26)(C) to avoid any confusion between the definition of "viatical or life settlement broker," and the definition of "referral agent." As such, the commenter's concerns about "and" and "or" are no longer applicable.

Comment: A few commenters expressed concern that the definition of "viatical and life settlement broker" excludes from the definition attorneys or accountants representing the viator, life settlor, or owner in relation to the viatical or life settlement, who receive a contingent fee from the viator, life settlor, or owner. These commenters believed that such an exclusion will allow attorneys and/or accountants who receive a contingent fee to perform all of the functions of a viatical or life settlement broker without being required to obtain a certificate of registration, nor comply with all other consumer protection requirements imposed on non-attorney/non-accountant persons who perform viatical or life settlement broker functions.

Agency Response: The department does not believe the section requires changing, nor has this language been problematic in the past. The language excluding attorneys and accountants has been in the rule since 1996. This exclusion merely encompasses those persons who are representing their own clients in the context of a viatical or life settlement transaction where their primary role is that of representing the legal or financial interests of the viator, life settlor, or owner, and where their fees are paid by the viator, life settlor, or owner, not by the viatical or life settlement provider, provider representative, or broker. Neither an attorney nor an accountant, for example, could ethically accept a fee from a viatical or life settlement provider while at the same time representing his or her client in the transaction, as this would constitute a conflict of interest. As such, the exclusions in the rule merely recognize traditional professional relationships that exist separate and apart from the viatical or life settlement transaction, so that viators, life settlors, and owners may seek the legal or financial representation they may need when conducting legal and business affairs. The department clarifies that attorneys and accountants who are performing the functions of a broker or provider representative in a transaction, and not the functions of an attorney or an accountant, are required to obtain a certificate of registration for the viatical or life settlement business to avoid violation of the rule.

Comment: A commenter stated that there is a conflict between the proposed definition of "viatical or life settlement broker" and the existing definition of "viatical broker."

Agency Response: No conflict exists since the adopted definition replaces the definition in effect at the time these sections were proposed.

§3.1702(a)(27)

Comment: A commenter suggested that in lieu of "viatical and life settlement company" the department use the more commonly used industry term "viatical or life settlement provider" throughout the rule to avoid confusion.

Agency Response: The department agrees, and has changed the term from "company" to "provider" throughout the rule where appropriate.

Comment: A few commenters suggested that, in addition to the existing exclusions from the definition, the following exclusions which are a part of the NAIC model regulations should be added: "(E) an authorized or eligible insurer that provides stop loss coverage to a viatical and/or life settlement company;" and "(F) a natural person who enters into or effectuates no more than one (1) agreement in a calendar year for the transfer of a life insurance policy for any value less than the expected death benefit."

Agency Response: The department agrees, and has added the commenters' suggested language as subparagraph (E), with modification; however, the department has not added the suggested subparagraph (F). It is the department's position that any person performing the acts of a broker or provider representative in this state must obtain a certificate of registration because the statute and rule provide various consumer safeguards (e.g. consumer disclosures) which serve as the basis for requiring registration in this state.

§3.1703(b)

Comment: A few commenters questioned whether the language of this subsection was meant to prevent a company or individual from registering under two different entities or names at the same

time, and stated that if that is the intent, this is not what the rule says.

Agency Response: This section is meant to prevent persons from obtaining duplicate registrations from the department. The department offers the following example for clarification: John Doe could not obtain two certificates of registration to operate as a life settlement broker, so that, if the department revoked one, he could attempt to rely on the other one and continue doing life settlement business even though the other registration has been revoked. This provision is consistent with 28 TAC §19.902 (One Agent, One License).

§3.1703(j), (l) and (m)

Comment: A few commenters stated that subsection (j) appears to offer licensing/registration reciprocity, and requested that the section be clarified to explain specifically how Texas will apply reciprocity to licensees from other states through use of these documents. Another commenter requested clarification of the requirement that a letter of good standing from the secretary of state must be sent to the department. The commenter asked whether "secretary of state" means the Texas Secretary of State, or the state of formation for the applicant's resident state.

Agency Response: The department clarifies that the rule does not provide for reciprocity. Subsection (j) sets forth the procedures that an applicant domiciled in another state needs to follow to obtain a certificate of registration in this state. The applicant is required to submit the documentation (i.e. certificate of good standing) from the applicant's domiciliary state's secretary of state. To clarify, the department has made a change to subsection (j). The department also recognizes that the least intrusive and least costly method to verify compliance with Texas business and corporations law under §3.1703(l) and (m) (i.e. certificate of authority, articles of incorporation, etc.) is to require applicants to submit a copy of their certificate of existence from the Texas Secretary of State, and the department has made a change to paragraphs (l) and (m) to accomplish this.

§3.1703(o)

Comment: A commenter suggested that the requirements of subsection (o) should apply to "any material information," not necessarily any change in information.

Agency Response: The department disagrees. The department has developed, and will continue to develop, applications for a certificate of registration that ask only for information that the department believes is material. As such, any change in the information submitted in the application is a material change that must be reported to the department.

§3.1703(p)

Comment: A commenter stated that the reference to a copy of "any applicable judgment" is not adequately defined. Another commenter stated that while notification of any suspension or revocation of the right to do business in any state should be reported to the department, it is not appropriate for a show cause order because at the point a show cause order is issued, there has been no determination as to any wrongdoing by the licensed person.

Agency Response: The department does not believe that it is necessary to define "judgment." Words not defined in a regulation are given their ordinary meaning and common usage, including any meanings of a trade or profession in which they are used. Some jurisdictions commence their enforcement actions with a preliminary order known as a "show cause" order. Failure of the party to appear pursuant to a show cause order operates as a default, allowing the ordering party to take an action. It is the department's understanding that these orders are based upon evidence that the licensee or registrant has engaged in conduct which violates the law. Any information or evidence of wrongdoing is necessary for consumer protection and should be reported to the department.

§3.1703(q)

Comment: A commenter believed that the fingerprint card requirements of 28 TAC Chapter 19 do not apply to the viatical or life settlement industry, and also believed this requirement does not address who should be fingerprinted if an applicant is a business entity instead of an individual. The commenter believed the department's requirements are very broad and should be clarified so as not to require dozens of officers or directors of a company to furnish fingerprint cards. Another commenter was pleased that the rule includes a fingerprint requirement.

Agency Response: The department clarifies that the provision expressly makes Chapter 19 applicable to the business of viatical and life settlements. The department also clarifies that if the applicant is a business entity (i.e. partnership or corporation, etc.) each person listed in the application for certificate of registration as key personnel or a shareholder with 10% or more control is required to submit a fingerprint card unless the officer/shareholder has previously submitted a fingerprint card as specified in §§19.1804 and 19.1805.

§3.1704(e) - (g)

Comment: A commenter stated that the renewal requirements are too stringent, and suggested allowing a viatical or life settlement company which chooses not to renew its registration to retain an administrative company which is registered to perform these functions for the viatical or life settlement company until the remaining transactions reach final maturity or are transferred to a new broker. Some commenters stated that this language is complicated and can be simplified. Another commenter stated that this section is inconsistent with the provision requiring a broker's registration to perform tracking duties.

Agency Response: The requirements of subsections (e) - (g) are needed to protect consumers when viatical or life settlement providers, provider representatives, or brokers cease doing the business of viatical or life settlements in Texas. The department has changed the sections to clarify that viatical and life settlement providers and brokers are permitted under the rule to retain a provider, broker, or one of their own provider representatives to perform tracking services. A viatical or life settlement provider conducting tracking services is permitted to do so under its existing certificate of registration.

§3.1705

Comment: Several commenters stated that the information required in the annual reports constitutes trade secrets and should be protected from public access. Another commenter stated that the information required by this section serves no useful purpose, and should not be required except in an on-site audit by the department. The commenter stated that requiring this information is onerous, expensive, and results in significantly lower offers to viators, life settlors, or owners. A commenter stated that the requirement to file annual reports in both electronic and paper formats is burdensome and wasteful. The commenter requested that the department reconsider this requirement.

Agency Response: The department recognizes that the commenters are concerned that the information submitted to the department in the annual reports could be accessible by the general public under the Texas Public Information Act. However, the information received in §3.1705 reports is necessary to assist the department in complying with the consumer protection requirements of Article 3.50-6A. The reporting requirements are based upon model statutes and regulations and for nearly identical information to that which is required in those model laws. The information contained in the reports will be helpful to the department in addressing consumer protection issues by providing data to study market trends, ascertain fairness of settlement amounts, and estimate the volume of business in this state. The department believes that there is adequate statutory protection to safeguard information alleged to constitute trade secrets, and directs the commenters to the Texas Public Information Act, Tex. Gov't Code Ann. §§552.110 and 552.305, and other applicable provisions of that act for information on seeking to protect information that is alleged to be a trade secret. The department has changed the language to require only electronic filing, with an option to file in paper format if filing electronically is not feasible for the provider, provider representative, or broker.

§3.1705(c)(1)(C)

Comment: A commenter stated that the A.M. Best rating on the report should clarify that the rating is the rating of the insurer at the time of the settlement transaction.

Agency Response: The department agrees and has changed the language.

§3.1705(c)(1)(E)

Comment: A commenter stated the answer to "viator's or life settlor's state of residence" at the time of application can only be Texas.

Agency Response: The department understands the commenter's suggestion, but has made no change in case there are situations where the information may vary.

§3.1705(c)(1)(M) and (c)(2)(H)

Comment: Several commenters objected to the use of International Classification of Disease (ICD) codes in the annual reports, and suggested the use of a disease category. Reasons given for not including ICD codes included: too costly; difficult to report due to lack of trained medical staff; and difficulty in obtaining from providers. The commenters also believed it serves no useful purpose, and appears to be outside the scope of the legislation. A commenter stated that the prevailing ICD code at the time of death is not usually the prevailing ICD code at the time of settlement.

Agency Response: The department disagrees with the recommended change, as ICD codes have been included in the reports since the department first adopted the viatical settlement rules. This information is one of the data elements needed by the department to monitor pricing trends in the sale of settlements. The method of determining ICD codes is a business choice, whether by hiring or contracting with staff with expertise in this area, or by obtaining such information from the health care provider when requesting a copy of the medical records for underwriting review. The department is not concerned with the ICD code at the time of death, but only at the time of purchase of the viator's, life settlor's, or owner's policy, and has clarified this in the rule.

§3.1705(c)(9)

Comment: A commenter requested that paragraph (9) be clarified to reflect that "any person" does not apply to a company which performs its own in-house tracking and monitoring.

Agency Response: The department agrees that providers that perform in-house tracking should not be required to list their own employees, and has added the code "IH" to indicate in-house tracking,. The department has also made a change to clarify that providers should list brokers, providers, or provider representatives that perform these functions for them.

§3.1705(d)

Comment: A commenter believed this section, which allows the department to request any additional information, is too broad and needs to be stricken.

Agency Response: The department clarifies that any additional information required under this section would generally be related to the information submitted in the report. Even without the rule, TDI has the authority pursuant to Article 3.50-6A, §3, to request additional information.

§3.1706

Comment: A commenter stated that pre-approval of forms and advertising materials does not serve a legitimate purpose. Two commenters stated that the filing requirements are costly. One of the commenters stated that the requirements are contrary to the current trend of file and use.

Agency Response: The department disagrees. Article 3.50-6A, §2(c) requires the commissioner to adopt reasonable rules for approval of contract forms. Approval of contract forms fulfills other statutory requirements, including but not limited to consumer protection and maintenance of confidentiality of personal and medical information. Advertising materials are not listed as a type of form that must be approved, but are required to be filed for informational purposes only and may be used prior to review by the department pursuant to §3.1707. Filing of forms and advertising materials is not a new requirement. There are no filing fees associated with the filing of forms, and the rule does not change the types of forms that must be filed with the department. The requirements are not contrary to file and use because the rules provide a provision which will enable providers, provider representatives, or brokers to use forms upon receipt of the filing by the department (i.e., file and use).

Comment: A commenter proposed an annual submission of forms at the time of license renewal. It was also suggested that the form filing and approval requirements be limited to forms which must be signed by the viator, life settlor, and/or owner. The commenter further stated that Florida uses "signature by seller" criteria in its recent law as did the NAIC in its most recent version.

Agency Response: The department disagrees, as this suggestion would not allow the department to fulfill the requirements of Article 3.50-6A, including but not limited to providing consumer protection through disclosure, approval of contract forms, and confidentiality of personal and medical information. Additionally, an annual submission requirement would be problematic because the rules provide for biennial renewal of registration in lieu of annual renewal. The department has reviewed the most recent versions of the NAIC model act and regulations and was unable to locate a "signature by seller" provision. The department has also reviewed the Florida "signature by seller criteria," and notes that the Florida forms include those listed in §3.1706(b), except for subsection (b)(7). Therefore, it appears that the Texas

filing requirements are nearly identical to those used in Florida. Subsection (b)(7) is necessary to address future modifications or changes to forms required by law or for purposes of consumer protection.

§3.1706(d), (m), and (q)

Comment: A commenter stated that the rule no longer allows modification of forms on a case-specific basis, which it said is problematic, time-consuming, and costly. Several commenters expressed concern where modification of a form is required after the form has been issued. A commenter noted that viatical and life settlement changes are different from changes in a life insurance policy because once the policy is purchased, the money is paid to the viator or life settlor up front, and the transaction is ended. Another commenter expressed concern that if the department decides, after the contract or other form is approved and issued, that something in the contract or form needs to be changed or amended, the viator or life settlor may refuse to accept the change to the contract or may refuse to agree to the modification, which could cause problems such as renegotiation of the contract or litigation. One commenter stated that this issue may be partially resolved by the department adding the terminology "may request"; however, the form approval process may still be problematic.

Agency Response: The rule replaces the case-specific filing with a file and use system. File and use allows providers, provider representatives, and brokers flexibility to modify their forms so they can be quickly used in the marketplace so long as the forms comply with rule requirements. Under the current rule, even if a form is a case-specific filing, the form still must be filed with the department and must comply with the minimum requirements of the regulations. This requirement has not changed in the adopted rules. The department understands the commenters' concerns regarding amending or reissuing existing contracts, and notes that requests for corrections or for replacing a form previously issued will be based upon the severity of the deficiency identified and will be handled on a case-by-case basis.

§3.1706(d)(2)

Comment: A commenter suggested that the department approve or disapprove forms within a reasonable time frame, such as 10 business days. The commenter further suggested that failure to meet this time frame should result in automatic approval of the form.

Agency Response: The department understands the commenter's concerns but has made no change. As part of the department's overall regulatory requirements, it is required by statute to perform many functions such as form review, data collection and analysis, consumer protection, licensing and registration. The department continually strives to expedite the review of forms and to search for more efficient ways of improving the filing process. Since the rules have separated the registration and form filing processes, this should improve the time frame for registration, as well as for form review. The department also directs the commenters to §3.1706, addressing file and use, if the commenter has remaining concerns about review and approval time frames.

§3.1706(e)(6)

Comment: A commenter stated that the turnaround time for corrections is too long, will be costly to the company, and may even result in business failure.

Agency Response: The commenter's concern is based upon a misunderstanding of the filing process. The department clarifies that the 30-day time frame for corrections is not a time frame for the department to review corrections, but instead is the time frame set for providers, provider representatives, and brokers to submit their corrections to the department. The department welcomes and encourages providers, provider representatives, and brokers to expedite submission of corrections.

§§3.1706(g) and 3.1709(c)(11)(A)

Comment: A commenter requested that companies and brokers be allowed to delineate which type of settlement is being entered into at the time of contract, because it is not always known until it is underwritten which kind of settlement will be entered into. A few commenters requested addition of the phrase "to the best of their knowledge" in this provision since, at the time the form is used, it may not be evident whether the person has a catastrophic or life-threatening illness if a medical evaluation has not yet been performed.

Agency Response: The department agrees, and has added the words "to the best of their knowledge" to these sections.

§3.1707

Comment: A commenter stated that filing of advertising and/or marketing materials is appropriate.

Agency Response: The department agrees.

§§3.1708(b)(2)(E) and 3.1714(a)

Comment: Several commenters stated that all confidential information obtained for the sale of the policy must be available to possible future owners of the policy, or the policy will become illiquid. Another commenter requested insertion of "or potential financing entity" after "financing entity" in §3.1714(a).

Agency Response: The department agrees that confidential information may be needed for future sales of the policy and has revised the sections accordingly. The department's intent is not to require identification of the specific person to whom confidential information will be released, but rather to require general identification of those persons or entities to whom the viatical or life settlement provider, provider representative, or broker will release the confidential information, so that the viator, life settlor, or owner will know, upon signing the release, who might have access to their confidential information. Therefore, the department has deleted the words "specifically" and "the person," and changed the word "will" to "may." The department has also removed the words "financing entity" from §3.1714(a)(2). The department has changed the rule in all sections, where appropriate, to remove the limitation that the information may only be given in the form of statistical data.

§§3.1708(b)(2)(I) and 3.1711(a)

Comment: A commenter stated that the requirements to disclose commission information may be impossible to comply with if brokers are sharing commissions or paying referral fees, and that disclosure of this information may be outside the scope of the statute. Another commenter stated that such provisions produce no ascertainable benefit to the client. Another commenter requested that the language be changed to reflect policy owner rather than the insured, because the commenter believed the insured should have no right to be informed of the amount or terms of commission unless the viator or life settlor is also the policy owner.

Agency Response: Viators and life settlors, even if they are not owners of the policy, have consumer protection interests in the transaction as provided by statute, and have the right to information, upon request, regarding commissions. The viator or life settlor is an integral part of the transaction since he or she provides medical consent information, and commission(s) information could affect a viator's or life settlor's decision to release such information.

§§3.1708(b)(2)(M), 3.1702(a)(21), 3.1709(e), and 3.1710(d)

Comment: Several commenters expressed concerns about provisions that would prohibit the sale of future increases in the death benefit, as well as accidental death and dismemberment benefits. Some commenters noted that future increases in benefits, such as cost of living increases, double indemnity, etc., may be negotiated as part of the payment amount and should be transferred with ownership of the policy. A few commenters expressed concern that prohibiting the transfer of future benefits would create problems with the law of absolute assignment and could cloud the title to the insurance policy. These commenters believed that disclosure to the viator, life settlor, or owner of these benefits would be adequate.

Agency Response: The department agrees in part and disagrees in part. The department has changed the language throughout the rule to be consistent with the NAIC model act and regulations on viatical and life settlements, such that purchasing of accidental death benefits (ADB) will still be disallowed, but the purchase of other increases and benefits will be permitted, with adequate disclosure as added in §3.1708(b)(2)(L). The department clarifies that spousal and dependent coverage could not be purchased without a settlement on the spouse or dependent, and multiple assignments are possible under any life insurance policy. The department does not agree with the commenters' assertions that limiting the purchase of the ADB rider affects the ownership of the policy, or creates problems with clouding of title.

§3.1709(a)

Comment: A commenter stated that the inclusion of insurance agents as a class of persons to consult regarding the impact of a viatical or life settlement upon a viator's or life settlor's eligibility for public assistance, is not appropriate. This commenter believed that persons on public assistance would not have the range of advisers available to them that are listed in this provision. The commenter suggested keeping the current language, as it is simpler, more direct, and more useful to the consumer.

Agency Response: The department disagrees. A person's socio-economic status does not preclude access to various types of advisors. The required disclosure language does not specify that the viator, life settlor, or owner must contact all the advisors named. The viator, life settlor, or owner has freedom of choice. The fact that the viator, life settlor, or owner has a life insurance policy to sell to a viatical or life settlement provider indicates access to either an insurer or an insurance agent, and these persons often discuss such issues in marketing a life insurance policy.

Comment: A commenter stated that standard Spanish language for this industry has not been developed but believes the proper phrase is "en Vida" rather than "Pago en Vida."

Agency Response: The department contacted a court-certified Spanish interpreter who stated "Pago en Vida" is more precise.

§3.1709(c)(1)

Comment: Two commenters stated that the company's executive officer should be allowed to appoint someone to act with his or her authority to approve changes to the viatical or life settlement contract.

Agency Response: The department agrees in part and disagrees in part. The department has changed the language to recognize that a person other than the executive officer may make a change, but only if that person is properly identified in the form. The department also clarifies that this section does not affect the provider's duty to comply with the filing requirements of §3.1706.

§3.1709(c)(4)

Comment: A commenter stated that in some instances, the owner desires to hold transfer documents until he or she can verify that funds are in escrow, and then send them to the insurance company. The commenter believed that the forms are meaningless until they are presented to the insurance company, and suggested the following language: "a provision that, within three business days, upon receipt by the insurance carrier of documents to effect the transfer of the policy." The commenter believed that this common time frame would be more accommodating and still provide adequate assurance of availability of funds.

Agency Response: The department disagrees. In situations where an owner is reticent to sign transfer documents until funds are in the escrow account, the provider can direct the owner to the contract language required by this section. Also, there is nothing in §3.1709(c)(4) which prohibits the provider from appeasing this type of owner by placing funds in the escrow account, or providing some other arrangement that will satisfy the owner's need to be assured of the security of the transaction prior to the transfer documents being sent to the owner for completion.

§3.1709(c)(5)

Comment: A commenter believed the rule should include a provision for tracking if the designated person or the viator or life settlor cannot be located.

Agency Response: The department recognizes the commenter's concerns, but disagrees, as such a provision could result in the provider, provider representative, or broker being able to contact individuals other than the viator or life settlor or their designated contact persons (i.e. family members), which is prohibited by the rule.

§3.1709(c)(7)

Comment: Several commenters expressed concern with the requirement that the viatical or life settlement company notify the viator, life settlor, or owner of any subsequent assignment, sale, or transfer of the policy. One commenter stated that this provision will present logistical difficulties in subsequent transfers by one or more financing entities. The commenter agreed with disclosing to the viator, life settlor, or owner that the ownership of the policy after it is originally purchased is subject to change; however, the commenter believed that there should be an exemption from disclosing a change in ownership if the original company continues to track the entity. Another commenter stated that such notification to an owner is not appropriate; but agreed it would be appropriate to notify the insured that a policy insuring his or her life has been transferred by the original company.

Agency Response: The department agrees and has deleted the requirement to notify the viator, life settlor, or owner of subsequent assignments, sales, or transfers.

§3.1709(c)(10)

Comment: A commenter requested that this paragraph be reworded to reflect that only the owner of a policy has the right to conversion. Another commenter expressed concern that disclosure of pass-throughs of additional policies or coverages does not eliminate the possibility that a policyholder may be surrendering coverage without reimbursement.

Agency Response: The department has added the word "owner" to this provision. The department acknowledges the second commenter's concern, but clarifies that policy owners are able to negotiate the sale of their policies, and believes that disclosure to the viator, life settlor, or owner that they may be surrendering coverage without reimbursement is sufficient.

§3.1709(f)

Comment: A commenter suggested that the department develop a clearly worded glossary of key terms for use as an appendix to eliminate any confusion as to the identity of key terms.

Agency Response: The department believes a prescribed glossary from the department is not necessary. Providers should be allowed the opportunity to develop their own glossaries for use in the context of a settlement, ensuring that consumers know the meanings of the words contained in their contracts.

§3.1709(f)(5)

Comment: Several commenters requested addition of the phrase "at the time of the contract" when identifying the insurance company underwriting the policy due to frequent transfers of blocks of business. One of the commenters requested modification of subsection (f)(5) to clarify that such a name does not include any entity reinsuring a portion of the policy.

Agency Response: The department agrees with the first comment and has made the suggested change, with modification. The department disagrees with the second comment because subsection (f)(5) does not require inclusion of any reinsurance entity, only the insurance company underwriting the policy which serves as the basis for the contract. The underwriter and reinsurer are not synonymous.

§3.1709(g)

Comment: A few commenters expressed concerns about limiting the company to use of one escrow or trust account for reasons including, but not limited to, instances where a company receives funding from more than one investor, and each investor requires a separate escrow or trust account for accounting reasons.

Agency Response: The department agrees and has deleted the limitation.

§3.1709(h)

Comment: A commenter stated that the time for providing these materials is uncertain, and requests clarification.

Agency Response: The department clarifies that the timing of the delivery of each of these materials will vary with each document, since they are presented to the viator, life settlor, or owner at different times during the viatical or life settlement transaction.

§3.1710(c)(2)

Comment: A commenter stated that information relating to a viator's or life settlor's family is often necessary in connection with the filing of a death claim.

Agency Response: The department recognizes the commenter's concerns and has changed subsection (c)(2) to allow family member information to be obtained since the name of the viator's, life settlor's or owner's mother and father is often needed to obtain a certificate of death for submission to the life insurance company for payment of the death benefit. However, to protect consumer confidentiality as required by Article 3.50-6A, the department has made other changes to subsection (c)(2) to prohibit a viatical or life settlement provider, provider representative, or broker from contacting by any method, the viator's, life settlor's, or owner's family members, including a spouse and significant other, unless such person(s) have been designated as a contact person under §3.1712. In making this change, the department specifically notes that some viators, life settlors, or owners may have financial or medical issues of a sensitive nature that they wish to keep private from their family members.

§3.1710(c)(5)

Comment: A commenter stated that these provisions deprive the owner of certain rights to pledge or assign a policy as the owner sees fit, and the commenter is uncertain of the legislative authority for these provisions.

Agency Response: The department disagrees that the provisions deprive the owner of certain rights. Before any viatical or life settlement contract is completed, the viatical or life settlement provider requires medical information about the viator or life settlor to evaluate the viator's or life settlor's health status for settlement purposes. To review this information, the provider, provider representative, broker, or policy owner, by law, must obtain the viator's or life settlor's written consent in situations where the owner and viator or life settlor are different persons under the policy. This provision ensures that the owner has not unlawfully obtained or released the viator's or life settlor's confidential information without his or her knowledge. Statutory authority for this provision exists in Article 3.50-6A, §2(c)(7) which requires rules adopted by the commissioner to include rules governing the maintenance of appropriate confidentiality of personal and medical information.

§3.1710(c)(6)

Comment: Two commenters suggested including other factors to better define the criteria the department will utilize, such as current interest rates, term of policy, premium costs, risks associated with policy (e.g. caps on conversion), cost of money, existence of risk for the class of policy, the type of policy, and outstanding loans, among others. One commenter stated that the factors used to determine unjust payments are open-ended, and that it may be difficult, or even impossible, for a company to determine if its payments would be considered "just" by the department.

Agency Response: The department disagrees with some of the items the commenters suggested and notes that much of the criteria suggested is included in the data submitted in the report(s) required by §3.1705. The department has deleted items from §3.1710(c)(6) that are also listed in §3.1705, and has added a reference to §3.1705. The department will use the data in §§3.1705 and 3.1710(c)(6) as the norm to monitor payments in

Texas, but also believes that, in some instances, other information might be considered when determining if a payment is just. The department has kept the phrase "among other factors."

Comment: A commenter stated concerns that this provision may lead to elaborate administrative procedures, and requested an explanation of how the department intends to implement this section.

Agency Response: This provision will not lead to elaborate administrative procedures because viatical and life settlement providers currently assess life insurance policies to determine the fair market value they are willing to pay to purchase a viator's, life settlor's, or owner's policy. Such a provision is allowed in the rule pursuant to Article 3.50-6A(e). The department plans to evaluate these criteria annually, and as needed in response to any consumer complaints. If any review reflects a substantial difference in payment amounts between risks of the same class, the department will contact the provider to obtain information, including other factors that may have affected the purchase price.

§3.1710(c)(12)

Comment: Several commenters expressed concerns with a prohibition on use of power-of-attorney forms. These commenters stated that the language requiring the viator, life settlor, or owner to execute a power-of-attorney in favor of a viatical or life settlement company or broker is at times essential to the transaction. Some commenters urged removal of this as a prohibited practice. Other commenters suggested the department allow use of limited or special power-of-attorney forms.

Agency Response: The department agrees in part and disagrees in part. For consumer protection purposes, the power-of-attorney should not be so general or broad as to potentially allow a provider, provider representative, or broker to use the power-of-attorney for purposes unrelated to the viatical or life settlement transaction. However, the department recognizes that the form serves a valuable purpose in the course of the viatical or life settlement transaction. Therefore, the department has changed the language to allow a limited or special power-of-attorney only when it explicitly states the occasions in which the power-of-attorney may be invoked, and is limited to purposes related to the viatical or life settlement transaction.

§3.1712

Comment: A commenter stated that the provision relating to contacting the viator, life settlor, or owner for health status inquiries may resolve other difficulties, but is poorly placed, and suggested that all provisions regarding tracking should be in one single place or refer to other relevant sections.

Agency Response: Various provisions throughout the rule apply to tracking, including registration, renewal, and prohibited practices, among others. The department believes the provisions are appropriately placed.

Comment: A few commenters stated that because life expectancy may change at certain stages of the viatical or life settlement contract, limiting a company's ability to inquire about a viator's or life settlor's life expectancy based on information obtained at the time of the contract is unworkable and potentially confusing for the company. Another commenter stated that the frequency of contacts in the proposed rule is based upon life expectancy at the time of contract, and requested that monthly contacts should be allowed in the final expected year. Another commenter stated that it is unreasonable to limit the number of contacts based on life expectancy because the company has a large investment in the policy, and a contact of once per month is not unreasonable if it is disclosed at the time of purchase of the policy. A commenter supported the concept of a contact person, but suggested the provision be amended to require three contact persons at the time of contract, one of whom must be an attending physician.

Agency Response: The department disagrees with contacting a viator, life settlor, or owner more than once per month, but agrees that life expectancy may change at certain stages of the viatical or life settlement process, and has removed the phrase "as determined at the time of contract." Nothing in this section prohibits the viator or life settlor from designating more than one contact person, but the department believes the number should be kept within a reasonable limit.

§3.1713(b)

Comment: A commenter stated that the provision prohibiting a viatical or life settlement company from continuing to track a policy that the company sells is completely unreasonable. The commenter believed the issue could be resolved by replacing the word "must" with "may" in the fourth line, and by concluding with language that indicates that if the company does not wish to track the policy, it must designate another licensed company for the tracking. The commenter stated that this entire section is further confused by earlier language requiring persons who perform tracking to be licensed brokers. The commenter encourages the department to further review this concept.

Agency Response: The department agrees that clarification is needed, and has changed the subsection to allow a viatical or life settlement provider to continue to track or appoint one of their provider representatives, another Texas provider, or a broker to track the viator's or life settlor's health status. Any person appointed for this purpose must hold a Texas certificate of registration.

§3.1714(a)(4) and (b)

Comment: Several commenters expressed concern with the 12-month expiration of the medical consent form and recommended that the consent form be allowed to remain in effect for the duration of the insured's life, as it is used to track the health status of the viator and life settlor. A commenter stated that this requirement could place the broker or company in conflict with §3.1712. A few commenters stated that limitation of the consent form affects the funder's ability to obtain updated medical data necessary for secondary sales, and believed the insured should have the option to waive "expiration of consent forms" with appropriate disclosures. A commenter stated that this will result in higher offers and less intrusive post-settlement monitoring. Two commenters stated that stop loss insurers require a valid authorization to release medical information so that a re-review may take place to provide a current valuation. One of the commenters stated that institutional investors also require accurate and timely health information.

Agency Response: The department agrees with removal of the 12-month expiration period, and has changed subsection (b) to remove the language that limited the duration of medical release forms and prohibited the use of confidential information to track the on-going health status of any viator or life settlor after the owner and the viatical or life settlement provider have entered into the viatical or life settlement contract, and require disclosure

of this fact and of the person's right to withdraw consent pursuant to applicable law.

§3.1715

Comment: A commenter stated that this subsection unfairly places liability on properly licensed entities for the failure of others to adhere to applicable regulations, and that the department can adequately police violations through annual broker reports.

Agency Response: The department disagrees. Article 3.50-6A requires the department to develop rules to adequately address consumer protection. The article also requires providers, provider representatives, and brokers that conduct viatical or life settlement business in Texas to be properly registered. Registration is necessary to ensure that consumers are dealing with persons who are aware of the requirements of Article 3.50-6A and this subchapter. Allowing properly registered entities to pay or share commissions with unregistered entities may harm consumers, and thus contravenes these consumer protection provisions. The department believes that reporting information would not adequately address this goal because a broker could do business with many different providers, each of whom will be submitting a separate report under §3.1705 long after the non-registered entity has engaged in the unlawful practice.

Comment: Several commenters stated that requiring an escrow agent or trustee who pays premium to be a licensed insurance agent is a burdensome restriction. These commenters stated that other states only require escrow agents to be financial institutions protected by the FDIC and suggested that Texas propose similar regulations. One commenter suggested deletion of the requirement. One commenter stated that the nature of the escrow agent is to serve as an independent party to the transaction and to preserve the interest of the parties and as such, believed that the definition of "escrow agent or trustee" is sufficient to maintain the integrity and conformity with the intent and purpose of the act. A commenter stated that requiring an escrow agent or trustee to obtain a life insurance license is not related to their involvement in the settlement industry and suggested that the requirement that any individual that performs services relating to the gathering, organization, analysis of confidential information, etc., be expanded to include the handling of funds. A commenter stated that the responsibility of paying premiums has nothing to do with the business of insurance and that escrow agents, who are licensed by the Texas Department of Banking (TDB), are routinely audited and must meet substantial requirements. This commenter urged the department to prohibit any person or entity not subject to the regulatory authority of TDI or TDB from acting as an escrow agent.

Agency Response: The department recognizes the commenters' concerns and has accordingly deleted the language.

§3.1716(a)

Comment: A commenter stated that this subsection appears to require viatical and life settlement companies and brokers to be responsible for entities completely out of their control, such as escrow agents, and urged modification or deletion of this section to only include those entities under the direct control of the company or broker.

Agency Response: The department disagrees. The provision addresses acts or omissions that are committed through various entities. Therefore, this provision does not hold the provider, provider representative, or broker responsible for acts committed by a person acting independently of the provider, provider representative, or broker.

§3.1717(b)

Comment: A commenter stated that viatical or life settlement brokers may not know of the death of the viator or life settlor, and that it was important to note this fact. The commenter believed that the appropriate file retention period should be three years after the closing of the sale of the policy, and that this concept is contained in the NAIC model of which the commenter approves.

Agency Response: The department agrees and has replaced the phrase, "death of the viator or life settlor" with "date the viatical or life settlement has matured."

For, with changes: Accelerated Benefits Corporation; Affirmative Lifestyle Corporation; American Viatical Services; Coventry Capital, LLC; Coventry Financial LLC; Life Partners, Inc.; Montgomery Capital, LLC; Mutual Benefits Corporation; National Viatical Association; National Viatical and Life Settlement Association of America; Office of Public Insurance Counsel; Texas Association of Insurance and Financial Advisors; Viatical Benefactors, LLC; ViatiCare Financial Services, LLC; ViatiCare Financial Services, LLC; Viaticus.

Against: None.

The sections are adopted under the Insurance Code Article 3.50-6A and Section 36.001. Article 3.50-6A provides that the commissioner shall adopt reasonable rules to implement this article as it relates to viatical and life settlements. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

§3.1701. Purpose and Severability.

(a) Purpose. This subchapter implements the provisions of Insurance Code Article 3.50-6A. The commissioner implements this subchapter for the following purposes:

(1) to provide consumer protection in a viatical or life settlement transaction for a viator or life settlor and owner who assigns, sells, or otherwise transfers a policy or its net death benefit, or who attempts to do so;

(2) to establish requirements for registration, disclosure, and form approval for persons engaged in the business of viatical or life settlements;

(3) to define prohibited practices for persons engaged in or involved in transactions relating to the business of viatical or life settlements;

(4) to ensure that a viator's or life settlor's and owner's rights under the Insurance Code and this subchapter remain protected if a viatical or life settlement provider assigns, sells, or otherwise transfers a policy or net death benefit under the policy which served as the basis for a viatical or life settlement transaction;

(5) to protect the confidential information of viators or life settlors and owners who assign, sell, or otherwise transfer their policies or net death benefits under such policies, or who seek to do so; and

(6) to provide enforcement mechanisms to ensure that persons engaged in, or involved in transactions relating to the business of viatical or life settlements comply with the Insurance Code, this subchapter, or any other applicable law of this state or the United States.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this

state, is unconstitutional or for any other reason is invalid, the remaining provisions shall remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this subchapter to particular persons, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional or for any other reason is invalid, the provision shall remain in full effect as to other persons or circumstances.

§3.1702. Definitions.

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

(1) Advertisement -- Includes, but is not limited to:

(A) printed and published material, audio-visual material, and descriptive literature of a viatical or life settlement provider, provider representative, or broker, including materials used in direct mail, newspapers, magazines, the internet, radio, telephone and television scripts, billboards, and similar displays;

(B) descriptive literature and sales aids of all kinds used by a viatical or life settlement provider, provider representative, or broker and distributed to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters;

(C) prepared sales talks, presentations, and materials for use by a viatical or life settlement provider, provider representative, or broker, and those representations made to members of the public;

(D) materials used to solicit viatical or life settlements;

(E) material included with a viatical or life settlement or an application for a viatical or life settlement, when the settlement is solicited or when the contract is delivered, including materials used in connection therewith;

(F) lead card solicitations, which are communications that, regardless of form, content, or stated purpose, are used to compile a list containing names or other personal information regarding individuals who have expressed a specific interest in a product and are used to solicit persons in this state for a viatical or life settlement; and

(G) any other communication directly or indirectly related to a viatical or life settlement or application for a viatical or life settlement, and used in the eventual sale or solicitation of a viatical or life settlement or application for a viatical or life settlement.

(H) The term "advertisement" does not include:

(i) communications or materials used within a viatical or life settlement provider's, provider representative's, or broker's own organization, not used as sales aids and not disseminated to members of the public;

(ii) communications with individuals, other than materials urging individuals to purchase or inquire into the potential purchase of a viatical or life settlement;

(iii) materials used solely for the recruitment, training, and education of a viatical or life settlement provider's, provider representative's, or broker's personnel, provided it is not also used to induce individuals to inquire into the potential purchase of a viatical or life settlement or application for a viatical or life settlement.

(2) Business of viatical or life settlements -- The making of, or proposing to make, as a viatical or life settlement provider, provider representative, or broker, a viatical or life settlement contract, or taking or receiving any application for a viatical or life settlement, or doing the acts of a viatical or life settlement provider, provider representative, or broker.

(3) Catastrophic or life-threatening illness -- An illness or physical condition which, as certified by a physician, can reasonably be expected to result in death in 24 months or less after the date of the certification.

(4) Certificate holder -- A member or employee eligible for coverage under a certificate issued pursuant to a group policy.

(5) Confidential information -- A viator's, life settlor's, or owner's name, address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, genetic information, medical information, financial information, or any other information that is likely to lead to the identification of a viator, life settlor, or owner, including the identity of any family member, spouse, or significant other.

(6) Control -- As defined in Insurance Code Article 21.49-1, §2.

(7) Escrow account -- An account established by a viatical or life settlement provider for the sole purpose of entering into viatical or life settlements wherein the funds payable to the owner are placed with an independent third party to be paid to the owner on the fulfillment of the conditions of the viatical or life settlement contract.

(8) Escrow agent or trustee -- An attorney, certified public accountant, financial institution, or other person licensed in a capacity under the authority of a regulatory body to provide escrow or trust services.

(9) Escrow or trust agreement -- An agreement establishing an escrow account or a trust.

(10) Financing entity -- An underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical or life settlement provider, credit enhancer, reinsurer, or any person whose sole activity related to the viatical or life settlement is providing funds to effect the viatical or life settlement, and who has an agreement in writing with a registered viatical or life settlement provider to act as a participant in financing the viatical or life settlement.

(11) Genetic information -- Information derived from the results of a genetic test.

(12) Genetic test -- A laboratory test of an individual's DNA, RNA, proteins, or chromosomes to identify by analysis of the DNA, RNA, proteins, or chromosomes, the genetic mutations or alterations in the DNA, RNA, proteins, or chromosomes that are associated with a predisposition for a clinically-recognized disease or disorder. The term does not include:

(A) a routine physical examination or a routine test performed as part of a physical examination;

(B) a chemical, blood, or urine analysis;

(C) a test to determine drug use; or

(D) a test for the presence of the human immunodeficiency virus.

(13) Insured -- An individual covered by a policy.

(14) Life expectancy -- The mean number of months a viator or life settlor can be expected to live as determined by the viatical or life settlement provider considering medical records and appropriate experiential data.

(15) Life settlement -- A transaction whereby a written agreement is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state, under which a life settlement

provider acquires, through assignment, sale, or transfer, a policy insuring the life of an individual who does not have a catastrophic or life-threatening illness or condition by paying the owner or certificate holder compensation or anything of value that is less than the net death benefit of the policy.

(16) Life settlor -- An individual who:

(A) is the insured under an individual policy or a certificate holder under a group policy, and who does not have a catastrophic or life-threatening illness or condition; and

(B) enters into a life settlement contract with a life settlement provider or attempts to do so through inquiry to, negotiation with, or by providing or consenting to the provision of confidential information to, a life settlement provider, provider representative, or broker. The term does not include a life settlement provider that assigns, sells, or otherwise transfers a policy that it has purchased from a life settlor and owner.

(17) Mature --

(A) as it relates to viatical or life settlement brokers, occurs when the owner has received full payment of the settlement for the assignment, sale, or transfer of the policy that served as the basis for the viatical or life settlement; or

(B) as it relates to viatical or life settlement providers, occurs when the viator or life settlor has died; or

(C) as it relates to viatical or life settlement provider representatives or brokers who have been appointed to continue to track a viator's or life settlor's health status pursuant to §3.1704(e) of this subchapter (relating to Renewal; Fees), occurs when the viator or life settlor has died.

(18) Net death benefit -- The amount of the death benefit under a policy to be purchased, less any outstanding debts or liens.

(19) Owner -- The person who has the right to assign, sell, or otherwise transfer a policy, or a certificate issued pursuant to a group policy. This definition recognizes that, in some instances, the owner and viator or life settlor may not be the same person under the policy.

(20) Person -- An individual, corporation, trust, partnership, association, or any other legal entity.

(21) Policy -- An individual life insurance policy, a rider to an individual life insurance policy, or a certificate or a rider to a certificate evidencing coverage under a group life insurance policy.

(22) Referral agent -- A person who refers or introduces a viator, life settlor, or owner to a viatical or life settlement provider, provider representative, or broker, but does not advertise his or her services as a referral agent, nor advertises the availability of viatical or life settlements on behalf of any viatical or life settlement provider, provider representative, or broker; nor performs services or takes part in any negotiations effecting a viatical or life settlement. This definition shall not be construed to allow a person making a referral to perform the acts of a viatical or life settlement provider, provider representative, or broker in this state without first obtaining a certificate of registration as required by §3.1703 of this title (relating to Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees).

(23) Settlement application -- A written form provided by a viatical or life settlement provider, provider representative, or broker to be completed by a viator or life settlor and owner for the purpose of applying to a viatical or life settlement provider, provider representative, or broker to be considered by the provider, provider representative, or broker for the sale of the policy insuring the life of a viator or life settlor.

(24) Settlement contract -- The written document evidencing the agreement entered into between a viatical or life settlement provider and a viator or life settlor and owner that establishes the terms under which the viatical or life settlement provider will pay compensation or anything of value in return for the viator's or life settlor's and owner's assignment, sale, or transfer of the net death benefit or ownership of all or a portion of the policy or benefit which served as the basis for the viatical or life settlement.

(25) Trust -- An account or trust established by a viatical or life settlement provider for the sole purpose of entering into viatical or life settlements wherein the funds payable to the owner are placed with a trustee to be paid to the owner on the fulfillment of the conditions of the viatical or life settlement contract.

(26) Viatical or life settlement broker -- A person who is not a viatical or life settlement provider representative, and who for a commission or other form of compensation, or with the intent of obtaining such compensation:

(A) offers or attempts to negotiate a viatical or life settlement between a viator or life settlor and owner and one or more viatical or life settlement providers by representing the viator, life settlor, or owner in such negotiation(s) to obtain the best offer or sale price for the viator's, life settlor's, or owner's policy; or

(B) performs services related to the gathering, organization, or analysis of confidential information about a viator, life settlor, or owner for purposes of entering into a settlement contract, or contacts a viator, life settlor, or owner, or a viator's or life settlor's designee as provided in §3.1712 of this subchapter (relating to Contacting the Viator, Life Settlor, or Owner for Health Status Inquiries: Limits and Prohibited Practices) for the purpose of tracking the viator's or life settlor's health status after a viatical or life settlement has been signed by all necessary parties and payments have been made to the owner.

(C) The term does not include: an owner of a policy insuring the life of a viator or life settlor; a family member of a viator or life settlor who does not receive, or expect to receive, any form of compensation from a viatical or life settlement provider, provider representative, or broker for referring a family member; an attorney, accountant, estate planner, financial planner, or individual acting under power of attorney from the viator, life settlor, or owner, who is retained to represent the viator, life settlor, or owner and whose compensation is paid entirely by the viator, life settlor, or owner or at the direction and on behalf of the viator, life settlor, or owner without regard to whether a viatical or life settlement is effected; an attorney or accountant representing the viator, life settlor, or owner in relation to the viatical or life settlement, who receives a contingent fee from the viator, life settlor, or owner; a person who solicits only potential investors in viatical or life settlements, and who does not in any way advertise, solicit, or promote viatical or life settlements in a manner that reasonably could attract viators, life settlors, or owners; or any physician acting within the scope of the physician's medical license who provides medical analysis for the physician's own patient or who, on a contract or employment basis, performs medical analysis for a person who performs services for a viatical or life settlement provider, provider representative, or broker related to the gathering, organization, or analysis of confidential information about a viator or life settlor for the purpose of effecting a viatical or life settlement.

(27) Viatical or life settlement provider -- A person, other than a viator, life settlor, or owner of an individual policy or certificate holder under a group policy insuring the life of a viator or life settlor, who enters into a viatical or life settlement with a viator or life settlor

and owner or certificate holder, or who attempts to do so through negotiation, solicitation, or acquisition of confidential information from or about a viator, life settlor, or owner, or who performs services as described in paragraphs (26) or (28) of this subsection. The term does not include:

(A) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a policy as collateral for a loan;

(B) the issuer of a policy that makes a loan or pays benefits, including accelerated benefits, under the policy or in exchange for surrender of the policy;

(C) a financing entity;

(D) a trustee or escrow agent; or

(E) an insurer that provides stop loss coverage to a viatical or life settlement provider.

(28) Viatical or life settlement provider representative -- A person who is not a viatical or life settlement broker, and who is employed by, or contracts exclusively with, a viatical or life settlement provider, and who by nature of the person's employment or contract does one or more of the following on behalf of the viatical or life settlement provider with whom the person is employed or contracted:

(A) offers or attempts to negotiate a viatical or life settlement with a viator, life settlor, or owner by representing the viatical or life settlement provider with whom the person is employed or contracted; or

(B) performs any of the services described in paragraph (26)(B) of this subsection.

(C) The term does not include those persons listed in paragraph (26)(C) of this subsection.

(29) Viatical settlement -- A transaction whereby a written agreement is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state, under which a viatical settlement provider acquires through assignment, sale, or transfer, a policy insuring the life of an individual who has a catastrophic or life-threatening illness or condition by paying the owner or certificate holder compensation or anything of value that is less than the net death benefit of the policy.

(30) Viator -- An individual who:

(A) is the insured under an individual policy or a certificate holder under a group policy, and who has a catastrophic or life-threatening illness or condition; and

(B) enters into a viatical settlement contract with a viatical settlement provider or attempts to do so through inquiry to, negotiation with, or by providing or consenting to the provision of confidential information to a viatical settlement provider, provider representative, or broker. The term does not include a viatical settlement provider that assigns, sells, or otherwise transfers a policy that it has purchased from a viator and owner.

(b) Insurance Code §§31.001, 31.002, 31.003, and 31.007 which include definitions of "department" and "commissioner" and describe the structure and duties of the Texas Department of Insurance, apply to this subchapter and to Insurance Code Article 3.50-6A.

§3.1703. Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees.

(a) Any person engaging in the business of viatical or life settlements in this state must hold a certificate of registration issued by the department as required by this subchapter unless:

(1) the person's involvement in a viatical or life settlement transaction is limited solely to that of a referral agent; and

(2) any fee received by such person for making the referral consists of a nominal, fixed, one-time fee, that is not contingent upon the purchase or sale of the product for which the referral is made.

(b) A viatical or life settlement provider, provider representative, or broker may hold no more than one certificate of registration of the same type in the same legal name at the same time.

(c) A viatical or life settlement provider, provider representative, or broker doing viatical or life settlement business subject to the provisions of this subchapter shall have the viatical or life settlement provider's, provider representative's, or broker's certificate of registration issued in the provider's, provider representative's, or broker's legal name, and may only act within the scope of authority granted by the certificate of registration. If a person holds a certificate of registration authorizing the person to act as:

(1) a viatical or life settlement broker or provider representative, that person need not obtain an additional certificate of registration to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must hold, in its own legal name, a separate certificate of registration to conduct business as a viatical or life settlement broker or provider representative in this state.

(2) a viatical or life settlement provider, that person need not obtain an additional certificate of registration to participate in a registered partnership or corporate entity of the same type in this state, but the partnership or corporate entity with which the person participates must hold, in its own legal name, a separate certificate of registration to conduct business as a viatical or life settlement provider in this state.

(d) Any registered viatical or life settlement provider, provider representative, or broker may have additional offices or do business under assumed names as that term is defined in §19.901 of this title (relating to Definitions Concerning Conduct of Licensed Agents) without obtaining an additional certificate of registration; provided, each viatical or life settlement provider, provider representative, or broker shall furnish the department with a list identifying any and all offices from which the viatical or life settlement provider, provider representative, or broker will conduct viatical or life settlement business, and show any and all assumed names which the viatical or life settlement provider, provider representative, or broker will utilize in conducting viatical or life settlement business at each of those offices.

(1) Where such a filing is required under the Assumed Business or Professional Name Act, Texas Business and Commerce Code §36.01, et seq., or any similar statute, the viatical or life settlement provider, provider representative, or broker shall provide the department with a copy of the valid assumed name certificate reflecting proper registration of each assumed name utilized by the viatical or life settlement provider, provider representative, or broker.

(2) The assumed name shall comply with subsection (e) of this section.

(e) The legal name, including an assumed name, used by a viatical or life settlement provider, provider representative, or broker in the conduct of viatical or life settlement business under a certificate of registration shall be subject to the requirements of §19.902 of this title (relating to One Agent, One License) except that a separate application shall not be required for a viatical or life settlement provider, provider representative, or broker who conducts business under a single assumed name and registers that name with the department on the viatical or life settlement provider's, provider representative's, or broker's initial application for certificate of registration.

(f) Each person engaging in, or desiring to engage in, business as a viatical or life settlement provider, provider representative, or broker in this state shall file with the department a completed application for certificate of registration in such form as the department may require. The application shall be signed and sworn to by the person. Persons may obtain forms for application for a certificate of registration by making a request to the Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9107 or 333 Guadalupe, Austin, Texas, 78701, or by accessing the department's website at www.tdi.state.tx.us.

(g) Each completed application for certificate of registration, when filed with the department, shall be accompanied by a two-year registration fee in the amount of $500 if the applicant is a viatical or life settlement provider, and $250 if the applicant is a viatical or life settlement provider representative or broker. All registration fees are non-refundable and non-transferable, except as otherwise provided in §3.1704(f) of this subchapter (relating to Renewal; Fees).

(h) In addition to submitting the application and two-year registration fee required by subsection (g) of this section, a person engaging in, or desiring to engage in, business as a provider representative in this state shall submit to the department with his or her application for certificate of registration, a notice of exclusive representation from the viatical or life settlement provider on whose behalf the applicant, as a provider representative, will solicit business. The notice shall include a certification from the viatical or life settlement provider stating that the viatical or life settlement provider desires to designate the applicant as its provider representative.

(i) A designation made under subsection (h) of this section continues in effect until it is terminated or withdrawn by the viatical or life settlement provider. Such termination and withdrawal shall be in writing, a copy of which shall be sent to the department, no later than 10 calendar days after the date the designation is terminated and withdrawn.

(j) If the applicant is domiciled in another state, and if:

(1) the domiciliary state licenses or registers persons engaged in the business of viatical or life settlements, the applicant shall attach to the application for certificate of registration either:

(A) a current copy of a letter of good standing obtained from the regulatory body which issued the license or certificate of registration; or

(B) a copy of the applicant's current license or certificate of registration issued by the domiciliary state.

(2) the domiciliary state does not license or register persons engaged in the business of viatical or life settlements, the applicant shall attach to the application for certificate of registration, a current copy of a letter of good standing obtained from the domiciliary secretary of state or other regulatory body, as applicable, which maintains records relating to incorporation.

(k) If the applicant is domiciled in another state, the applicant shall complete and execute forms as required by the department for appointment of agent for service of process and for irrevocable consent to jurisdiction of the commissioner of insurance and Texas courts. Both forms shall be attached to the application for certificate of registration. The agent for service of process must be a person with a Texas address who has an established place of business and who can be easily located and served with notices, legal process, and papers.

(l) A partnership may file an application for certificate of registration to engage in business as a viatical or life settlement provider, provider representative, or broker provided that all persons having control in the affairs of any such partnership are named in the application for certificate of registration, and the partnership submits with its application for certificate of registration, a current copy of its certificate of existence as a registered partnership from the Texas Secretary of State.

(m) A corporation may file an application for certificate of registration to engage in business as a viatical or life settlement provider, provider representative, or broker provided that the corporation submits with its application for certificate of registration, a current copy of its certificate of existence as a registered corporation from the Texas Secretary of State.

(n) If an applicant for a certificate of registration to operate as a viatical or life settlement provider, provider representative, or broker has complied with all application procedures in this section, and the department is satisfied that the applicant meets all legal requirements, the department shall issue the applicant a certificate of registration to engage in business as a viatical or life settlement provider, provider representative, or broker unless the department determines that the application should be denied based on any one or more of the factors set forth in Insurance Code Article 3.50-6A, or other applicable law. If the department denies the application, or if, at any time, the applicant no longer meets the requirements for registration, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a certificate of registration shall be governed by §1.32 of this title (relating to Licenses).

(o) If there is a change to any information provided in an application for certificate of registration by an applicant, the viatical or life settlement provider, provider representative, or broker shall submit written notification of the change to the department within 30 days of the change. This requirement includes changes in information that occur after the certificate of registration has been issued and during which time the certificate of registration remains valid and unexpired. Such notifications of change in information shall be separate from any other submission of information to the department and:

(1) each applicant shall at all times keep the department informed of both the applicant's current mailing and physical addresses;

(2) the mailing and physical addresses on the most recent application or notification shall be considered the viatical or life settlement provider's, provider representative's, or broker's last known addresses for purposes of notice to the viatical or life settlement provider, provider representative, or broker by the department.

(3) Nothing in paragraphs (1) and (2) of this subsection releases a registered viatical or life settlement provider, provider representative, or broker relocating outside of Texas from complying with subsections (j) - (m) of this section.

(p) A viatical or life settlement provider, provider representative, or broker shall notify the department, and shall deliver a copy of any applicable order or judgment to the department not later than the 30th day after the date of the:

(1) suspension or revocation of the viatical or life settlement provider's, provider representative's, or broker's right to transact business in another state;

(2) receipt of an order to show why the viatical or life settlement provider's, provider representative's, or broker's license or certificate of registration in another state should not be suspended or revoked; or

(3) imposition of a penalty, forfeiture, or sanction on the viatical or life settlement provider, provider representative, or broker for the violation of the laws of this state, any other state, or the United States.

(q) An applicant shall comply with the requirements of Chapter 19, Subchapter S of this title (relating to Fingerprint Card Requirements for Applicants for License).

(r) In addition to the information required in this section, the department may ask for other information necessary to determine whether the applicant complies with the requirements of Insurance Code Article 3.50-6A and this subchapter for purposes of issuing a certificate of registration to the applicant.

§3.1704. Renewal; Fees.

(a) Unexpired certificates of registration may be renewed every two years by filing with the department a completed application for renewal in such form as the department may require. Each renewal application, when filed, shall be accompanied by a two-year renewal fee of $500 if the renewal applicant is a viatical or life settlement provider, and $250 if the renewal applicant is a viatical or life settlement provider representative or broker. All renewal fees are nonrefundable and non-transferable, except as otherwise provided in subsection (f) of this section.

(b) If an applicant subsequently adds additional certificates of registration, the department may designate one expiration date per applicant to apply to all certificates of registration held by the applicant. The designated date shall be the date on which the initial certificate of registration would normally expire. For certificates of registration which would normally expire after the designated expiration date, renewal fees shall be adjusted pro rata on a monthly basis. The fee adjustment shall be for the renewal immediately following the institution of the designated expiration date. On each subsequent renewal, the applicant shall pay the full registration fee for each certificate of registration.

(c) If the renewal applicant is domiciled in another state, the renewal applicant shall comply with the requirements of §3.1703(j) - (m) of this subchapter (relating to Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees).

(d) Upon filing the completed renewal application and payment of the proper fee, the viatical or life settlement provider's, provider representative's, or broker's current certificate of registration shall continue in force until the renewal certificate is issued by the department or until the department has refused, for cause, to issue such renewal certificate as provided in Insurance Code Article 3.50-6A, or §3.1716 of this subchapter (relating to Denial, Suspension, or Revocation of Certificate of Registration; Enforcement), or other applicable law, and has given notice of such refusal in writing to the renewal applicant.

(e) If a viatical or life settlement provider, provider representative, or broker does not intend to renew or elects to surrender its certificate of registration, the viatical or life settlement provider, provider representative, or broker shall notify the department in writing. The provider's, provider representative's, or broker's written notification of nonrenewal or surrender shall be mailed not later than the 60th day before the date its current certificate of registration expires or is to be surrendered. The viatical or life settlement provider, provider representative, or broker that is nonrenewing or surrendering its certificate of registration shall comply with paragraph (1) or (2) of this subsection.

(1) A viatical or life settlement provider that has viatical or life settlements that will not mature by the date the current certificate of registration expires or is to be surrendered shall take one of the following actions:

(A) renew its current certificate of registration, subject to subsection (f) of this section, or not surrender the certificate of registration until the date the last viatical or life settlement has matured and file the report required by §3.1705 of this subchapter (relating to Reporting Requirements);

(B) sell the viatical or life settlements that have not matured and file the report required by §3.1705 of this subchapter; or

(C) appoint in writing one of its provider representatives, another provider, or a broker to continue to track the viator's or life settlor's health status for purposes of continuing the administration of the viatical or life settlement. Appointments shall comply with the following:

(i) The appointed viatical or life settlement provider, provider representative, or broker must agree in writing to make all inquiries to the viator or life settlor or the viator's or life settlor's designee in accordance with §3.1712 of this subchapter (relating to Contacting the Viator, Life Settlor, or Owner for Health Status Inquiries: Limits and Prohibited Practices), and include the transferred viatical or life settlement information in the annual report required by §3.1705(c) of this subchapter.

(ii) The viatical or life settlement provider making the appointment shall transfer all records pertaining to its viatical or life settlements to the appointed viatical or life settlement provider, provider representative, or broker; obtain written confirmation from the appointed viatical or life settlement provider, provider representative, or broker that the records for all transferred viatical or life settlements have been received; file the report required by §3.1705 of this subchapter; and provide the viator or life settlor and owner with the appointed provider's, provider representative's, or broker's name, address, telephone number, and contact person.

(iii) Copies of the written agreements, confirmations, and reports required by clauses (i) and (ii) of this subparagraph shall be filed with the department no later than the date of expiration or surrender.

(2) A viatical or life settlement broker or provider representative who elects to surrender, or not renew, their current certificate of registration, shall file the reports required by §3.1705 of this subchapter. A broker appointed by a viatical or life settlement provider or broker, or a provider representative appointed by its viatical or life settlement provider, to provide tracking services who is nonrenewing or surrendering his/her certificate of registration shall:

(A) renew its current certificate of registration, subject to subsection (f) of this section;

(B) appoint in writing a Texas registered viatical or life settlement provider or broker to continue to track the viator's or life settlor's health status for purposes of continuing the administration of the viatical or life settlement. Appointments shall comply with the following:

(i) The appointed viatical or life settlement provider or broker must agree in writing to make all inquiries to the viator or life settlor or the viator's or life settlor's designee in accordance with §3.1712 of this subchapter, and include the transferred viatical or life settlement information in the annual report required by §3.1705 of this subchapter.

(ii) The viatical or life settlement broker or provider representative making the appointment shall transfer all records pertaining to its viatical or life settlements to the appointed viatical or life settlement provider or broker; obtain written confirmation from the appointed viatical or life settlement provider or broker that the records for all transferred viatical or life settlements have been received; file

the report required by §3.1705 of this subchapter; and provide the viator or life settlor and owner with the appointed provider's or broker's name, address, telephone number, and contact person.

(iii) Copies of the written agreements, confirmations, and reports required by clauses (i) and (ii) of this subparagraph shall be filed with the department no later than the date of expiration or surrender.

(f) In the event that a viatical or life settlement provider, provider representative, or broker taking one of the actions required by subsection (e)(1) or (e)(2) of this section is not able to fully complete one of the actions before its certificate of registration expires, the viatical or life settlement provider, provider representative, or broker shall pay its full two-year renewal fee, and comply fully with subsection (e)(1) or (e)(2), as applicable, and thereafter surrender its certificate of registration to the department. Upon return of the certificate of registration, the viatical or life settlement provider, provider representative, or broker shall be eligible for a pro rata, monthly-based refund of its renewal fee.

(g) The surrender of any viatical or life settlement provider's, provider representative's, or broker's certificate of registration to the department shall not operate to negate any offense committed prior to the effective date of the surrender. In addition, transmitting to the department any or all viatical or life settlement certificates of registration shall in no way affect any disciplinary proceedings by the department or by the commissioner of insurance in respect to any viatical or life settlement provider, provider representative, or broker.

(h) Nothing in this section shall require the department to issue a renewal of a certificate of registration to any person.

§3.1705. Reporting Requirements.

(a) On or before March 1 of each year, each viatical or life settlement broker shall submit to the department, for the previous calendar year, a complete and accurate annual report containing the name and address of each viatical or life settlement provider and any other brokers with whom the broker transacted the business of viatical or life settlements in Texas, and the number of transactions for each viatical or life settlement provider or other broker. A viatical or life settlement broker who is non-renewing or surrendering the certificate of registration, shall file, upon nonrenewal or surrender, a complete and accurate report containing the information required by this subsection for the period from the latter of the last reporting period or the date of initial registration through the date of nonrenewal or surrender. The report shall be submitted in electronic format as a text file in a comma-delimited format, unless prior to filing the report, the viatical or life settlement broker submits a written request and receives approval from the department to file the report in hard copy. The report and/or written request to file the report in hard copy shall be submitted to the department's Filings Intake Division at the address specified in §3.1703(f) of this subchapter (relating to Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees).

(b) On or before March 1 of each year, each viatical or life settlement provider registered to conduct business in this state shall submit to the department for the previous calendar year, a complete and accurate annual report of all viatical or life settlement transactions in Texas, and a separate complete and accurate annual report of all viatical or life settlement transactions for all states in the aggregate. A viatical or life settlement provider that is nonrenewing or surrendering its certificate of registration, upon nonrenewal or surrender shall file a complete and accurate report containing the information required by subsection (c) of this section for the period from the latter of the last reporting period or the date of initial registration through the date of nonrenewal or surrender.

(c) The viatical or life settlement provider's reports required by this section shall be submitted in electronic format as a text file in a comma-delimited format, unless prior to filing the report, the viatical or life settlement provider submits a written request and receives approval from the department to file only a hard copy. The reports and/or written request to file the report in hard copy shall be submitted to the department's Filings Intake Division at the address specified in §3.1703(f) of this subchapter. The reports shall contain the information set forth in paragraphs (1) - (9) of this subsection as follows:

(1) For each viatical or life settlement contracted during the reporting period:

(A) a unique identifying number or other consistent identifier that corresponds to each viator, life settlor, or owner in the report, as a means of identifying the viator, life settlor, or owner, in a manner that does not reveal any confidential information;

(B) date (month and year) the settlement contract was signed by all necessary parties;

(C) insurance carrier's name and, if available, A.M. Best or other rating at the time of settlement contract;

(D) age and mean life expectancy (in months) of the viator or life settlor at the time of contract;

(E) viator's or life settlor's and owner's state of residence at the time of contract;

(F) face amount of policy purchased;

(G) net death benefit purchased;

(H) estimated total premiums to keep policy in force for mean life expectancy, and/or WP-Waiver of Premium in effect, or NA-not applicable because policy is paid up or no premiums are due;

(I) net amount paid to the owner (less any outstanding debts or liens);

(J) source of policy (B-Broker; D-Direct Purchase; SM-Secondary Market, i.e., previously purchased by another person);

(K) type of policy (I-Individual or G-Group);

(L) age of the policy at the time the viatical or life settlement contract was effected;

(M) primary ICD Diagnosis Code at the time of settlement contract, in numeric format, as defined by the International Classification of Diseases, as published by the U.S. Department of Health and Human Services (for life settlors with no diagnosis code, use N/A);

(N) type of funding (I-Institutional - e.g. a bank, corporation, company, non-individual entity; P-Private - e.g. an individual); and

(O) status as of ending date (The allowable status codes are: Death, if applicable; N/A, if the date of death has not been determined or verified; Sold, if the settlement contract has been sold; or Appoint, if the settlement contract has been appointed to another registered settlement provider, provider representative, or broker.

(2) For each viatical or life settlement where death has occurred during the reporting period:

(A) a unique identifying number or other consistent identifier that corresponds to each viator, life settlor, or owner in the report, as a means of identifying the viator, life settlor, or owner, in a manner that does not reveal any confidential information;

(B) date (month and year) the settlement contract was signed by all necessary parties;

(C) age and mean life expectancy (in months) of the viator or life settlor at time of contract;

(D) viator's or life settlor's and owner's state of residence at the time of contract;

(E) net death benefit collected under the policy;

(F) amount of total premiums paid, and/or WP-Waiver of Premium in effect, or NA-not applicable because policy is paid up or no premiums are due;

(G) net amount paid to the owner (less any outstanding debts or liens);

(H) primary ICD Diagnosis Code at the time of settlement contract, in numeric format, as defined by the International Classification of Diseases, as published by the U.S. Department of Health and Human Services (for life settlors with no diagnosis code, use N/A);

(I) date of death;

(J) amount of time (in months) between the date the viatical or life settlement contract was signed by all necessary parties, and the date of death;

(K) difference between the actual number of months the viator or life settlor lived after the date the contract was signed by all necessary parties, and the mean life expectancy used by the reporting viatical or life settlement provider.

(3) the name and address of each viatical or life settlement provider, provider representative, or broker from which the reporting provider was referred a policy;

(4) the name and address of any other person from which the reporting provider was referred a policy for which a fee was given for the referral;

(5) the name and address of each viatical or life settlement provider, provider representative, or broker to whom the reporting provider referred a policy;

(6) the number of policies reviewed and rejected;

(7) the number of policies purchased in the secondary market as a percentage of total policies purchased;

(8) the name and address of any person whom the provider utilizes to perform medical evaluations of any kind relating to viators or life settlors; and

(9) the name and address of any provider, provider representative, or broker that the viatical or life settlement provider utilizes to track a viator's or life settlor's health status after a settlement contract has been signed by all necessary parties, and payment has been made to the owner, or the code "IH" to indicate tracking performed by in-house employees.

(d) In addition to the information required in this section, the department may request any other information the department deems necessary to conduct a complete review of the viatical or life settlement provider's, provider representative's, or broker's conduct of business related to the assignment, negotiation, purchase, sale, or other business related to viatical and life settlements.

(e) In complying with the reporting requirements of this section, a viatical or life settlement provider, provider representative, or broker shall not include any confidential information, or in any other way compromise the anonymity of any viator, life settlor, or owner, or the viator's, life settlor's, or owner's family members, spouse, or significant other.

(f) Any viatical or life settlement provider, provider representative, or broker that fails or refuses to submit any information required by this section is subject to disciplinary action under §3.1716 of this subchapter (relating to Denial, Suspension, or Revocation of Certificate of Registration; Enforcement).

§3.1706. Form Filing Requirements and Approval, Disapproval, or Withdrawal of Forms.

(a) Upon issuance of a viatical or life settlement certificate of registration by the department, a viatical or life settlement provider, provider representative, or broker shall file, for review or approval, any form it uses, or intends to use, to effect a viatical or life settlement contract in this state, prior to any use, issuance, or delivery of the form. A provider, provider representative, or broker conducting both viatical and life settlement business in this state may file a form for use in both the viatical and life settlement markets in accordance with subsection (g) of this section.

(b) Forms which must be filed include, but are not limited to, the following:

(1) settlement applications;

(2) settlement contracts, and any amendments thereto;

(3) disclosures, except as provided in subsection (f)(8) and (9) of this section;

(4) escrow or trust agreements;

(5) documents used to obtain or release confidential information, including documents used by the viatical or life settlement provider, provider representative, or broker which in any way refer to, affect, request, or relate to a viatical or life settlement provider's, provider representative's, or broker's obtaining or releasing confidential information;

(6) acknowledgment forms, except as provided in subsection (f)(8) of this section; and

(7) any other form used by a viatical or life settlement provider, provider representative, or broker to effect a viatical or life settlement contract in this state.

(c) All forms filed pursuant to this section shall be accompanied by a transmittal checklist, a copy of which is available from the department at the address specified in §3.1703(f) of this subchapter (relating to Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees). The transmittal checklist shall be completed and signed by a duly authorized representative or attorney of the viatical or life settlement provider, provider representative, or broker, and shall include the following information:

(1) the name of the submitting viatical or life settlement provider, provider representative, or broker and its registration number;

(2) a designated contact person for the filing, including the individual's name, address, phone number, and if available, fax number and e-mail address. If the form filing is submitted by anyone other than the viatical or life settlement provider, provider representative, or broker, the filing shall be accompanied by an attachment executed by an officer of the viatical or life settlement provider, provider representative, or broker, designating the person submitting the filing as the contact for that filing;

(3) a statement indicating the type(s) of settlement for which the form is used (i.e. viatical, life, or both);

(4) a list of all submitted forms, and an explanation of the purpose and use of each form including, if applicable, a designation of any prototype form(s) used;

(5) if applicable, a list of the form numbers and approval dates of all previously approved forms with which the submitted form will be used, and a statement explaining when the submitted form will be used;

(6) a designation indicating whether the form is file and use or review and approval prior to use as those categories are described in subsection (d) of this section;

(7) a designation indicating whether the form is new, informational, substantially similar to a previously approved form, exact copy, substitution of a previously approved form, correction to a pending form, or a resubmission of a previously disapproved form, as those types are described in subsection (e) of this section; and

(8) any applicable information, attachments, and certifications specified in this section.

(d) Categories for viatical or life settlement form filings are file and use or review and approval prior to use, as follows:

(1) File and Use. A form filed under this category may be immediately used and delivered in this state until a request for corrections has been made, or the form has been disapproved by the department. A filing under this category shall include the information and certifications specified in subsection (f)(1) and (2) of this section. Any form that has been previously disapproved by the department pursuant to subsection (k) of this section is not eligible for filing under this category.

(2) Review and approval prior to use. A form filed under this category must be filed with the department not less than 60 days prior to the viatical or life settlement provider's, provider representative's, or broker's intended use or delivery of such form. A filing under this category prohibits the viatical or life settlement provider, provider representative, or broker from using or delivering such form prior to the end of 60 days from the date the form is received by the department, unless the department approves the form during the 60-day period. If the form has not been approved by the 60th day after the date the form is received by the department, the viatical or life settlement provider, provider representative, or broker may use the form:

(A) when the form is approved by the department; or

(B) if the form has not been previously disapproved, or corrections have not been requested by the department at any time, and the viatical or life settlement provider, provider representative, or broker submits to the department the certifications specified in subsection (f)(3) of this section.

(e) The types of viatical or life settlement form filings are new, informational, substantially similar to a previously approved form, exact copy, substitution of a previously approved form, corrections to a pending form, and resubmission of a previously disapproved form, as follows:

(1) New. A form which has not been previously reviewed or approved by the department under Insurance Code Article 3.50-6A and this subchapter, except for a form withdrawn by a viatical or life settlement provider, provider representative, or broker pursuant to paragraph (6) of this subsection.

(2) Informational. A form which is submitted for informational purposes only.

(3) Substantially similar to a previously approved form. A form which is substantially similar to a form that was approved by the department on or after May 1, 2001. This type of form filing requires the information and certification specified in subsection (f)(1) and (4) of this section.

(4) Exact copy. A form which, except for the viatical or life settlement provider's, provider representative's, or broker's name, address, phone number, or other similar viatical or life settlement provider's, provider representative's, or broker's identification information, is an exact copy of a form approved by the department on or after May 1, 2001. This type of form filing requires the information and certifications specified in subsection (f)(1) and (4)(A) and (C) of this section, and will be approved as of the date of receipt by the department.

(5) Substitution of a previously approved form. A form which substitutes a form previously approved by the department on or after May 1, 2001, for the same viatical or life settlement provider, provider representative, or broker wherein the previously approved form has not been issued, or otherwise used in Texas, and will not be used in Texas at any time. This type of form filing requires the information and certifications specified in subsection (f)(1) and (4) of this section.

(6) Correction to a pending form. A form containing corrections to a pending form submitted subsequent to the viatical or life settlement provider, provider representative, or broker receiving notification of the form's deficiencies from the department. This type of form filing requires the information and certifications specified in subsection (f)(1) and (5) of this section, and shall be received by the department no later than 30 days following the date the viatical or life settlement provider, provider representative, or broker receives oral or written notification from the department of the form's deficiencies. If a corrected form is not received by the department within the 30 days following the date the viatical or life settlement provider, provider representative, or broker receives notification of the form's deficiencies, the form shall be considered withdrawn by the viatical or life settlement provider, provider representative, or broker, and will receive no further consideration until it is refiled as a new form filing.

(7) Resubmission of a previously disapproved form. A form containing corrections to a form subsequent to the viatical or life settlement provider, provider representative, or broker receiving a disapproval letter from the department. This type of form filing requires the information and certifications specified in subsection (f)(1) and (7) of this section.

(f) A viatical or life settlement provider, provider representative, or broker shall include the certification(s), attachments(s), and other information referred to in this section as follows:

(1) A viatical or life settlement provider, provider representative, or broker, or its duly authorized representative or attorney filing any form with the department shall certify on the transmittal checklist that it has reviewed, and is familiar with, all applicable statutes and regulations of this state and of the United States, has reviewed the form filing, and to the best of their knowledge and belief, states that the filed form complies in all respects with the applicable statutes and regulations of this state and of the United States.

(2) A viatical or life settlement provider, provider representative, or broker filing a form under subsection (d)(1) of this section shall, in addition to providing the certification specified in paragraph (1) of this subsection, certify to the following:

(A) that no corrections to the form have been requested by the department; and

(B) that the form has not been previously disapproved by the department.

(3) A viatical or life settlement provider, provider representative, or broker filing a form under subsection (d)(2) of this section shall, in addition to providing the certification specified in paragraph (1) of this subsection, certify that the form will not be used until the form is approved by the department. If, following the 60th day from the date the form is received by the department, the viatical or life settlement provider, provider representative, or broker elects to use, issue, or deliver such form prior to receiving approval from the department, the viatical or life settlement provider, provider representative, or broker shall provide the certifications specified in paragraphs (1) and (2) of this subsection.

(4) A viatical or life settlement provider, provider representative, or broker submitting a form under subsection (e)(3), (4) or (5) of this section, shall provide the certification specified in paragraph (1) of this subsection, and shall provide the following information and certification(s):

(A) the form number and approval date of the previously approved form, including the provider's, provider representative's, or broker's name if different from the submitting provider, provider representative, or broker;

(B) a summary of the difference(s) between the previously approved form and the submitted form, including a description of any deleted text. The submitted form shall clearly identify all changes. New or modified text shall be underlined; and

(C) a certification that no changes have been made to the form other than those identified.

(5) A viatical or life settlement provider, provider representative, or broker submitting a form pursuant to subsection (e)(6) of this section shall provide the certification specified in paragraph (1) of this subsection, and shall provide the following information and certification(s):

(A) the form number of the pending form;

(B) the name of the department's form review specialist who reviewed the form;

(C) the date of notification of any form deficiencies;

(D) the tracking number of the pending form as assigned by the department;

(E) a summary of the difference(s) between the previously reviewed form and the corrected form, including a description of any deleted text. The corrected form shall clearly identify all changes. New or modified text shall be underlined; and

(F) a certification that no changes have been made to the form other than those identified.

(6) A viatical or life settlement provider, provider representative, or broker submitting a form pursuant to subsection (e)(5) of this section shall provide the certification specified in paragraph (1) of this subsection, and a certification that the original version of the form has not been issued in Texas, or otherwise used in Texas, and will not be used in Texas at any time.

(7) A viatical or life settlement provider, provider representative, or broker submitting a form pursuant to subsection (e)(7) of this section shall provide the certification specified in paragraph (1) of this subsection, and shall provide the following information and certification(s):

(A) the form number of the disapproved form;

(B) the date of disapproval by the department; and

(C) the information and certification(s) specified in paragraph (5)(B), (D), (E), and (F) of this subsection.

(8) A viatical or life settlement provider, provider representative, or broker utilizing either the prototype viatical or life settlement disclosure described in §3.1708(c) of this subchapter (relating to Required Disclosure), or the prototype viatical or life settlement acknowledgment form described in §3.1709(d) of this subchapter (relating to Application and Contract Forms: Required Provisions and Escrow/Trust Agreements), is not required to file the form under this section if the viatical or life settlement provider, provider representative, or broker certifies on the transmittal checklist that no changes have been, or will be made, to the department's language.

(9) A viatical or life settlement provider, provider representative, or broker shall certify on the transmittal checklist either that the English/Spanish application disclosure:

(A) appearing on the submitted application is an exact copy of the language specified in §3.1709(a) of this subchapter and that no changes have been or will be made to the application disclosure; or

(B) will be attached as a supplement to the front of the submitted application and that no changes have been or will be made to the English/Spanish application disclosure. A viatical or life settlement provider, provider representative, or broker making this certification is not required to file the supplement with the department.

(g) A provider, provider representative, or broker conducting both viatical and life settlement business in this state, and who submits a form for use in both the viatical and life settlement business shall certify that the provider, provider representative, or broker will, to the best of their knowledge, when issuing the form to viators, life settlors, or owners, clearly delineate on the form itself, whether the form is being used to effectuate a viatical settlement or whether the form is being used to effectuate a life settlement.

(h) Any form filed pursuant to this section shall be:

(1) filled in with specimen language and specimen fill-in material, and shall not contain the confidential information of any viator, life settlor, or owner;

(2) submitted on 8 1/2 by 11-inch paper. Bound forms will not be accepted;

(3) submitted in typewritten, computer generated, or printer's proof format and be clearly legible. Handwritten forms or handwritten corrections will not be accepted;

(4) designated by a unique form number sufficient to distinguish it from all other forms used by the viatical or life settlement provider, provider representative, or broker. The form number shall be located in the lower left-hand corner of the cover page or on the first page of the form, if visible with the cover closed.

(i) A form filed under this section may contain variable language, provided that the variable language is:

(1) bracketed; and

(2) accompanied by a clear explanation of how the material will vary and how it will be used.

(j) Form filings that are not accompanied by a completed transmittal checklist, or which do not contain all required information and/or certifications, will not be accepted for review by the department, and will be returned to the viatical or life settlement provider, provider representative, or broker as incomplete.

(k) The department may disapprove any form filed pursuant to this section, or withdraw previous approval of any form, if:

(1) the form fails to comply with any applicable statutes or regulations of this state or the United States; or

(2) the content of the form is unjust, encourages misrepresentation, or is in any way deceptive.

(l) The department may request that corrections be made to a form to bring the form into compliance with the provisions of this subchapter, Article 3.50-6A, or any law of this state or the United States.

(m) When the department makes a request for corrections, disapproves a form, or withdraws approval of a form pursuant to subsection (k), (l), or (q) of this section, the department may request that the viatical or life settlement provider, provider representative, or broker replace the form previously used, issued, or delivered, with a corrected form, or correct the form by amendment. The department may also request that the viatical or life settlement provider, provider representative, or broker discontinue using the form, if, prior to receiving approval from the department, any form has been used, issued, or delivered.

(n) The department shall send written notification of any approval or disapproval of any form filed under this section.

(o) The department may request any additional information necessary for a comprehensive review of any form.

(p) The viatical or life settlement provider, provider representative, or broker may make a written request for hearing to the department's Chief Clerk at the address specified in §3.1703(f) of this subchapter upon receiving notification under subsection (k) of this section of any disapproval of a form by the department.

(q) The commissioner may, after notice and opportunity for hearing, withdraw any previous approval of a form, if any form violates or does not comply with Insurance Code Article 3.50-6A, this subchapter, or any law of this state or the United States. The commissioner may require the viatical or life settlement provider, provider representative, or broker to either replace the form previously used or delivered with a corrected form, or correct the form by amendment.

§3.1707. Advertising, Sales and Solicitation Materials; Filing Prior to Use.

(a) Upon issuance of a certificate of registration, each viatical or life settlement provider, provider representative, or broker shall file with the department all advertising or other solicitation materials used to market viatical or life settlements or the viatical or life settlement provider's, provider representative's, or broker's services in this state, on or before the date such materials are disseminated. Advertising filings should be filed with the department's Advertising Unit at the address specified in §3.1703(f) of this subchapter (relating to Application for Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees).

(b) The filings required by this section are for informational purposes only. Viatical and life settlement providers, provider representatives, or brokers may use or disseminate the materials referenced in this section without the prior review of the department.

§3.1708. Required Disclosure.

(a) With each application for a viatical or life settlement, the viatical or life settlement provider, provider representative, or broker shall deliver to the viator or life settlor and owner written disclosures required by this section.

(b) The written disclosures shall:

(1) prominently display the viatical or life settlement provider's, provider representative's, or broker's full name, home office address, and telephone number; and

(2) disclose the following information:

(A) that individuals wishing to sell their policies may have alternatives to viatical or life settlements. These alternatives may include accelerated benefits offered by the issuer of the policy, loans secured by the policy, and surrender of the policy for cash value.

(B) that an individual may incur tax consequences by entering into a viatical or life settlement.

(C) that a viatical or life settlement may affect an individual's ability to receive supplemental social security income, public assistance and public medical services, including Medicaid.

(D) that the proceeds of a viatical or life settlement may not be exempt from creditors, personal representatives, trustees in bankruptcy, and receivers in state or federal court.

(E) that all confidential information solicited or obtained by a viatical or life settlement provider, provider representative, or broker about a viator, life settlor, or owner, including the viator's, life settlor's, or owner's identity or the identity of family members, a spouse or significant other, if obtained in accordance with §3.1710(c)(2) of this subchapter (relating to Prohibited Practices Relating to Advertising and Solicitation; Applications and Contracts), is confidential, and shall not be disclosed in any form to any person, unless disclosure has been given by prior written consent from the viator, life settlor, or owner on a form which identifies to whom the confidential information may be released, and the purpose for releasing the confidential information.

(F) that the medical release form may be used to track ongoing health status and that the viator, life settlor, or owner may withdraw their consent pursuant to applicable law.

(G) how viatical or life settlements operate.

(H) the owner's right to rescind a viatical or life settlement contract at any time, but not later than the 15th day after the date the owner receives the viatical or life settlement proceeds. If the viator or life settlor dies at any time prior to the end of the rescission period, the viatical or life settlement contract shall be deemed to have been rescinded. The viatical or life settlement provider shall refund the death benefit to the owner or beneficiaries designated by the owner in the viatical or life settlement contract for this purpose, and the death benefit returned to such beneficiary or beneficiaries shall be subject to the deduction of all viatical or life settlement proceeds previously paid, and if applicable, any premiums paid by the viatical or life settlement provider.

(I) the viator's, life settlor's, or owner's right to know, upon request, the identity of any person who will receive or has received a commission or other form of compensation from the viatical or life settlement provider, provider representative, or broker with respect to their viatical or life settlement and the amount and terms of such compensation.

(J) the limits and options regarding contacts for determination of health status set forth in §3.1709(c)(5) and (6) of this subchapter (relating to Application and Contract Forms: Required Provisions and Escrow/Trust Agreements).

(K) that if the policy which is the subject of a viatical or life settlement is a joint policy, or contains riders or other provisions insuring the lives of a spouse , dependents, or anyone else other than the viator or life settlor, there may be a possible loss of coverage.

(L) that the individual may wish to inquire if the policy which is the subject of a viatical or life settlement contains a provision or rider for future increases in the death benefit, and the amount paid by the viatical/life settlement provider for the purchase of the future increase.

(M) that if the policy which is the subject of the viatical or life settlement contains a rider to, or a provision of, the policy providing an additional death benefit for accidental death, such death benefit remains payable by the insurance company to the beneficiary last named by the viator, life settlor, or owner, not including the viatical or life settlement company, or in the absence of a beneficiary, to the estate of the viator, life settlor, or owner.

(N) that entering into a viatical or life settlement contract will have an effect on payment of premiums and dispositions of proceeds, cash values, and dividends, and may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the individual.

(O) that the individual may wish to contact an attorney, accountant, estate planner, financial planning advisor, their insurer, insurance agent, tax advisor, or social services agency regarding potential consequences resulting from entering into a viatical or life settlement.

(P) that the individual may wish to inquire if the person marketing, offering, or negotiating the viatical or life settlement is a viatical or life settlement broker, or is a provider representative, and explain that a provider representative does not actively market the viator's, life settlor's, or owner's policy to various viatical or life settlement providers to find the best competitive offer, but instead only offers and negotiates a viatical or life settlement between a viator, life settlor, or owner and the viatical or life settlement provider with whom the provider representative is employed or contracted.

(Q) that the viator, life settlor, or owner may file a complaint by contacting the Texas Department of Insurance, Consumer Protection Division, Mail Code 111-1A, P. O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by calling the department's Consumer Help Line between 8 a.m. and 5 p.m., Central Time, Monday-Friday at 1-800-252-3439; by faxing a complaint to the department at 1-512-475-1771; by completing a complaint on-line at www.tdi.state.tx.us; or by e-mailing a complaint to consumer.protection@tdi.state.tx.us; and

(3) comply with the plain language requirements prescribed in §3.602(b)(1)(A)-(C) of this title (relating to Plain Language Requirements), and shall contain the appropriate text required by this section, but shall not contain any material of an advertising nature, except for the viatical or life settlement provider's, provider representative's, or broker's logo-type.

(c) A viatical or life settlement provider, provider representative, or broker may either develop and file for approval its own disclosure or utilize the applicable disclosure available from the department which may be obtained by making a request to the Life/Health Division at the address specified in §3.1703(f) of this subchapter (relating to Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees).

§3.1709. Application and Contract Forms: Required Provisions and Escrow/Trust Agreements.

(a) With each application for a viatical or life settlement, the viatical or life settlement provider, provider representative, or broker shall deliver to the viator or life settlor and owner, the following information in English and in Spanish, which either must be displayed prominently and in bold print on the front page of the application, or on a supplement attached to the front of the application:

(1) In English: "Receipt of a (INSERT: viatical* or life,** as applicable) settlement may affect your eligibility for public assistance programs such as medical assistance (Medicaid), Aid to Families with Dependent Children (AFDC), supplementary social security income (SSI), and drug assistance programs. The money you receive for your life insurance policy also may be taxable. Before completing a (INSERT: viatical or life, as applicable) settlement contract, you are urged to consult with an attorney, accountant, estate planner, financial planning advisor, your insurer or insurance agent, tax advisor, or a social service agency concerning how receipt of a payment will affect you, your family, and your spouse's eligibility for public assistance. For more information about (INSERT: viatical or life, as applicable) settlements generally, contact the Texas Department of Insurance at 1-800-252-3439." (Insert either or both, as applicable: *Viatical settlement -- A transaction whereby a written agreement is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state, under which a viatical settlement provider acquires, through assignment, sale, or transfer of a policy insuring the life of an individual who has a catastrophic or life-threatening illness or condition, by paying the owner or certificate holder compensation or anything of value that is less than the net death benefit of the policy. **Life settlement -- A transaction whereby a written agreement is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state, under which a life settlement provider acquires, through assignment, sale, or transfer of a policy insuring the life of an individual who does not have a catastrophic or life-threatening illness or condition, by paying the owner or certificate holder compensation or anything of value that is less than the net death benefit of the policy.)

(2) In Spanish: "El aceptar una liquidación tipo (INSERT: viáticos* or pago en vida**) podría afectar que usted pueda inscribirse en los programas de asistencia pública, tales como los de Asistencia Médica de Medicaid, Ayuda para Familias con Hijos Menores (AFDC), Ingreso Suplementario del Seguro Social (SSI) y otros programas de ayuda para la compra de medicamentos. Es posible que también tenga que pagar impuestos por el dinero que usted reciba por su seguro de vida. Antes de firmar cualquier acuerdo tipo (INSERT: viáticos or pago en vida) lo exhortamos que consulte con un abogado, contador, planeador de patrimonios, consejero económico, su aseguradora o agente de seguros, consejero (perito) en materia de impuestos o con (y con) una agencia (las agencias) de servicios sociales para que se informe cómo el recibo de dichos pagos podría afectar su capacidad, la de su familia y la de su cónyuge para recibir asistencia pública. Para más información en general respecto a los acuerdos tipo (INSERT: viáticos or pago en vida) llame al Departamento de Seguros de Texas al 1-800-252-3439." *Pago Tipo Viáticos - Una transacción en la cual por medio de un contrato por escrito a cumplir en este estado se solicita, negocia, ofrece, compromete, establece o expide, que bajo dicho contrato un proveedor de liquidación tipo viáticos adquiera, por medio de asignación, venta o transferencia, la póliza de seguro de vida de un individuo que padece de una enfermedad o padecimiento catastrófico o que amenaza la vida, al pagar al propietario o tenedor de la póliza una compensación o cualquier cosa de valor de menos cuantía que la suma neta del beneficio de muerte que estipula la póliza. or **Pago en Vida - Una transacción en la cual por medio de un contrato por escrito a cumplir en este estado se solicita, negocia, ofrece, compromete, establece o expide, que bajo dicho contrato un proveedor de liquidación tipo pago en vida adquiera, por medio de asignación, venta o transferencia, la póliza de seguro de vida de un individuo que no padece de una enfermedad o padecimiento catastrófico o que amenaza la vida, al pagar al propietario o tenedor de la póliza una compensación o cualquier cosa de valor de menos cuantía que la suma neta del beneficio de muerte que estipula la póliza.

(b) All application and medical release forms signed by the viator, life settlor, or owner at the time of application shall contain the name, address, and phone number of the viatical or life settlement provider, provider representative, or broker to whom the application is being made, and copies of the forms, including the Spanish/English

disclosure, shall be given to the viator, life settlor, or owner at the time of application.

(c) All contracts used to effect viatical or life settlements shall contain the following:

(1) a provision that the viatical or life settlement contract together with the application, including any amendments and attached papers, if any, constitutes the entire viatical or life settlement contract between the parties to the contract, and no change to the viatical or life settlement contract shall be valid until approved by an executive officer of the viatical or life settlement provider designated in the contract with authority to bind the provider, and unless such approval be endorsed thereon or attached to the viatical or life settlement contract. The provision shall also state that no person, other than an executive officer of the provider, has the authority to change the viatical or life settlement contract, or to waive any of its provisions, and that in the absence of fraud, all statements made by the viator or life settlor and owner shall be deemed representations and not warranties.

(2) a provision that the owner may rescind the viatical or life settlement contract at any time, but not later than the 15th day after the date that the owner receives the proceeds of the viatical or life settlement. If the viator or life settlor dies at any time prior to the end of the rescission period, the viatical or life settlement contract shall be deemed to have been rescinded, and the viatical or life settlement provider shall refund the death benefit to the owner or beneficiaries designated in the viatical or life settlement contract for this purpose. A refund of the death benefit to a beneficiary or beneficiaries under this paragraph is subject to repayment of all viatical or life settlement proceeds, and if applicable, any premium paid by the viatical or life settlement provider.

(3) a provision that, at the option of the viatical or life settlement provider, the proceeds may be placed into an escrow or trust account to effect payment to the owner.

(4) a provision that, within three business days, upon receipt from the owner of documents to effect the transfer of the policy, the viatical or life settlement provider may at its option either:

(A) make unconditional payment to the owner, either in a lump sum or in installment payments in a manner not prohibited by §3.1710(c)(7) of this subchapter (relating to Prohibited Practices Relating to Advertising and Solicitation; Applications, and Contracts); or

(B) place the proceeds of the settlement with a trustee or escrow agent, to be placed into an escrow or trust account in a financial institution that is a member of the Federal Deposit Insurance Corporation (FDIC), where such proceeds shall remain until:

(i) the proceeds are disbursed to the owner within three business days, upon acknowledgment of the transfer of the policy by the issuer of the policy;

(ii) the proceeds are transferred to purchase an instrument used to effect installment payments in a manner not prohibited by §3.1710(c)(7) of this subchapter; or

(iii) the proceeds and premium paid by the viatical or life settlement provider are returned to the viatical or life settlement provider by the escrow agent or trustee upon notice of the owner's rescission, including rescission due to the death of the viator, life settlor, or owner within the rescission period.

(5) a provision that the viator or life settlor may designate any individual of legal age, in regular contact with the viator or life settlor, as a contact for inquiries about the viator's or life settlor's health status upon written notice providing the name, address and telephone number of the individual. The provision shall include:

(A) the limitations on inquiry set forth in §3.1712 of this subchapter (relating to Contacting the Viator, Life Settlor, or Owner for Health Status Inquiries: Limits and Prohibited Practices); and

(B) a statement that the viator or life settlor may change a designation at any time upon written notice to the viatical or life settlement provider.

(6) a provision that the viatical or life settlement provider shall provide to the viator or life settlor and owner, the name, address, and telephone number of the viatical or life settlement provider, provider representative, or broker that will contact the viator or life settlor or his or her designee as provided in §3.1712 of this subchapter, and shall notify the viator or life settlor and owner of any change in such information.

(7) a provision disclosing that the viatical or life settlement provider has the right to assign, sell, or otherwise transfer the policy that is the subject of the viatical or life settlement to a person unknown to the viator, life settlor, or owner, without the viator's, life settlor's, or owner's consent.

(8) a provision defining how any notice required or permitted under the contract shall be given and delivered.

(9) a provision disclosing what effect the viatical or life settlement will have on payment of premiums and disposition of proceeds, cash values and dividends.

(10) a provision disclosing that if the policy that is the subject of the viatical or life settlement is a joint policy, or contains riders or other provisions insuring the lives of a spouse, dependents, or anyone else other than the viator or life settlor, there may be a possible loss of coverage, and the viator, life settlor, or owner should contact their insurance company or their agent to determine if the coverage may be converted in order to avoid losing the coverage.

(11) an acknowledgment form, which a viator or life settlor and owner shall sign before a notary, stating that:

(A) to the best of their knowledge, either the viator has a catastrophic or life-threatening illness, or the life settlor does not have a catastrophic or life-threatening illness;

(B) the written disclosures required by §3.1708 of this subchapter (relating to Required Disclosure) have been received and read;

(C) all of the documents used to effect the viatical or life settlement have been received and read; and

(D) the viatical or life settlement contract is being entered into knowingly and voluntarily.

(d) A viatical or life settlement provider, provider representative, or broker may develop and file its own acknowledgement form required by subsection (c)(11) of this section, or may utilize the acknowledgment form available from the department, which may be obtained by making a request to the Life/Health Division at the address specified in §3.1703(f) of this subchapter (relating to Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees).

(e) If a viatical or life settlement provider enters into a viatical or life settlement which allows the owner to retain an interest in the policy or the policy contains a provision, whether in the policy or attached by rider, providing an additional death benefit for accidental

death, the viatical or life settlement contract or amendment shall contain a provision:

(1) that the viatical or life settlement provider will effect the transfer of the amount of the net death benefit only to the extent or portion of the amount sold. Benefits in excess of the amount that is sold will be paid by the insurance company directly to the beneficiaries in accordance with the terms of the policy;

(2) that the additional death benefit for accidental death shall remain payable to the beneficiary last named by the viator, life settlor, or owner, not including the viatical or life settlement provider or in the absence of a beneficiary, to the estate of the viator, life settlor, or owner;

(3) that the viatical or life settlement provider will, upon acknowledgment of the perfection of the transfer, either:

(A) advise the owner, in writing, that the insurance company has confirmed the owner's remaining interest in the policy; or

(B) send the owner a copy of the document sent from the insurance company that acknowledges the owner's remaining interest in the policy;

(4) that defines the apportionment of premiums to be paid by the viatical or life settlement provider and the owner. It is permissible for the viatical or life settlement contract, or amendment, to specify that all premiums will be paid by the viatical or life settlement provider. The contract, or amendment, may also require the owner to reimburse the viatical or life settlement provider for the premiums attributable to the remaining interest, including any premiums for the accidental death benefit subsequent to the viatical or life settlement contract.

(f) All viatical or life settlement contracts, in addition to meeting the other requirements of this section, shall contain:

(1) consistent terminology;

(2) a section defining key terms used in the viatical or life settlement contract;

(3) the name of the owner and insured;

(4) the number of the policy which serves as the basis for the viatical or life settlement contract;

(5) the name of the insurance company underwriting the policy at the time of contract;

(6) the amount of the net death benefit of the policy; and

(7) a signature line for the viatical or life settlement provider and the owner and insured, as applicable.

(g) A viatical or life settlement provider that places the proceeds of the viatical or life settlement into an escrow or trust account pursuant to subsection (c)(3) or (c)(4)(B) of this section, shall comply with the following:

(1) the name of the registered viatical or life settlement provider shall be included within the name of the escrow or trust account;

(2) the escrow agent shall not be any person under common control with a viatical or life settlement provider, provider representative, or broker;

(3) the escrow or trust agreement shall contain:

(A) the name of the owner and insured:

(B) the number of the policy which serves as the basis for the viatical or life settlement contract;

(C) the name of the insurance company underwriting the policy at time of contract;

(D) the name of the viatical or life settlement provider purchasing the policy;

(E) the name, address, and telephone number of the escrow agent or trustee;

(F) the amount of proceeds placed into the escrow or trust account;

(G) all terms and conditions of the escrow or trust agreement;

(H) the name and address of the financial institution where the funds to be paid to the owner will be deposited;

(I) a description of the purpose of the escrow or trust account;

(J) the circumstances that will trigger disbursement of the funds from the escrow or trust account;

(K) the name of the person to whom the funds will be disbursed;

(L) the time restrictions or limitations for accepting assignment of the policy regarding the insurance company's acceptance of the assignment or failure of the insurance company to acknowledge the assignment;

(M) if applicable, the process for required notices for communication if the viator or life settlor rescinds the viatical or life settlement contract pursuant to subsection (c)(2) of this section, or if the insurance company does not accept the policy assignment;

(N) the duties of the escrow agent or trustee;

(O) the designation of the escrow agent or trustee;

(P) the limits of liability for the escrow agent or trustee;

(Q) the process by which any dispute arising between the owner and the viatical or life settlement provider and the escrow agent or trustee concerning the interpretation of the escrow or trust agreement is to be resolved; and

(R) a signature line for the viatical or life settlement provider, the owner and insured, and the escrow agent or trustee.

(h) The viatical or life settlement provider, provider representative, or broker shall provide, to the viator or life settlor and owner, a copy of the viatical or life settlement contract and all materials used to effect the viatical or life settlement, including, but not limited to, the application, a copy of the escrow or trust agreement, and any consent forms or any other document that the viatical or life settlement provider, provider representative, or broker, as applicable, required the viator or life settlor and owner, or his or her representative, to sign in order to effect the viatical or life settlement. The viatical or life settlement contract and all other materials used to effect the viatical or life settlement shall be provided at no charge to the viator or life settlor and owner.

§3.1710. Prohibited Practices Relating to Advertising and Solicitation; Applications and Contracts.

(a) No viatical or life settlement provider, provider representative, or broker shall advertise or in any other way solicit business in a manner that is untruthful or misleading by fact or implication. In considering whether or not the advertising or other solicitation is untruthful or misleading, the department shall use the standards set forth in this

subchapter, Insurance Code Article 21.21, and Chapter 21, Subchapter B of this title (relating to Insurance Advertising, Certain Trade Practices, and Solicitation), or any other applicable law.

(b) No viatical or life settlement provider, provider representative, or broker shall state or imply any advantage, right, or preference which, if granted or performed, would be a violation of any law of this state or the United States.

(c) No viatical or life settlement provider, provider representative, or broker shall:

(1) condition the consideration of an application for a viatical or life settlement on the exclusive dealing between the viator or life settlor and owner and the viatical or life settlement provider, provider representative, or broker;

(2) directly or indirectly contact any owner's, viator's, or life settlor's parents or family members, including a spouse or significant other, for any purpose, unless the owner, viator, or life settlor has designated a member of his or her family, a spouse, or a significant other as a contact person for health status information as provided in §3.1712 of this title (relating to Contacting the Viator, Life Settlor, or Owner for Health Status Inquiries; Limits and Prohibited Practices);

(3) discriminate in the availability or terms of viatical or life settlements on the basis of race, color, national origin, creed, religion, occupation, geographic location, marital or family status, sexual orientation, age, gender, disability or partial disability, unless it can be demonstrated that any such factor affects the life expectancy of the viator or life settlor;

(4) discriminate between viators or life settlors with dependents and those without dependents;

(5) enter into any viatical or life settlement contract without:

(A) obtaining the written consent of both the viator or life settlor and owner, if the two are separate individuals under the policy which is the subject of the viatical or life settlement; and

(B) making the disclosures required by §3.1708 of this subchapter (relating to Required Disclosure) to both the viator or life settlor and the owner;

(6) enter into any viatical or life settlement contract that provides a payment to the owner that is unjust. In determining whether a payment is unjust, the department may consider, among other factors, the data submitted in the reports required by §3.1705 of this title (relating to Reporting Requirements), and the prevailing discount rates in the viatical or life settlement market in Texas, or if insufficient data is available for Texas, the prevailing rates nationally or in other states that maintain such data;

(7) enter into a viatical or life settlement contract in which payments of proceeds are made in installments, unless the settlement is effected through an annuity purchased from an insurance company licensed by this state or licensed by the state in which the annuity is purchased or through an escrow or trust account which provides for installment payments and which is established by a financial institution licensed by this state or any other state in the United States, and is also a member of the FDIC;

(8) enter into any viatical or life settlement in this state in which any form used to effect the settlement, including the escrow or trust agreement, contains a provision that either requires or limits a viator, life settlor, or owner to resolve a legal dispute with the viatical or life settlement provider, provider representative, or broker in any state other than Texas, specifies a particular city, county, or locality in Texas or elsewhere as the legal forum for resolving a dispute, or makes any other state's laws as the law applicable to the form;

(9) enter into any viatical or life settlement in which any form used to effect the settlement, including the escrow or trust agreement, contains a provision that requires the owner, viator, or life settlor to pay for policy premiums that cover any period of time after the date in which the ownership of the policy is transferred, except as provided in §3.1709(e)(4) of this subchapter (relating to Application and Contract Forms: Required Provisions and Escrow/Trust Agreements);

(10) retain any portion of the proceeds from the viatical or life settlement contract;

(11) intentionally misstate the life expectancy of any viator or life settlor for the purpose of evading the tax laws of the United States, or for any other purpose; or

(12) require any viator, life settlor, or owner to give the viatical or life settlement broker, provider, provider representative, or any person, a general power-of-attorney, or designate the broker, provider, provider representative, or any person as his or her attorney-in-fact; provided that the viatical or life settlement broker, provider, provider representative, or other person may obtain a special or limited power-of-attorney if such power-of-attorney is restricted only to purposes related to the viatical or life settlement transaction, and those purposes are explicitly described in the special or limited power-of-attorney form.

(d) No viatical or life settlement provider, provider representative, or broker shall purchase benefits of a policy or rider which provides for additional death benefits for accidental death. Such additional death benefits shall remain payable to the beneficiary last named by the viator, life settlor, or owner, not including the viatical or life settlement provider, or in the absence of a beneficiary, to the estate of the viator, life settlor, or owner.

§3.1711. Payment of Commissions or Other Forms of Compensation: Disclosure and Prohibited Practices.

(a) Upon request of the viator, life settlor, or owner, the viatical or life settlement provider, provider representative, or broker shall disclose in writing to the viator, life settlor, or owner:

(1) the identity of any person who will receive a commission or other form of compensation from the viatical or life settlement provider, provider representative, or broker with respect to the viatical or life settlement; and

(2) the amount and terms of the compensation.

(b) A viatical or life settlement provider, provider representative, or broker shall not pay or offer to pay any referral or finder's fee, commission, or other compensation to a viator's or life settlor's physician, attorney, accountant, social worker, case manager, individual acting under power-of-attorney, or other person providing medical, social, financial planning or other counseling services to the viator, life settlor, or owner.

(c) Notwithstanding the manner in which the viatical or life settlement broker is compensated, a viatical or life settlement broker, is deemed to represent only the viator or life settlor and owner and owes a fiduciary duty to the viator or life settlor and owner to act according to the viator's or life settlor's and owner's instructions and in the best interest of the viator or life settlor and owner.

§3.1712. Contacting the Viator, Life Settlor, or Owner for Health Status Inquiries: Limits and Prohibited Practices.

(a) If a viator or life settlor makes a designation of an individual as provided in §3.1709(c)(5) of this subchapter (relating to Application and Contract Forms: Required Provisions and Escrow/Trust

Agreements), a viatical or life settlement provider, provider representative, or broker shall not contact the viator, life settlor, or owner for health status information about the viator or life settlor, unless the viatical or life settlement provider, provider representative, or broker is unable, after diligent effort, to contact a designee for more than 30 calendar days, subject to the restrictions set forth in subsection (b) of this section.

(b) Once a viator, life settlor, or owner has entered into a settlement with a viatical or life settlement provider, no viatical or life settlement provider, provider representative, or broker shall contact the viator, life settlor, or owner, or a viator's or life settlor's designee, to determine the viator's or life settlor's health status more frequently than once every 30 days for viators or life settlors with a life expectancy of one year or less, and no more than once every three months for viators or life settlors with a life expectancy of more than one year. No person shall contact the viator, life settlor, owner, or designee for determining the health status of a viator or life settlor as provided in §3.1709(c)(5) and (6) of this subchapter, unless that person is registered as a viatical or life settlement provider, provider representative, or broker in this state.

§3.1713. Assignment, Sale, or Transfer of Policies: Disclosure.

(a) Any viatical or life settlement provider that assigns, sells, or otherwise transfers its interest in any policy that is the subject of a viatical or life settlement without providing the disclosures to the viator, life settlor, or owner as required by §3.1709(c)(7) of this subchapter (relating to Application and Contract Forms: Required Provisions and Escrow/Trust Agreements) is subject to discipline by the commissioner under §3.1716 of this subchapter (relating to Denial, Suspension, or Revocation of Certificate of Registration; Enforcement).

(b) At the time a viatical or life settlement provider assigns, sells, or otherwise transfers its interest in any policy that is the subject of a viatical or life settlement contract to any person not registered pursuant to this subchapter, the viatical or life settlement provider, must continue to track the viator's or life settlor's health status, or appoint, in writing, one of their Texas-registered provider representatives, another Texas-registered viatical or life settlement provider, or a Texas-registered broker, to make all inquiries to the viator, life settlor, or owner, or the viator's or life settlor's designee, regarding the health status of the viator or life settlor or any other matters. A viatical or life settlement provider that assigns, sells, or otherwise transfers such a policy to a non-registered person and fails to continue to track the viator's or life settlor's health status, or to make such an appointment, commits a violation of this section, and is subject to discipline by the commissioner under §3.1716 of this subchapter.

§3.1714. Confidentiality.

(a) All confidential information solicited or obtained by a viatical or life settlement provider, provider representative, or broker about a viator, life settlor or owner, including the viator's, life settlor's, or owner's identity or the identity of family members, a spouse or a significant other, is confidential and shall not be disclosed in any form to any person, unless disclosure:

(1) is provided by prior written consent from the viator, life settlor, or owner on a form which identifies to whom the confidential information may be released, and the purpose for releasing the confidential information;

(2) is provided to the department in the form of statistical data from which the identity of the viator or life settlor and owner cannot be ascertained;

(3) is provided to the department in response to a subpoena from the commissioner, pursuant to the enforcement powers made applicable by Insurance Code Article 3.50-6A, and §3.1716 of this subchapter (relating to Denial, Suspension, or Revocation of Certificate of Registration; Enforcement), or in response to a written request for information made pursuant to Insurance Code §38.001; or

(4) is provided to the department during the course of an examination by the department of the business and affairs of the viatical or life settlement provider, provider representative, or broker, as provided in §3.1717 of this subchapter (relating to Examinations).

(b) All medical and financial information solicited or obtained by a viatical or life settlement provider, provider representative, or broker about a viator, life settlor, or owner must be obtained by written consent which must disclose that the viator, life settlor or owner has the right to withdraw consent pursuant to applicable law, and that the release form(s) may be used to track on-going health status.

(c) A viatical or life settlement provider, provider representative, or broker shall not release any viator's, life settlor's, or owner's confidential information to any person without first making a factual determination that:

(1) the releasing of any confidential information to that person is not in violation of any applicable provisions of the laws of this state, or of the United States, relating to the confidentiality of information;

(2) all persons to whom any confidential information is disclosed will maintain the confidentiality of such information and not disclose it to any other person in any form without prior and knowing written consent of the viator or life settlor and owner;

(3) all persons to whom any confidential information is released, have sufficient procedures implemented to prevent the accidental or unauthorized release of any viator's or life settlor's and owner's confidential information; and

(4) the viatical or life settlement provider, provider representative, or broker is not violating any law of this state or the United States by engaging in business with persons to whom it is releasing the confidential information of any viator, life settlor, and owner.

(d) In any enforcement action taken by the department for a violation of this section, in accordance with §3.1716 of this subchapter, it shall be the viatical or life settlement provider's, provider representative's, or broker's duty to establish sufficient evidentiary proof that the factual determinations referenced in subsection (c) of this section were made by the provider, provider representative, or broker.

(e) Confidential information obtained by the commissioner pursuant to the subpoena powers set forth in §3.1716 of this subchapter, is protected by the confidentiality provisions of either Insurance Code Article 1.10D or §§36.151 - 36.159 depending on which provision is used to subpoena the information.

(f) All confidential information solicited or obtained by a viatical or life settlement provider, provider representative, or broker about a viator, life settlor, or owner shall be further subject to applicable provisions of the laws of this state and of the United States.

§3.1715. Prohibition Against Doing Business with an Unregistered or Unlicensed Viatical or Life Settlement Provider, Provider Representative, or Broker, Escrow Agent or Trustee.

No viatical or life settlement provider, provider representative, or broker registered pursuant to this subchapter shall participate in a viatical or life settlement, or pay or share commissions, with a person engaging in the business of viatical or life settlements who is required to be

registered pursuant to this subchapter, but who has not obtained such registration.

§3.1716. Denial, Suspension, or Revocation of Certificate of Registration; Enforcement.

(a) Pursuant to Insurance Code Article 3.50-6A, if the commissioner determines, after notice and opportunity for hearing, that a viatical or life settlement provider, provider representative, or broker, individually or through any officer, partner, member or key management personnel, employee, director, affiliate, subcontractor, shareholder of the registrant or applicant, escrow agent, or trustee has violated or fails to meet any provision of Insurance Code Article 3.50-6A, this subchapter, or any other insurance law of this state or another law made applicable to viatical or life settlement providers, provider representatives, or brokers, the department may take any of the actions authorized by the insurance laws referenced in Insurance Code Article 3.50-6A, §3.

(b) A viatical or life settlement provider, provider representative, or broker whose certificate of registration has been denied, suspended, or revoked under this section or pursuant to Insurance Code Article 3.50-6A shall not file another application for certificate of registration before the first anniversary of the effective date of the denial, suspension, or revocation or, if judicial review of the denial, suspension, or revocation is sought, the first anniversary of the date of the final court order or decree affirming the action. An application filed after that period shall be denied by the department unless the applicant shows good cause why the denial, suspension, or revocation of the previous certificate of registration should not bar the issuance of a new certificate of registration.

(c) Pursuant to Insurance Code Article 3.50-6A, §3, the department shall have all authority and powers in Insurance Code Article 1.10D against a person who violates any penal law while engaging in the business of viatical or life settlements or while attempting to defraud a viatical or life settlement provider, provider representative, or broker.

(d) Pursuant to Insurance Code Article 3.50-6A, §3, in order to facilitate enforcement of Article 3.50-6A, other applicable laws and this subchapter, the department may utilize the provisions of Insurance Code Chapters 36 and 38 which apply to investigations of viatical or life settlement providers, provider representatives, or brokers (whether registered by the department, applying for a certificate of registration or unlawfully doing business without a certificate of registration), or anyone else engaged in, or conducting transactions relating to the business of viatical or life settlements.

(e) The department may seek information made confidential by §3.1714 of this subchapter (relating to Confidentiality) through use of subpoenas issued pursuant to Insurance Code Article 3.50-6A, §3, Article 1.10D, Chapter 36, or through use of a written request for information made pursuant to Insurance Code §38.001. Confidential information obtained by the department shall remain confidential pursuant to the terms of either Insurance Code Chapter 38 or Article 1.10D, §5.

(f) Pursuant to Insurance Code Article 3.50-6A, §3, Insurance Code §§36.101, 36.205, and Chapter 40 apply to enforcement actions brought pursuant to this subchapter.

§3.1717. Examinations.

(a) The department may examine the business and affairs of any viatical or life settlement provider, provider representative, or broker in this state. The department may request any viatical or life settlement provider, provider representative, or broker to produce any records, books, files, or other information reasonably necessary to ascertain whether or not the viatical or life settlement provider, provider representative, or broker is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the viatical or life settlement provider, provider representative, or broker.

(b) For purposes of such examination, records of all transactions of viatical and life settlements shall be maintained by the viatical or life settlement provider, provider representative, or broker and shall be available to the department for inspection during reasonable business hours. All viatical or life settlement providers, provider representatives, and brokers doing business in this state shall maintain records of each viatical or life settlement in which it participates, until three years after the date the viatical or life settlement has matured.

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

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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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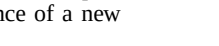

SUBCHAPTER R. MINIMUM REGISTRATION, DISCLOSURE, AND NONDISCRIMINATION REQUIREMENTS FOR VIATICAL DOCUMENTS

28 TAC §§3.1704, 3.1706, 3.1716-3.1718

The Commissioner of Insurance adopts the repeal of §§3.1704, 3.1706, and 3.1716-3.1718 concerning viatical and life settlements. The repeal is adopted without changes to the proposed repeal as published in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7485).

The repeal is necessary so that proposed new §§3.1704, 3.1706, 3.1716, and 3.1717 may be adopted to implement the 1999 legislative amendments to Insurance Code Article 3.50-6A from the 76th Legislative Session, House Bill 792. Contemporaneous with this adopted repeal, adopted amendments to §§3.1701-3.1703, 3.1705, and 3.1707-3.1715, and newly adopted §§3.1704, 3.1706, 3.1716, and 3.1717 are published elsewhere in this issue of the *Texas Register*.

The purpose and objective of this repeal is to remove sections that are being replaced with newly adopted §§3.1704, 3.1706, 3.1716, and 3.1717.

No comments were received.

The repeal of §§3.1704, 3.1706, and 3.1716-3.1718 is adopted under the Insurance Code Article 3.50-6A and §36.001. Article 3.50-1A, which provides that the commissioner shall adopt reasonable rules to implement this article as it relates to viatical and life settlements. Insurance Code §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.

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

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SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §§3.3306, 3.3308, 3.3312

The Commissioner of Insurance adopts amendments to §§3.3306, 3.3308, and 3.3312, concerning the minimum standards for Medicare supplement policies. Sections 3.3306, 3.3308, and 3.3312 are adopted without changes to the proposed text as published in the December 15, 2000, issue of the *Texas Register* (25 Tex Reg. 12318) and will not be republished.

The amendments bring Texas into compliance with federal requirements adopted November 1999 in Public Law 106-113, concerning the Balanced Budget Refinement Act (BBRA) and the Ticket To Work And Work Incentives Improvement Act (TWWIIA). The compliance enables Texas to retain its regulatory authority over Medicare supplement coverage. The amendments also make clarifying technical changes to the sections and forms for consistency and readability.

The BBRA and TWWIIA amend section 1882 of the Social Security Act (Act), which governs Medicare supplement insurance. The amendment to §3.3306 provides that each Medicare supplement policy shall provide that benefits and premiums can be suspended while the individual is eligible for benefits under section 226 (b) of the Act; then reinstitutes the Medicare supplement coverage if the individual loses coverage under the group health plan and provides the required notice of loss of coverage. Section 3.3306 also sets forth a copayment structure for outpatient hospital services provided to Medicare beneficiaries. The 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 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 Medicare supplement plan.

No comments were received.

The amended sections are adopted under the 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.

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

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CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER T. INTERIM STUDY OF AGENTS AND AGENTS' LICENSES STATUTES

28 TAC §19.1901

The Commissioner of Insurance adopts the repeal of Subchapter T, §19.1901, concerning an advisory committee for the interim study of agents and agents' licenses statutes. The repeal is adopted without changes to the proposal as published in the September 15, 2000, issue of the *Texas Register* (25TexReg 9176) and will not be republished.

Repeal of this subchapter is necessary because the advisory committee completed its assigned tasks prior to the deadlines established in Insurance Code Article 21.15-7 and associated regulations. In addition, repeal of this subchapter is necessary because the advisory committee was terminated effective December 31, 1998, as set out in §19.1901 (f). As a result, this subchapter is no longer necessary.

The purpose of this repeal is to remove an outdated rule concerning the conduct of an agent licensing advisory committee because the committee completed its assigned task and was terminated by operation of law.

No comments were received.

Repeal of Subchapter T is adopted pursuant to Texas Civil Statutes Article 6252-33, Insurance Code Article 21.15-7 and §36.001. Texas Civil Statutes Article 6252-33 §5 requires a state agency that is advised by an advisory committee to adopt rules which state the purpose of the committee, and describe the committee's task and the manner in which the committee will report to the agency. Section 8 of Article 6252-33 requires a state agency that is advised by an advisory committee to establish by rule a date on which the committee will automatically be abolished. Insurance Code Article 21.15-7 directs the commissioner to appoint an advisory committee to assist in the

evaluation and review of agents and agents' licenses statutes. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by 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.

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SUBCHAPTER T. SPECIALTY INSURANCE LICENSE

28 TAC §§19.1901 - 19.1910

The Commissioner of Insurance adopts new Subchapter T, §§19.1901 - 19.1910 concerning specialty insurance licenses. Sections 19.1904 and 19.1909 are adopted with changes to the proposed text as published in the September 15, 2000, issue of the *Texas Register* (25 TexReg 9177). Sections 19.1901 - 19.1903, 19.1905 - 19.1908 and 19.1910 are adopted without changes and will not be republished.

The 76th Texas Legislature enacted Senate Bill 957 which added new Article 21.09 to the Texas Insurance Code establishing a specialty insurance agent license. The department adopts the new subchapter to implement new Article 21.09, define terms used in Article 21.09, and clarify the processes involved in making application for a specialty license from the department.

Section 19.1901 specifies that the purpose of these rules is to implement the licensing of specialty agents as provided for by Article 21.09. Section 19.1902 defines terms used in the subchapter. Section 19.1903 sets forth the licensing requirements for individual and entity applicants. Section 19.1904 provides information necessary to properly complete a specialty license application including application for more than one specialty license authority, the registration of an assumed name with the department, and availability of application and registration forms. Section 19.1905 requires applicants to register each location where insurance sales will be conducted under the specialty license and prohibits the solicitation of insurance from non-registered locations. Section 19.1906 establishes a two year expiration period for specialty licenses and provides for license renewal. Section 19.1907 provides for the licensure of persons not resident in Texas. Section 19.1908 requires licensees to notify the department of certain enumerated occurrences including change of address, the addition or removal of office locations, and administrative actions by other insurance regulators. Section 19.1909 contains requirements for the mandatory employee training program as set out in Article 21.09. Section 19.1910 sets forth the disciplinary procedures for specialty licensees including denial of issuance, refusal to renew, suspension, and revocation. Simultaneous to the adoption of new Subchapter T, the adopted repeal of current Subchapter T is published elsewhere in this issue of the Texas Register.

Comment: A commenter suggested adding a new section to the rule to require specialty insurance licensees to include in their disclosures to consumers and in their employee training programs specific information regarding price, benefits, exclusions, conditions or other limitations of the insurance policies they solicit.

Agency Response: The Department disagrees. Insurance Code Article 21.09 §1(g) currently requires disclosure of the material terms of insurance coverage offered to consumers. The Department believes the current disclosure requirements in Article 21.09 provide sufficient consumer protections. The Department will monitor market practices and may consider requiring additional disclosures as necessary to maintain effective consumer protection.

Comment: A commenter suggested that a definition for credit property insurance should be included, either by referencing Article 21.09, §3(a)(3), or by restating the definition in the regulation.

Agency Response: The Department disagrees. A definition of credit property insurance is included in Insurance Code Article 21.09 §3(a)(3). The general purpose of a regulation is to provide additional guidance on application of the statute. Duplication of a definition from the statute is not illuminative of statutory function or application.

Comment: A commenter suggested it should be adequate for the applying organization to provide its tax certificate number on the application form in lieu of the requirement to submit a franchise tax certificate.

Agency Response: The Department disagrees. The franchise tax certificate is required to demonstrate good standing with the state comptroller's office. Inclusion of the certificate with the license application shortens the time required to process the license application at TDI.

Comment: A commenter suggested that the requirement to provide personal information about the applicant's owners and the requirement to notify the Department of the addition or removal of an officer, director, member, partner or other person who can control the licensee is overly burdensome and recommended instead that each applicant identify and provide contact information for one or two individuals that will be responsible for insurance sales under the license.

Agency Response: The Department disagrees. The requirement to provide this information applies to all persons who have the ability to "control" the operations of the licensee. Control is defined in the rule. This requirement is intended to ensure compliance with federal law (18 U.S.C. §1033) which prohibits conduct of the business of insurance by a person with a felony conviction. The information required concerning the applicant's owners and officers is necessary to perform a criminal history background check on these persons.

Comment: A commenter believed the requirement that the applicant be actively engaged in a finance or retail business at each location where insurance sales will be conducted conflicts with insurance industry marketing practices and should be removed.

Agency Response: The Department disagrees. The specialty license is a point of sale license authorizing the solicitation of

insurance which is incidental to an associated consumer transaction. This is clearly set out in the statute by language which restricts the entities which may be issued a specialty license. The solicitation of insurance after the point of sale or by a third party marketer would require a different license type which is available from the Department under other provisions of the Insurance Code.

Comment: A commenter stated that it is not clear what the reference to "more than one license authority" means. The commenter suggested adding a definition for "license authority" or some other language to avoid confusion.

Agency Response: The Department agrees and has changed the language in §19.1904 to clarify that the phrase is restricted to specialty license authorities.

Comment: A commenter questioned whether clear statutory authority exists for the requirement to notify the Department of administrative actions taken against the licenseholder by the insurance regulator of another state and felt that Article 21.09 does not reflect any specific intent to place this requirement on specialty license holders alone.

Agency Response: The statutory authority for this disclosure is Insurance Code Section 81.003. The requirement to notify the Department of administrative actions taken against the licenseholder by the insurance regulator of another state is not restricted solely to specialty licensees. This provision was added to this rule to ensure proper notice to licensees of the requirements imposed by other sections of the Insurance Code.

Comment: A commenter believed the ability of the Department to institute disciplinary action against an insurance company or specialty license holder based upon use of an improper training program would constitute double jeopardy for insurers or their agents using an insurer-provided training program already approved by TDI, and strongly recommended that this provision not apply to insurers and license holders using TDI approved training programs that are kept up to date.

Agency Response: The Department disagrees. Section 19.1909(b) of the rule requires the insurance company to submit only an outline of the training program for approval by the Department. The requirement to submit all training materials to the Department upon request is a necessary enforcement mechanism and an important consumer protection. The ability to review the entire training program, when necessary, will allow the department to hold the insurance company responsible for the material contained in its training program and to hold the specialty licensee responsible for the proper administration of the training program to its employees. The Department has changed the language in this section to clarify these responsibilities.

For with changes: Office of Public Insurance Counsel; Assurant Group. Against: None.

The subchapter is adopted under Insurance Code Article 21.09 and §36.001. Article 21.09 §6 provides the Commissioner may adopt rules necessary to implement the specialty license. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

§19.1904. Application.

(a) Application for more than one specialty license authority. A first time applicant may seek licensure for more than one specialty license authority on the same specialty license application. A $50 fee per specialty license authority must accompany the application.

(b) Assumed name or trade name. An applicant desiring to use an assumed name in the conduct of an insurance business under a specialty insurance license shall be subject to the requirements of §19.902 of this title (relating to One Agent, One License) except that a separate filing with the department shall not be required for an applicant who conducts business under a single assumed name and registers that name with the department on the applicant's original specialty license application. No applicant for or holder of a specialty license shall be required to file multiple registrations with the department for a previously registered assumed name as a result of seeking more than one specialty license authority.

(c) Forms. Application and Registration forms are available by:

(1) contacting the department's licensing division customer service center; or

(2) through the department's website at www.tdi.state.tx.us.

§19.1909. Employee Training.

(a) Each employee of a specialty license holder who performs any act of an insurance agent within the scope of the individual's employment shall complete a training program which satisfies the requirements of Article 21.09 §1(d).

(b) An insurance company authorized to write the specialty insurance product shall submit an outline of the training program to the department for approval prior to use by a specialty license holder.

(c) The training outline shall be sufficiently detailed to demonstrate that the specialty license applicant's employees will receive training in the disclosures required under the applicable statutes and regulations as well as training in each specific type of specialty insurance product which the applicant seeks authorization to solicit.

(d) An applicant for or holder of a specialty insurance license shall submit all employee training materials to the department upon request. If the department finds that a training program is deficient, misrepresents any aspect of the insurance transaction or contains inaccuracies misleading to the public, the department may institute a disciplinary action against the insurance company that prepared the training materials. If the department finds that a training program is modified by or is not properly administered by the specialty license holder, the department may take any disciplinary action authorized under §19.1910 of this title (relating to Denial or Refusal of Specialty License Application; Suspension or Revocation of Specialty Licenses; Discipline of Specialty License Holders) against the specialty license holder.

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

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER M. MANDATORY BENEFIT NOTICE REQUIREMENTS

28 TAC §21.2107

The Commissioner of Insurance adopts an amendment to §21.2107, concerning mandatory benefit notice requirements. This amendment is adopted with a change to the text as published in the December 15, 2000, issue of the *Texas Register* (25 Tex Reg. 12322).

The amendment brings Texas into compliance with federal requirements adopted November 1999 in Public Law 106-113, the Balanced Budget Refinement Act. The Balanced Budget Refinement Act amended section 1882 of the Social Security Act, which governs Medicare+Choice coverage and Medicare supplement insurance, and includes notification changes that inform covered individuals of their additional right of an alternative date for termination of enrollment and guaranteed issuance of Medicare supplement coverage.

The amendment directs entities described in §3.3312, concerning guaranteed issue of Medicare supplement policies for eligible persons, to disclose to covered individuals their additional right to use an alternate date for termination of enrollment when the individual has received notification of an impending termination or discontinuance of their Medicare+Choice plan or PACE program, for the guaranteed issuance of Medicare supplement coverage. The department has made a grammatical change to subsection (b) for consistency and readability.

No comments were received.

The amendment is adopted under the 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.

§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) 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, which 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) 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) adopts amendments to §§19.208, 19.210, 19.214 and 19.2112, concerning nursing facility licensure application and renewal, without changes to the proposed text in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10706). Section 19.216 is adopted with changes to the proposed text.

Justification for the amendments is to provide continuity within the nursing facility rules and close loop-holes for nursing facility owners with a poor history of providing high-quality care. In reviewing the nursing facility rules, DHS found that the current rules prohibit issuing a license to an applicant to operate a new facility if, during the five-year period preceding the application, the applicant had a license to operate a health-care facility, long-term care facility, personal-care facility, or similar facility in any state revoked. However, the current rules did not require the disclosure of such information for an applicant for re-licensure; therefore DHS proposed such a rule. DHS also wished to clarify that facilities cannot surrender licenses in lieu of revocation to escape the repercussions of license revocation, which include being barred from a license to operate a new facility and potentially being barred from re-licensure. Additionally, DHS found that administrative penalties for late submission of a license renewal application, change of ownership application, and notice of change of administrator had been deleted inadvertently from the rule base; therefore DHS proposed amendments re-establishing those administrative penalties.

The department received one comment from Brown & Fortunato, P.C., a law firm. A summary of the comment and the department's response follow.

Comment: Regarding §19.216(a)(4), it is inappropriate to place the burden upon the facility to ensure the change of administrator application reaches the Facility Enrollment Section of DHS within

30 days. Also, the language of the change is not consistent with the Texas Health and Safety Code §242.066(e), which requires DHS to consider the equities of imposing a penalty in each case. The statute states "in determining the amount of penalty, the department shall consider any matter that justice may require ...." The statute then lists a series of factors that must be considered in each case. Therefore, we believe the language of "must pay a $500 administrative penalty" is inappropriate. We suggest the language be modified to read: "If DHS does not receive the application within 30 days of the effective date of the change, DHS may impose a $500 administrative penalty."

Response: DHS changed the language in §19.216(a)(4) to read: "... DHS may impose a $500 administrative penalty." The department believes that it is necessary to specify which section in DHS must receive the notice to avoid ambiguity. The reference to the Provider Enrollment Section will not be changed. However, to assist facilities, DHS added language that, if the notice is postmarked within the 30-day period, 15 days will be added to the 30-day period to receive the notice.

DHS made a non-substantive change in §19.216(a)(4). The word "application" is being replaced with the word "notice." The department made this change to accurately reflect that a facility is required to notify the department of a change of administrator, but does not apply for a change of administrator.

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §§19.208, 19.210, 19.214, 19.216

The amendments are adopted under the Human and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendments implement the Health and Safety Code §242.037.

§19.216. License Fees.

(a) Basic fees.

(1) Probationary license. The license fee is $125 plus $5 for each unit of capacity or bed space for which a license is sought.

(2) Initial and renewal license. The license fee is $250 plus $10 for each unit of capacity or bed space for which a license is sought. The fee must be paid with each initial and renewal of license application.

(3) Increase in bed space. An approved increase in bed space is subject to an additional fee of $10 for each unit of capacity or bed space.

(4) Change of administrator. A facility must report a change of administrator within 30 days of the effective date of the change by submitting a change of administrator notice and a $20 fee to the Texas Department of Human Services Facility Enrollment Section. If Facility Enrollment does not receive the notice within 30 days of the effective date of the change, DHS may impose a $500 administrative penalty. If the notice is postmarked within the 30-day period, 15 days will be added to the time period to receive the notice.

(5) Background information fee. The background information fee is $50.

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, DHS has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D.

(2) DHS charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapter 242 each calendar year if the amount of the nursing and convalescent trust fund is less than $10,000,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, not to exceed $20 annually, and is in an amount sufficient to provide not more than $10,000,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(3) DHS may charge and collect a fee more than once a year only if necessary to ensure that the amount in the nursing and convalescent trust fund is sufficient to allow required disbursements.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter W of this chapter (relating to Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders) must pay an annual fee of $100.

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

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Paul Leche
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SUBCHAPTER V. ENFORCEMENT DIVISION 2. LICENSING REMEDIES

40 TAC §19.2112

The amendment is adopted under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendments implement the Health and Safety Code §242.037.

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

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CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Texas Department of Human Services (DHS) adopts the repeal of §30.101, §30.103, and §30.105; and adopts new §30.2, §30.4, §30.10, §30.12, §30.16, §30.18, §30.20, §30.30, §30.32, §30.34, §30.36, §30.40, §30.50, §30.52, §30.70, §30.80, §30.82, §30.84, and §30.100 without changes to the proposed text published in the August 4, 2000 issue of the *Texas Register* (25 TexReg 7331). New §§30.14, 30.54, 30.60, and 30.62 are adopted with changes to the proposed text published in the August 4, 2000 issue of the *Texas Register* (25 TexReg 7331). DHS is simultaneously filing a related adoption in Chapter 30 in this issue of the *Texas Register*.

Justification for the repeals and new sections is to provide more extensive Medicaid contracting rules for the Medicaid Hospice program, which has greatly expanded since the original program rules were promulgated. Hospice providers need to be aware of their contractual responsibilities when contracting with DHS as Medicaid hospice providers. Providers are required to comply with 42 Code of Federal Regulations Chapter 418 Hospice Care, Health Care Financing Administration Medicaid Guidelines, and state licensing rules.

New §§30.2 and §30.4 are consistent with other DHS rules.

New §30.10 identifies the eligibility requirements for the program. The rules are consistent with the Health Care Financing Administration guidelines.

New §30.12 identifies the certification timeframes. This is consistent with the Health Care Financing Administration guidelines.

New §30.14 requires that providers conduct a client-specific comprehensive assessment for subsequent physician certifications after the first year on hospice. The hospice program is intended for individuals with a terminal illness who have been certified by a physician to have six months or less to live, if the illness runs its normal course. Physicians may not be able to predict when an individual will die, due to medical reasons, causing individuals to remain on hospice for extended periods of time. In these instances, physicians will need to address the need for hospice and why the individual has a terminal illness with a prognosis of six months or less to live.

New §30.16 states that persons requesting hospice must elect this care. This is consistent with the Health Care Financing Administration guidelines.

New §30.18 identifies when a recipient can revoke a hospice. The rules are consistent with the Health Care Financing Administration guidelines.

New §30.20 identifies when a recipient can change a designated hospice. The rules are consistent with the Health Care Financing Administration (HCFA) guidelines.

New §§30.30, 30.32, 30.34, and 30.36 require that providers have a contract with the department and comply with specific criteria. This is required in all DHS programs.

New §§30.40, 30.50, and 30.52 addresses physical therapy, occupational therapy, and speech therapy in general. Waiver requests for these therapies and requirements for reimbursement for hospice services are also addressed. The rules are consistent with the Health Care Financing Administration guidelines.

New §30.54 states that continuous home care may be provided for up to five consecutive days. Additional days may be provided upon approval by the department. Providers may appeal the denial to extend continuous home care days. Limiting the number of days assures the provider of payments and allows the department to review requests for additional days to ensure that continuous home care has occurred and the need for it is valid.

New §§30.60 and 30.62 explains Medicaid hospice payments and limitation and the department's processing requirements. These rules are consistent with HCFA guidelines and the Health and Human Services Commission (HHSC) Nursing Facility Utilization rules, which will be effective June 1, 2001 and departmental policy for claims processing.

New §30.70 explains that the department will conduct annual contract management visits. The department conducts these visits for all the Medicaid contracts.

New §§30.80, 30.82, and 30.84 explain that sanctions will be imposed when providers do not meet the terms of their Medicaid contract. The department imposes this in all programs.

New §30.100 requires that when contracting with a nursing facility (NF), hospice providers must chart procedures in the NF clinical records, ensure all documents are in the record, advise the NF staff of changes in the recipient's condition, and have joint procedures for ordering medications to ensure that the proper payor is billed and for reconciling billing between the two providers. Charting and filing in one record will help to ensure communication and coordination of care.

The department received comments from an individual and the following organizations: Hospice of El Paso, Texas & New Mexico Hospice Organization, Hospice of Deep East Texas and Home Hospice. A summary of the comments and the department's responses follows.

Comment: The Balanced Budget Act of 1997 changed the timeframe in which the hospice must obtain the physician's written certification of terminal illness in the patient's chart. Medicare requires the hospice to obtain a verbal certification within two days and states that the written certification need only be on file in the patient's record prior to submission of a claim to the fiscal intermediary. This change needs to be in the Medicaid hospice program because hospice providers are finding it increasingly difficult to obtain signatures from physicians.

Response: The section will remain as written. The change made by the Balanced Budget Act of 1997 applies only to Medicare. Consultation with the department's General Counsel and the Health Care Financing Administration (HFCA) indicates that DHS must follow the Medicaid election process set out in the HCFA publication State Medicaid Manual 4305.1.

Comment: Chapter 311 of the Government Code, §311.016 addresses the use of the words "may", "shall" and "must". It states that the phrase "may not" imposes a prohibition and is synonymous with "shall not". I would urge the use of "may not" or "shall not" to emphasize the importance of §30.30 (e).

Response: The rule will remain as written. The department believes that language in the rule is sufficient to convey the restrictions.

Comment: Section 30.54 (a)(3) requires that the social worker and chaplain document why services were needed and what was accomplished during continuous home care. I would urge that this include that documentation be required by homemakers and

home health aides as well. I would also urge that chaplain services be excluded from detailed documentation, as this is unreasonably invasive of the relationship that the recipient has with clergy.

Response: The language will remain as written. Homemaker and home health aid duties are part of the current rule, are visible, and DHS can account for these services. The department added the social worker and chaplain services as part of continuous home care with the understanding and guidance from HCFA that these professionals must document why they were there and what was accomplished. No confidentiality is broken as all professional staff share information about the recipient's needs, mental condition, and physical condition in meetings and in documentation.

Comment: Section 30.54 (a)(5) should read "...hospice medical director or their designee...."

Response: The department will change the sentence to read "...hospice medical director or his designee..." The department added that the hospice medical director's designee can participate in the Plan of Care meeting. This will allow an individual who is experienced in the medical arena and has knowledge and understanding of the recipient's medical condition to speak on behalf of the medical director when he is unable to attend the Plan of Care meeting.

Comment: Section 30.54 (a)(7)(A) states that providers are required to send their request for a continuous home care extension by regular mail to the department at a post office box. This being the case, the provider will be required to assess the needs and make a determination that an extension is necessary during the first 24 hours of the crisis (to account for mail time). Making the call this early may result in a request for extension in most of the crisis situations. Please allow the provider to fax or use other electronic means to transmit the request to DHS. A provision to allow the electronic transmission of the response to the request for an extension should also be included in §30.54 (a)(8). Response: The department will retain the language in §30.54 (a)(7)(A). The amount of documentation required may be such that fax lines would be tied up for long periods of time. Providers have the option of using overnight mail. The department will add language to §30.54 (a)(8) that will read, "The department will fax the response to the provider if the provider includes a fax number with the extension request." The department will fax its response regarding the request for a waiver and request for reconsideration to the provider so the provider receives departmental decisions as quickly as possible.

SUBCHAPTER A. INTRODUCTION

40 TAC §30.2, §30.4

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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

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SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

40 TAC §§30.10, 30.12, 30.14, 30.16, 30.18, 30.20

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.14. Certification of Terminal Illness.

(a) Timing of certification.

(1) Except as provided in paragraph (2) of this subsection, the hospice must obtain the written certification of terminal illness from a physician no later than two calendar days after the period begins.

(2) For the initial period, if the hospice cannot obtain the written certification within two calendar days, it must obtain oral certifications within two calendar days and written certification no later than eight calendar days after the period begins.

(3) Upon receipt of the certification, hospice staff must:

(A) make an appropriate entry in the patient's medical record as soon as they receive an oral certification; and

(B) file written certifications in the medical record.

(b) Content of certification. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

(c) Sources of certification.

(1) For the initial period, the hospice must obtain written certification statements, and oral certification statements if required under subsection (a)(2) of this section, from:

(A) the medical director of the hospice or the physician member of the hospice interdisciplinary group; and

(B) the individual's attending physician if the individual has an attending physician.

(2) For subsequent periods after the first year, the hospice must conduct a client-specific comprehensive assessment that:

(A) identifies the client's need for hospice services in the areas of medical, nursing, social, emotional, and spiritual care. Hospice services include, but are not limited to, the palliation and management of the terminal illness and conditions related to the terminal illness; and

(B) contains a narrative from the physician which clearly identifies the reasons the patient is considered terminally ill; with a prognosis of less than six months to live.

(3) The assessment must be done no earlier than 30 workdays prior to the recertification date. The hospice provider must retain copies of all physician's certification statements, a current Texas Index for Level of Effort (TILE) assessment, if applicable, and the client-specific comprehensive assessment in both the hospice's records for the recipient and the recipient's nursing facility clinical record, if applicable.

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

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SUBCHAPTER C. PROVIDER REQUIREMENTS FOR ENTRANCE INTO THE TEXAS MEDICAID HOSPICE PROGRAM; DISCLOSURE REQUIREMENTS

40 TAC §§30.30, 30.32, 30.34, 30.36

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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SUBCHAPTER D. PROVIDERS' CONDITIONS OF PARTICIPATION: OTHER SERVICES

40 TAC §30.40

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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SUBCHAPTER E. COVERED SERVICES

40 TAC §§30.50, 30.52, 30.54

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§30.54. Special Coverage Requirements.

(a) Continuous home care. Continuous care is to be provided only during periods of crisis to maintain the recipient at the recipient's place of residence. A period of crisis is a period in which a recipient requires continuous care which is primarily skilled nursing care to achieve palliation or management of acute medical symptoms.

(1) A minimum of eight hours of continuous home care must be provided during a 24-hour day which begins and ends at midnight. The care need not be continuous, for example, four hours could be provided in the morning and another four hours in the evening of that day.

(2) Skilled nursing care must be provided for more than half of the continuous home care period and must be provided by either a registered nurse or licensed vocational nurse.

(3) Homemaker, home health aide services, medical social work, or chaplain services may be provided to supplement the nursing care. The provider must document why social work or chaplain services were needed and what was accomplished during continuous home care. While on-call staff may be used to provide continuous home care; staff, however, must be on site, providing care to the recipient in their place of residence to be considered for inclusion in continuous home care hours.

(4) The services may be provided for up to five consecutive days.

(5) The provider must have a physician's order and a documented medical need for skilled nursing care in the recipient's record and in the plan of care. The plan of care must be established by the attending physician, hospice medical director or his designee, and the interdisciplinary team, and coordinated by the hospice registered nurse. The plan of care must include the needs of the recipient; identification of the services, including management of discomfort and symptom relief; and the scope and frequency of the services needed to meet the needs of both the recipient and family.

(6) Prior to providing continuous home care, the provider must advise and discuss with the family or responsible party that temporary alternate placement may be necessary at the end of the five consecutive days. The provider must document the discussion with the family or responsible party in the recipient's records.

(7) If the provider believes that the crisis period will extend beyond the five consecutive days, the interdisciplinary team must discuss the temporary placement alternatives available to meet the needs of the recipient during the crisis period, such as a hospital or nursing facility. This discussion must be documented. If, after this discussion, the provider believes that an extension of continuous home care is necessary instead of alternative placement, the provider must submit a written request for an extension of continuous care to DHS.

(A) The written request must be sent to Texas Department of Human Services, Long-Term Care Policy, P.O. Box 149030, Mail Code Y-519, Austin, Texas, 78714-9030.

(B) The written request must include:

(i) documentation of all continuous home care provided during the previous five days;

(ii) physician's orders;

(iii) documentation of daily physician care plan oversight;

(iv) documentation that skilled nursing care was provided as more than half of the care given in a 24-hour period for each of the five days of continuous care;

(v) the number of days of continuous home care requested for the extension; and

(vi) documentation of the interdisciplinary team's discussion regarding alternate placement, including why continuous home care must be extended and why temporary alternate placement is not presently warranted.

(8) The Texas Department of Human Services (DHS) may extend continuous home care if it deems it medically necessary. Providers will be notified in writing of the department's decision within eight work hours after the department's receipt of the written request and documentation. The department will fax the response to the provider if the provider includes a fax number with the extension request.

(9) If DHS denies the request for an extension of continuous home care, the provider will be paid at the routine home care rate or inpatient care rate, if applicable, for subsequent days of care.

(10) Request for reconsideration. If the provider does not agree with the department's denial of the request for an extension of continuous home care, the provider may request a reconsideration of the decision at the state office level. The written request for reconsideration and all supporting documentation must be submitted to DHS at the address in paragraph (7)(A) of this subsection no later than the tenth calendar day after the provider's receipt of the denial of the request for an extension. DHS's reconsideration will be limited to a review of the documentation submitted. DHS will complete the reconsideration no later than the tenth calendar day after receipt of the request for reconsideration.

(b) Respite care.

(1) Respite care is short-term inpatient care provided to the individual at home only when necessary to relieve the family members or other persons caring for the individual at home.

(2) Respite care may not be reimbursed for more than five consecutive days.

(3) Respite care can be provided by:

(A) a hospice that meets the condition of participation for providing inpatient care directly; or

(B) a hospital or nursing facility that also meets the Medicare standards regarding 24-hour nursing service and patient areas.

(4) Respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time.

(5) Respite care may not be provided when the hospice patient is a nursing home resident.

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SUBCHAPTER F. REIMBURSEMENT

40 TAC §30.60, §30.62

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§30.60. Medicaid Hospice Payments and Limitations.

(a) Medicaid hospice per diem rates. For each day that an individual is under the care of a hospice, the hospice will be reimbursed an amount applicable to the type and intensity of the services furnished to the individual for that day. For continuous home care, the amount of payment is determined based on the number of hours of continuous care furnished to the beneficiary on that day.

(1) Routine home care. The hospice will be paid the routine home care rate for each day the recipient is at home, under the care of the hospice, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(2) Continuous home care. The hospice will be paid the continuous home care rate when continuous home care is provided. The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate. A minimum of 8 hours must be provided. For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to 24 hours a day. A maximum of five consecutive days are allowed for reimbursement. Additional days may be allowed with approval from the Texas Department of Human Services (DHS).

(3) Inpatient respite care. The hospice will be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of 5 days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(A) A hospice recipient who receives hospice respite care in a nursing facility and returns home after the respite does not have to be in a Medicaid bed in the nursing facility.

(B) Respite care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (h) of this section.

(C) If the hospice recipient dies as an inpatient, DHS pays the inpatient rate for the day of death.

(4) General Inpatient Care. Payment is made at the general inpatient rate when general inpatient care is provided.

(A) The Inpatient Care rate is paid for the date of admission and all subsequent inpatient days except day of discharge.

(B) For the day of discharge, DHS pays the routine home care rate.

(C) If the hospice recipient dies as an inpatient, DHS pays the inpatient rate for the day of death.

(D) Inpatient care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (h) of this section.

(b) Medicaid payments for physician services.

(1) The Medicaid Hospice Program makes payments to the Medicaid hospice provider for hospice physician services according to the customary and reasonable Texas Medicaid physician charges.

(2) The Medicaid Hospice Program does not pay when hospice physician services are provided by physicians who are not on staff with the Medicaid hospice provider or for independent contractors, who are under contract with the hospice.

(3) Payments for non-hospice physician services to Medicaid hospice recipients are made directly to physicians by Medicaid through the National Heritage Insurance Company (NHIC).

(4) The Medicaid hospice provider must include physician services in the hospice plan of care and clinical records and must inform physicians on how to bill for services to hospice recipients.

(c) Medicaid hospice-nursing facility per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-nursing facility rate that is 95% of the Medicaid nursing facility rate for each hospice recipient in a nursing facility. When the hospice-nursing facility rate is paid to the hospice provider, Medicaid vendor payment to the nursing facility is not paid. Room and board services include performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(d) Medicaid time limitations for DHS hospice payment.

(1) To receive payment of the hospice nursing facility rate, the hospice and nursing facility providers must complete and submit the Texas Index for Level of Effort (TILE) assessment on the hospice recipient or applicant in a nursing facility within 20 days of either or both hospice election or entrance to the nursing facility.

(2) TILE Assessments received after the 20th day will have the stamp-in date as the effective date.

(e) Medicaid payments on Medicare coinsurance for drugs and biologicals. For Medicare-Medicaid recipients only, the Medicaid Hospice Program pays the Medicaid hospice provider a 5.0% coinsurance on prescription drugs and biologicals, not to exceed $5 per prescription.

(f) Medicaid payments for Medicare respite coinsurance. For Medicare- Medicaid recipients only, the Medicaid Hospice Program pays the hospice provider a 5.0% coinsurance for each day of respite care for up to five consecutive days of a hospice coinsurance period.

(g) Third party resources. Medicaid pays only after all third-party resources have been used.

(h) Medicaid payment limitations for inpatient care. During the 12-month period beginning November 1 of each calendar year and ending October 31 of the following calendar year (the cap year), the aggregate number of inpatient hospice care days must not exceed 20% of the aggregate total number of all hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. If it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate are not counted as inpatient days. The limitation is calculated as follows:

(1) The maximum allowable number of inpatient days is calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment is necessary.

(3) If the total number of days of inpatient care exceeds the maximum allowable number, the limitation is determined by:

(A) calculating a ratio of the maximum allowable days to the number of actual days of inpatient care and multiplying this ratio by the total reimbursement for inpatient care (general inpatient and inpatient respite reimbursement) that was made;

(B) multiplying excess inpatient care days by the routine home care rate;

(C) adding together the amounts calculated in subparagraphs (A) and (B) of this paragraph; and

(D) comparing the amount in subparagraph (C) of this paragraph with interim payments made to the hospice inpatient care during the "cap period."

(4) If the inpatient care maximum has been exceeded, DHS recoups excess payments from subsequent Medicaid hospice provider claims.

§30.62. Medicaid Hospice Claims Processing Requirements.

(a) Requirement for payment. To receive Medicaid hospice payments, an entity must be licensed as a hospice, Medicare certified by the Health Care Financing Administration (HCFA) as a hospice, and Medicaid certified by the Texas Department of Human Services (DHS).

(b) Submittal and forms completion requirements. To receive Medicaid Hospice payments, the provider must submit the following documents to Provider Claims Payment:

(1) Texas Medicaid Hospice Program Recipient Election/Cancellation Notice form;

(2) Texas Medicaid Hospice Program Physician Certification of Terminal Illness form; and

(3) Texas Index for Level of Effort (TILE) Assessment form, if applicable.

(c) Denials. DHS will deny the following provider claims to the Medicaid Hospice Program and/or to other DHS programs:

(1) claims for hospice service days prior to a valid Medicaid Hospice Election Notice and a Physician Certification of Terminal Illness(es);

(2) claims which have been returned to the provider or recipients who have revoked the election of the Medicaid Hospice Program;

(3) claims for recipients who have been denied Medicaid eligibility;

(4) claims for Medicare-Medicaid recipients who are covered by the Medicare Hospice benefit; and

(5) claims by hospice providers whose Medicaid hospice contract has been cancelled.

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SUBCHAPTER G. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §30.70

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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SUBCHAPTER H. ENFORCEMENT

40 TAC §§30.80, 30.82, 30.84

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on February 1, 2001.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3108

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SUBCHAPTER J. MISCELLANEOUS PROVISIONS

40 TAC §30.100

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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SUBCHAPTER A. REQUIREMENTS

40 TAC §§30.101, 30.103, 30.105

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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SUBCHAPTER I. MEDICAL REVIEW AND RE-EVALUATION

40 TAC §30.90, §30.92

The Texas Department of Human Services (DHS) adopts new §§30.90 and 30.92 with changes to the proposed text published in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7331). DHS is simultaneously filing a related adoption in Chapter 30 in this issue of the *Texas Register*.

Justification for the new sections is to provide more extensive Medicaid contracting rules for the Medicaid Hospice program, which has greatly expanded. Hospice providers need to be aware of their contractual responsibilities when contracting with DHS as Medicaid hospice providers. Providers are required to comply with 42 Code of Federal Regulations Chapter 418 Hospice Care, Health Care Financing Administration Medicaid Guidelines and state licensing rules.

The department received comments from the following organizations: Hospice of El Paso, Texas & New Mexico Hospice Organization, Nurses of Hospice New Braunfels, Hospice of Deep East Texas and Home Hospice. A summary of the comments and the department's responses follows.

Comment: Federal regulations require that the room and board payment to nursing facilities (NF) pass through the hospice provider. Due to multiple payment classifications in the TILE system, the addition of staffing enhancement incentives and the manual payment system for room and board, delayed or reduced payments have become a serious problem. Being required to complete the TILE form is financially burdensome and increases the amount of time nurses have to spend away from the patients who need them. Rules should allow the nursing facility staff to complete the TILE forms, rather than the hospice provider, and submit the bill for payment to be made to the hospice. The hospice would then give the money to the NF, fulfilling the intent of the federal regulations which state that the room and board payment should be paid to the hospice rather than the NF. Rules should allow the NF to be paid room and board directly by the department.

Response: The department made changes to the Subchapter I Medical Review and Evaluation whereby the nursing facility and hospice nursing staff will complete and sign the Client Assessment, Review and Evaluation (CARE) form at the point a hospice recipient enters the NF or a NF resident elects hospice, every six months, and as necessary. The NF will electronically submit the CARE form. Room and board payments, which include the enhanced rate, will be paid to the hospice provider. The hospice is required by federal law to pass the room and board rate onto the nursing facility.

New §§30.90 and 30.92 are adopted with changes to reflect that hospice and nursing facility nurses must complete and electronically submit the CARE Form 3652, TILE assessment. Section 30.92 identifies the purpose codes to be utilized when a nursing facility resident elects hospice, every six months thereafter and allows for retroactive payments for up to one year from the end of the covered time. These changes are based on input from public comment, a series of meetings, and a public hearing. Both providers will complete the assessment due to the responsibility of each for the care of the recipient in the nursing facility. Electronic submission of Form 3652 by the nursing facility will assist providers with prompt room and board payments, as long as, the hospice eligibility forms are submitted to the department on a timely basis. These rules are consistent with the Nursing Facility Utilization rules that will be promulgated in March 2001.

Sections 30.14, 30.60, and 30.62, which are simultaneously adopted in this issue of the *Texas Register*, have been changed to state that the hospice provider must retain copies of or retain and submit the Texas Index for Level of Effort (TILE) assessment. The hospice-nursing facility assessment will no longer be utilized by providers after June 1, 2001. This language is consistent with Subchapter I, Medical Review and Re-evaluation.

Comment: The Utilization Review rules require that the nurse who completes the TILE form attend TILE training. The provider is not reimbursed for attending this training, which becomes a cash cost to a hospice. We do not budget for the cost of time and travel for nurses to attend such a course. What would happen if a nurse, who is scheduled to attend this training, is called to an emergency with a dying patient and their family?

Response: The rule will remain as written. TILE training is free to the providers. The department conferred with HCFA on this issue. Staff must be aware and agree with the information provided on the CARE form, since the TILE dictates the payment to the facility. Staff must be trained on TILE to ensure that the nursing facility receives the appropriate rate. If staff are unable to attend the training, they can reschedule for the next training. The department extended the deadline for the TILE training to June 1, 2001 to allow providers more time for training.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§30.90. Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (HHSC) Utilization Review (UR) Department.

(a) According to federal regulations and State Plan requirements, HHSC UR staff will conduct required on-site activities related to utilization review and control in nursing facilities receiving Medicaid reimbursement through the hospice provider for hospice services.

(b) Hospice provider staff must cooperate with HHSC UR staff during on-site inspections regarding personal contact with hospice recipients and the review of their clinical records.

(c) Subchapter I Medical Review and Evaluation will go into effect on June 1, 2001.

§30.92. Texas Index for Level of Effort (TILE) Assessments.

(a) Recipient assessment. Hospice and Nursing Facility nurse assessors assess recipients for TILE determination by completing the Client Assessment Review and Evaluation (CARE) form. These assessments establish TILE classifications as described in paragraphs (1)-(4) of this subsection. Effective June 1, 2001, nurse assessors must have completed a Health and Human Services Commission (HHSC) TILE training course and must be registered with the National Heritage Insurance Company (NHIC).

(1) Admissions assessments. The providers must complete and submit the CARE form on the hospice recipient or applicant in a nursing facility within 20 days of the point of hospice election. The assessment period is four weeks prior to the assessment date. Assessments received after the 20th day will have as the effective date the stamp-in date. The nursing facility receives an additional off cycle assessment to utilize when the applicant already resides in the nursing facility. This type of admission to hospice would be coded as an off cycle assessment.

(2) Continued stay reviews. The off cycle assessment must be submitted on a nursing facility (NF) resident who elects the Medicaid hospice benefit, at the point of election and every 180 days thereafter. The following provisions apply:

(A) The assessment sets a new schedule for submission of forms, unless the applicant has an admission MN determination in effect.

(B) The hospice and NF providers must complete and submit the CARE form. The assessment may be submitted up to 45 days prior to the 180th day. Assessments received earlier than the 135th day will be rejected.

(C) The assessment will be effective the 181st day, the day after the current assessment expires.

(D) Assessments received by the Texas Department of Human Services (DHS) Provider Claims Payment Unit after the current assessment expires will be effective the stamped date of receipt.

(3) Off-cycle assessment. If a recipient's medical condition deteriorates to the extent that he qualifies for a different TILE, the providers may submit an off-cycle assessment. Only one off-cycle assessment is permitted per recipient during a six month current assessment period. An additional off cycle assessment is permitted for admitting a recipient to hospice.

(A) The off-cycle assessment will be effective the date received (stamp-in date) by DHS, thereby changing the review cycle.

(B) The providers must complete and submit another assessment every 180 days thereafter, as outlined under paragraph (2) of this subsection.

(4) Error correction. A new assessment may be submitted for the purpose of correcting clinical errors previously made in the assessment portion of the form. The submission of the correction does not change the schedule for the submission of forms or necessarily change the TILE group. HHSC will not accept requests for changes submitted:

(A) over 60 days from the date of assessment on the incorrect form; or

(B) after notification of an on-site review date.

(5) A provider may submit a request for retroactive payment, for up to one year from the end of the covered time period, in the following instances:

(A) when a provider provides care for a recipient for a period of time not covered by an effective MN determination at admission or by assessment CARE forms between reviews; or

(B) if a recipient is found to be otherwise eligible for Medicaid for the three months prior to the month of his date of application for Medicaid assistance.

(b) Review and appeal of case-mix assessments. HHSC nurse reviewers conduct desk reviews and on-site reviews of CARE forms to verify TILE information and determine that the recipient's status is accurately reflected. Forms expired over 12 months will not be reviewed.

(1) HHSC nurse reviewers notify nursing facilities and hospice providers in advance of routine onsite visits. Notice is given of recipients whose medical records will be reviewed, the time period covered by the review, the parts of the records of all hospice recipients necessary for review, and the accommodations necessary for the review. Nursing facilities and hospice providers receive a minimum of two work days notice prior to a routine visit. Less than two days notice may be given to providers whose last two on-site visits resulted in corrective action. No notice is required for visits for investigation of TILE issues, including suspected fraud, or for visits requested by another state agency. If nurse reviewers are prevented from conducting a review based on a provider's actions, TILE rates on the recipients chosen for review will be lowered to the default TILE rate until the review can be accomplished. Payments will not be reversed.

(2) When an HHSC nurse reviewer determines that the TILE classification is not substantiated and/or does not accurately reflect the recipient's status, the reviewer will discuss the error and give the provider the opportunity to submit additional documentation to support the provider's assessment. Documentation may be presented at any time during the review process or the exit conference and adjustments may be made. An exit conference is held with the

nursing facility and hospice provider staff following the review. The provider is given formal notification of all TILE changes within 15 working days of the exit conference.

(A) DHS recoups funds previously paid to the provider under incorrect TILE classification. DHS will pay the hospice provider any increase due to a change in TILE classification.

(B) The change in TILE classification and per diem rate is effective retroactively to the "effective date" of the assessment reviewed.

(3) If the HHSC nurse reviewer and the hospice nurse assessor are unable to agree about an assessment, the provider may submit a written request for a reconsideration by a state office nurse specialist.

(A) The request for the reconsideration and all documentation supporting the requested changes must be received by the state office nurse specialist within 15 days of receipt of formal notification of TILE changes.

(B) The state office nurse specialist will review all material submitted by the provider and all information collected during the utilization review (UR).

(C) The TILE classification and associated per diem rate specified by the HHSC nurse reviewer remain in effect during the reconsideration period.

(D) If the reconsideration establishes that HHSC has changed a TILE classification in error, HHSC corrects the error retroactively.

(4) If the provider disagrees with the findings of the state office nurse specialist, the provider may initiate a formal appeal, as stated in Chapter 79, Subchapter Q of this title (relating to Contract Appeals Process), by submitting a request to the Director, Hearings Department, Mail Code W-613, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030 within 15 days of receipt of notification of the results of the reconsideration.

(A) The TILE classification and associated per diem specified by the state office reconsideration nurse supervisor remain in effect during the formal contract appeal.

(B) If the informal review or contract appeal process establishes that HHSC changed a TILE classification in error, HHSC corrects the error retroactively.

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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CHAPTER 43. PERSONAL ATTENDANT SERVICES PROGRAM

40 TAC §§43.1 - 43.9

The Texas Department of Human Services (DHS) adopts the repeal of Chapter 43, Personal Attendant Services Program, §§43.1-43.9, without changes to the proposed text in the October 13, 2000, issue of the *Texas Register* (25 TexReg 10309). The text will not be republished.

Justification for the adoption is to create the new Consumer-Managed Personal Assistance Services (CMPAS) Program that will provide long-term consumer-managed personal assistance services to persons with disabilities who require such services to maintain independence in the community. Persons in the program will direct their own care by participating in decisions about selecting, training, and supervising their personal assistants. The Client-Managed Attendant Services (CMAS) Program is being combined with the Personal Attendant Services (PAS) Program, transferred to DHS on September 1, 1999, and language from DHS's Chapter 49, Contracting for Community Care Services. The PAS program and the CMAS program services provide identical services and have similar eligibility requirements. Hence, it is more efficient for the department and the consumers who we serve to combine the programs. This will help consumers access services and will eliminate unnecessary administration for the department.

In a related action, DHS adopts new §§48.2600-48.2619, Subchapter E, Client-managed Attendant Services, in this issue of the *Texas Register*.

The department received no comments regarding the proposal.

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

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

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER E. CLIENT-MANAGED ATTENDANT SERVICES

The Texas Department of Human Services (DHS) adopts the repeal of §§48.2601-48.2616 and new §§48.2600-48.2619. The repeals and new §§48.2600, 48.2603, 48.2608, 48.2610, 48.2612, 48.2613, and 48.2615-48.2619 are adopted without changes to the proposed text in the October 13, 2000, issue of the *Texas Register* (25 TexReg 10310) and will not be republished. Sections 48.2601, 48.2602, 48.2604-48.2607,

48.2609, 48.2611, and 48.2614 are adopted with changes to the proposed text.

Justification for the repeals and new sections is to create the new Consumer-Managed Personal Assistance Services (CMPAS) Program that will provide long-term consumer-managed personal assistance services to persons with disabilities who require such services to maintain independence in the community. Persons in the program will direct their own care by participating in decisions about selecting, training, and supervising their personal assistants. The Client- Managed Attendant Services Program is being combined with the Personal Attendant Services Program, transferred to DHS on September 1, 1999, and language from DHS's Chapter 49, Contracting for Community Care Services.

In a related action, DHS adopts the repeal of Chapter 43, Personal Attendant Services Program, in this issue of the *Texas Register*.

The department received comments regarding creation of the Consumer-Managed Personal Assistance (CMPAS) Program Rules. A summary of the comments and the department's responses follow.

Comment: Regarding §48.2601(3), §48.2601(7), and §48.2601(8), since the client hires and fires the attendant and is totally responsible for the services delivered under the block grant and the voucher models, the program should be named "Consumer Managed Personal Attendant Services (CMPAS) Program." Otherwise, it could be confused with the Personal Assistance Services (PAS) category of licensure under the Home and Community Support Services Agency (HCSSA) law/regulations. It is important that all understand that those two models are not performed under the HCSSA license. The word "attendant" is also a common element in the two programs that have been combined under these new rules, and it should be retained. The word "attendant" should be substituted for "assistant" where applicable throughout the rules.

Response: DHS did not change to the suggested language. In developing the proposed rules, the agency was aware that various terms have been used to describe persons who perform the function of personal assistance. Personal assistance was chosen because it is a broader term which encompasses the array of functions which these individuals perform.

Comment: Regarding §§48.2601(1) and 48.2606(1), replace the words "hiring" and "hires" with "selecting" and "selects." The terms "select" and "dismiss" should be utilized in the agency model descriptions, as opposed to "hire" and "fire" in the block grant and voucher models. This helps to keeps it clear that the agency is the employer in the agency model, and the client is the employer in the other models.

Response: DHS changed the proposed language. For the agency model, the word "hiring" will be changed to "selecting." We agree that this better describes the function which the consumer is performing.

Comment: Regarding §48.2601(2) and §48.2611(5)(D), Block grant model, replace the word "dismiss" with "firing". The contractor should not be responsible for providing back-up attendants in the block grant model. The contractor should only be responsible for providing back-up in the agency model. If the client chooses to purchase back-up services from the contractor or any other HCSSA, they should be able to use their funds to do so. However, the client should have to negotiate that rate with the agency(ies). In the event of back-up, the agency would be the employer of those attendants.

Response: DHS did not change the proposed language. "Dismiss" adequately describes the personnel action being taken by the consumer. Since its inception, the block grant model has always required the provider to provide back-up services. This is one of the important differences between the Vendor Fiscal Intermediary Model and the block grant model.

Comment: Regarding §48.2601(4), consumer, the second sentence should either be deleted since it is redundant or should read "He retains control over the hiring or selection, the management, and the firing or dismissal of an individual providing services, based upon the model chosen."

Response: DHS changed the proposed language to read "He retains control over the selection." This language includes the function which all three payment models follow.

Comment: Regarding §48.2601(5), contractor, should read "A legal entity which has entered into a ..." Once again, the only services the contractor performs that come under the HCSSA license are provision of direct services in the agency model, and back-up services for the block grant and voucher models if the client chooses to purchase them through the contractor's HCSSA. In the latter case, the back-up services would then fall under the agency model. The qualifications of the contractor are stated correctly in §48.2603 and do not need to be stated here.

Response: DHS changed the proposed language as suggested. This more accurately reflects the broad function which all contractors perform.

Comment: Regarding §48.2601(6), fiscal agent, does the contractor have the option of being a fiscal agent? It appears that in §48.2601(5) they have to offer all three options.

Response: The contractor in the agency model has the option to be a fiscal agent, but is not required to perform this function.

Comment: Regarding §48.2601(8), the VFI handles the administrative functions for all personal attendants whether or not they are primary or substitute. To state this here could be construed to mean that the VFI provides substitute (back-up) attendants and it must be clear that they are in no way responsible for that function. Also, you could add after the last sentence, "The consumer is responsible for obtaining all back-up services."

Response: DHS changed the proposed language to read "The payment option in which the consumer controls the recruitment hiring, management, and firing of his personal assistant and substitute (back- up) personal assistants." This more accurately reflects the consumer function of providing his/her own substitute back-up care in the VFI model.

Comment: Regarding §48.2602(a)(4), it should read "Delegated health-related tasks--Health related tasks require a physician's order and must be delegated by a physician or a registered nurse in accordance with their respective practice acts. Physician delegation must be specific to the client, attendant, and tasks. Tasks include but are not limited to..." In the agency model, physician delegation is allowed under the HCSSA PAS category and therefore these rules should not require an RN to be involved. On the other hand, although physician delegation is most likely to occur in the voucher and block grant models, RN delegation should be allowed.

Another comment was received on the same subsection suggesting the following wording: "Health related tasks requiring

physician's orders authorizing the consumer's specific personal assistant(s) to perform specific tasks delegated by the physician and/or authorizing the Registered Nurse to delegate specific tasks include, but are not limited to ..."

Response: DHS changed the proposed language as suggested in the first paragraph above. This language clearly states the intent of allowing physician and/or nurse delegation based on physician's orders.

Comment: Regarding §48.2602(a)(4), care for a decubitus stage I may only require gentle cleansing (such as routine shower or bath) and pressure relieving methods. As the rule stands, any type of care for a stage I (in which the skin may only have a slight discoloration without any break) would require a physician's order and physician delegation. A competent client who directs his or her own care should be allowed an attendant's assistance with this type of care without a physician's order or delegation. I recommend that this rule be modified to ensure that this basic type of skin care can be provided without specific physician's orders and delegation.

Response: DHS changed the proposed language in §48.2602(a)(4)(D). The original intent was to maintain stage II only on this list.

Comment: Regarding §48.2602(b)(1), it should read "unless delegated by a licensed physician or registered nurse..."

Response: DHS changed the proposed language as suggested above. This clearly allows nurse delegation as an option.

Comment: Regarding §48.2603, we support the language as stated since it allows the contractor to perform the non-direct care services (program eligibility, fiscal agent, consumer training, etc.) outside of the HCSSA license; however, it assures the contractor does have these services available should the client choose the agency model or desire to purchase back up services from that agency.

Response: No change is indicated.

Comment: Regarding §48.2604(7), change "plan of care" to "service plan."

Response: DHS changed the proposed language as suggested above. This is the better term to use for the CMPAS program.

Comment: Regarding §48.2605(1), is the contractor required to sub-contract for the VFI services if they do not offer it themselves?

Response: The contractor is not required to sub-contract for VFI services. Consumers have an option to work with another VFI contractor if their contractor does not offer this service.

Comment: Regarding §48.2605(6), it should read "maintain a copy of physician's orders, identification of the delegating physician or RN, and names of attendants and specific tasks, as applicable, in the consumer's file when health-related services specified in 48.2602(a)(4) of this title are performed under the VFI or Block Grant options." This should be the extent to which the agency is responsible under either one of these models, as the services are not performed under the HCSSA license in these instances. If the health related services are provided under the agency model, these will be performed in accordance with the HCSSA licensure rules and the HCSSA will be responsible for compliance.

Response: DHS changed the proposed language as suggested above with the exception of specifically targeting the VFI and Block Grant option. This wording more clearly expresses intent; however, all models need to follow this rule.

Comment: Regarding §48.2606, the title of this is "responsibility under the agency model;" however, (1) also speaks to the block grant model. Subsections should be limited to discussing the agency model only.

Response: DHS did not change the proposed language. This responsibility is listed in both the agency and block grant subsection. Because it is not a responsibility under all three models, it can not be included in section §48.2605.

Comment: Regarding §48.2606(3)(A), the agency must be in compliance with the HCSSA license rules under the Agency Model. We would like a statement from the Department's HCSSA licensing department that the client, rather than the agency, is responsible for training and determining competence of the attendant with regard to tasks to be performed, and that the client or their designee is recognized as the supervisor for purposes of HCSSA licensure.

Response: Under the agency model, the agency, not the consumer is the employer of record and is responsible for initial orientation and determination of competence of personal assistants. HCSSA was consulted about the VFI and block grant model. They have verified that when the consumer is the employee of record, the services do not fall under HCSSA licensure.

Comment: Regarding §48.2606(3)(K), it should read "Provide all attendant services under the Personal Assistance Services category of their Home and Community Support Services Agency license." This has not been stated anywhere, and since this is the only model that should be subject to the license, it should be stated here. There is then no need to specifically break out the section on health-related tasks. The agency should be allowed to utilize physician or RN delegation, as is currently the case under the HCSSA license.

Response: The HCSSA license is noted in the §48.2601(3). In §48.2606(3)(K) DHS clarified that nurse supervision is required when tasks are delegated by a registered nurse.

Comment: Regarding §48.2607(1) and §48.2611(4), the sections state that the amount of funds retained by the contractor must not exceed the amount retained under the VFI model; however, §48.2607(2) states that the contractor is responsible for maintaining a pool of attendants for recruitment and back-up under the block grant model. This is quite expensive for the contractor to do. The limitation on the amount retained by the contractor in one model should not be based upon another option. It seems that the client should have the same responsibility under the VFI and block grant models with regard to recruiting, hiring and firing attendants, and obtaining their own back-up attendant. The client should have the capability of obtaining backup from the contractor's HCSSA or another HCSSA of their choice, or from their own personal back-up list just as any other private client would do. The client should be able to negotiate their price to obtain back-up attendant through agencies. The only difference between the VFI and the Block Grant should be that the client would handle all payroll functions under the block grant model. The contractor should be able to process a bill from an agency under the VFI model and reimburse the client for expenses for agency-provided back-up under the Block Grant model.

Response: DHS changed the proposed language to indicate that under the block grant model, the funds retained by the contractor will be negotiated with the consumer. This will allow the consumer a clear choice between the block grant and VFI model. It is understood that the extra expenses of providing back-up care needs to be taken into account.

Comment: Regarding §48.2609(4), it should read: "Hiring and firing the personal attendant under the Block Grant model and VFI option, and selecting and dismissing the attendant under the Agency Model."

Response: DHS changed the proposed language to "selecting and dismissing" to indicate the common role under all three payment models.

Comment: Regarding §48.2609(8), it should read: "In the VFI option, submitting."

Response: DHS did not change proposed language. This is a consumer responsibility under all payment models.

Comment: Regarding §48.2609(12), it should read "In the VFI option or Block Grant model, obtaining."

Response: DHS did not change proposed language. This is a consumer responsibility under all payment models.

Comment: Regarding §48.2609(12)(C), replace "patient" with "consumer."

Response: DHS replaced proposed language as suggested above.

Comment: Regarding §48.2609(14), include "changes in the consumer's physical condition which may effect the need for services."

Response: DHS replaced proposed language as suggested above.

Comment: Regarding §48.2611(3), replace "selection" with "hiring," and "dismissal" with "firing". The terms "long-term care" and "respite" have not been used elsewhere--only the term "personal assistance." Why are they included here?

Response: DHS replaced "selection" with "hiring" and deleted the terms "long term care" and "respite."

In addition, DHS corrected a reference to §48.6098 in §48.2613 and added the word "to" in §48.2614 for clarification.

40 TAC §§48.2600 - 48.2619

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.001- 22.030.

§48.2601. Definitions.

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

(1) Agency model--The payment option in which people with disabilities control the selecting, training, management, and dismissal of their personal assistants. A contractor controls the recruitment of personal assistants and back-up personal assistants and performs employer- related administrative functions. These administrative functions include payroll functions and filing tax-related reports of personal assistants. The contractor is the employer of record.

(2) Block grant model--The payment option in which the consumer controls the recruitment, hiring, management, and dismissal of his personal assistants. The consumer handles employer-related administrative functions that include payroll functions for their personal assistants and substitute (back-up) personal assistants and filing tax-related reports of personal assistants. The consumer is the employer of record. The contractor is responsible for providing substitute attendants and reimbursing the consumer for wages and employment taxes paid to the personal assistants for authorized services.

(3) Consumer-Managed Personal Assistance Services (CMPAS)--Personal assistant services provided by agencies licensed as Home and Community Support Services Agencies (HCSSAs) under the category of Personal Assistance Services license. Consumers in this program are mentally competent, physically disabled adults who are willing to supervise their personal assistant or who delegate someone to supervise the personal assistant. This program is unique in that it offers three payment options for the delivery of personal assistance services: agency model, block grant model, and vendor fiscal intermediary (VFI) model. Payment options vary based on the way a personal assistant is paid and the employer of record. The payment option determines the amount of control the consumer has over his services. It also impacts the flexibility of the service delivery. Consumers or contractors have different responsibilities in each option.

(4) Consumer--An eligible recipient of CMPAS services. The consumer manages his personal assistant in all three payment options. He retains control over the selection, management, and dismissal of an individual providing personal assistance.

(5) Contractor--A legal entity that has entered into a contractual agreement with the Texas Department of Human Services (DHS) to deliver CMPAS in accordance with established policies. The contractor determines the consumer's eligibility for services, authorizes the consumer's service levels within program limits, and offers the consumer a choice of the three payment options in CMPAS.

(6) Fiscal agent--A CMPAS contractor who agrees to participate in the vendor fiscal intermediary model. The fiscal agent enters into a contractual agreement with DHS to handle payroll; prepare and file tax-related forms and reports for workers' compensation, state and federal unemployment, Medicare, and Federal Insurance Contributions Act (FICA); and reimburse consumers for employer-related expenses.

(7) Personal assistant--A person who is employed by the consumer or contractor to provide personal assistance through CMPAS.

(8) Vendor fiscal intermediary model (VFI)--The payment option in which the consumer controls the recruitment, hiring, management, and firing of his personal assistants and substitute (back-up) personal assistants. A fiscal agent, the contractor, handles employer-related administrative functions that include payroll for the personal assistants and substitute (back-up) personal assistants and filing tax-related reports of personal assistants. The consumer is the employer of record.

§48.2602. Program Services.

(a) Eligible consumers are entitled to the following personal assistance services.

(1) Escort. Escort services include, but are not limited to, arranging for transportation or accompanying the consumer on trips such as to obtain health care services, household items, or wheelchair repairs, and to other locations in the community. The consumer is responsible for the cost of transportation.

(2) Home management. Home management services include, but are not limited to, assistance with activities related to housekeeping that are essential to the consumer's health and comfort:

(A) changing bed linens;

(B) house cleaning;

(C) laundering;

(D) shopping;

(E) storing purchased items; and

(F) washing dishes.

(3) Personal care. Personal care services include, but are not limited to, assistance with activities related to the care of the consumer's physical health:

(A) bathing;

(B) dressing and undressing;

(C) preparing meals;

(D) eating;

(E) exercising;

(F) grooming;

(G) caring for routine hair and skin needs;

(H) assistance with self-administered medications including suppositories;

(I) toileting;

(J) transfer and ambulation;

(K) changing an external catheter;

(L) using external manual manipulation to implement a bowel program;

(M) providing personal care related to menstruation;

(N) inserting and removing a tampon;

(O) providing ileostomy care (removing and disposing old bag and reapplying the new bag); and

(P) providing colostomy care (removing and disposing old bag and reapplying the new bag).

(4) Delegated health-related tasks. Health-related tasks require a physician's order and must be delegated by a physician or a registered nurse in accordance with their respective practice acts. Physician or a registered nurse delegation must be specific to the client, attendant, and tasks. In the agency model only, personal assistants or back-up assistants performing registered nurse delegated health- related tasks must be supervised by a registered nurse as specified in §48.2606(3)(K) of this title (relating to Additional Contractor Responsibilities Under the Agency Model). Tasks include, but are not limited to:

(A) internal catheter care, including insertion, irrigation, and changing;

(B) administration of medications;

(C) bowel program, including cleansing enema, and internal digital stimulation;

(D) decubitus care, stage II; and

(E) changing sterile dressings.

(b) The following services may not be authorized for reimbursement through the Consumer-Managed Personal Assistance Services (CMPAS) program:

(1) tasks that must be provided by licensed nurses or therapists unless delegated by a licensed physician or registered nurse; and

(2) the purchase of additional services and/or supplemental pay that result from agreements between the personal assistant and the consumer.

§48.2604. Consumer Eligibility Criteria.

To be eligible for participation in the Consumer-Managed Personal Assistance Services (CMPAS) program, the applicant must:

(1) be age 18 or older;

(2) have a physician's statement that the applicant has a physical disability. The physician's statement must describe the disability and state whether the disability is permanent or is expected to last for at least six months from the date eligibility is determined. If the disability is not permanent, the physician's statement must specify the expected duration of the disability;

(3) not receive Primary Home Care, Family Care, Residential Care (supervised living services and emergency care), Adult Foster Care, Frail Elderly Program, Medicaid Waiver Program services, Special Services To Persons With Disabilities - attendant services while receiving CMPAS, or attendant services through the In-Home Family Support Program;

(4) need assistance with at least one personal care task for at least five hours per week;

(5) be able and willing to self-direct personal assistant care or have a relative or friend who is able and willing to be responsible for directing the care without compensation;

(6) reside in one of the contract areas established as part of a procurement for CMPAS;

(7) have a service plan for authorized CMPAS of 52 hours per week or fewer. In addition, all Community Care for the Aged and Disabled services added to CMPAS must cost less than the weighted average cost for nursing home care; and

(8) have a funded service slot, based on availability of funds appropriated by the Texas Legislature to the CMPAS program.

§48.2605. Contractor Responsibilities Under Agency, Block Grant, and Vendor Fiscal Intermediary (VFI) Models.

After interviewing the applicant, the contractor must:

(1) provide personal assistance services to a specific number of eligible consumers in a specific geographic area as outlined in their contract with the Texas Department of Human Services (DHS). Contractors may provide the vendor fiscal intermediary (VFI) model, or refer consumers for that model to a VFI.

(2) employ an assessor with knowledge, understanding, and/or training in independent living concepts and at least one year of experience working with persons with physical disabilities. The assessor performs the following functions:

(A) determines service eligibility. The applicant must meet each criterion as specified in §48.2604 of this title (relating to Consumer Eligibility Criteria);

(B) enables the applicant to make an informed choice by discussing alternatives in public programs that offer personal assistance services;

(C) assesses and reassesses service needs annually, face-to-face, or by telephone, by using DHS Client Needs Assessment Questionnaire and Task/Hour Guide form; and

(D) develops a service plan that:

(i) includes the number of hours and tasks authorized and negotiated between the applicant and the contractor. Up to 10 hours per week may be authorized for tasks related to care of a dependent child under the age of 12; and

(ii) is signed by the applicant. If the applicant does not agree with the assessment of the service level and service plan, the issue is referred to the contractor's supervisory staff for resolution. If the outcome is unsatisfactory to both parties, a final determination is made by designated DHS staff within 30 days of notification. If the applicant does not agree with the determination of service level and service plan approved by the contractor's supervisory staff, the contractor must not delay initiation of services. Contractor staff, with the consumer's consent, may initiate services according to their assessment of the service level required and notify the designated DHS staff of the consumer's disagreement with the service level.

(3) place the applicant on an interest list if the eligible applicant cannot be served because the contractor is operating at full capacity. Full capacity is reached when all funds appropriated to the CMPAS program by the Texas Legislature have been allocated to the contractor by DHS and are already budgeted to be spend on existing clients. The contractor must:

(A) provide CMPAS services as space becomes available to two people from the CMPAS interest list and one person from the PAS waiting list in chronological order until all names are removed from the PAS interest list;

(B) contact the applicant annually to determine if he is still interested in receiving services and to inform him of his place on the interest list; and

(C) provide the interest list to the regional staff monthly. Regional staff places each applicant's name in the community care interest list system. As providers serve people from the interest list, regional staff update the interest list. In regions with more than one contractor, regional staff maintain the interest list, which combines the information from each contractor's interest list. As openings occur, regional staff contact consumers and give them a choice among providers.

(4) determine the consumer's copayment annually or upon change in consumer's income level. The contractor must notify the consumer of the need to follow copayment procedures to retain eligibility. Consumers are required to enter into copayment agreements based upon non-excluded monthly net income less allowable deductions. Computation of copayment amounts is outlined in §48.2614 of this title (relating to Consumer Copayment).

(5) offer the applicant a choice between the following three methods of paying the personal assistant:

(A) the contractor may pay the personal assistant's salary directly as specified in the agency model §48.2606 of this title (relating to Additional Contractor Responsibilities under the Agency Model) and §48.2610 of this title (relating to Additional Consumer Responsibilities under the Agency Model); or

(B) the consumer may pay the personal assistant's salary from a block grant option as specified in §48.2607 of this title (relating to Additional Contractor Responsibilities under the Block Grant Model) and §48.2611 of this title (relating to Additional Consumer Responsibilities under the Agency Model). Consumers receiving Medicaid or other services where eligibility may be wholly or partially based upon income are not allowed to choose this option; or

(C) the consumer may choose the VFI option as specified in §48.2608 of this title (relating to Additional Contractor Responsibilities under the VFI Model) and §48.2612 of this title (relating to Additional Consumer Responsibilities under the VFI Model).

(6) verify that there are standing physician's orders in accordance with the Texas Medical Practices Act and all related state and federal statutes and regulations if the personal assistant(s) provides the consumer any of the health-related services specified in §48.2602(a)(4) of this title (relating to Program Services). The contractor must maintain a copy of the standing physician's orders, identification of the delegating physician or registered nurse, and names of attendants and specific tasks, as applicable, in the consumer's file when health-related services specified in §48.2602(a)(4) of this title (relating to Program Services) are performed.

(7) re-assess and assist consumers when there is a change in consumer status. In some instances, personal assistant care will be insufficient. In this case, the consumer or contractor must request an evaluation of his needs. Based on the re-reassessment, services may be increased if appropriate, or terminated, if the additional tasks or hours exceed the cost ceiling for the program. Before services are terminated, the contractor must notify DHS following the procedures outlined in §48.6098 (a)-(d) of this title (relating to Applicant and Consumer Rights and Responsibilities in Agency, Block Grant and Vendor Fiscal Intermediary Models. Contractor staff must be aware of the availability and eligibility criteria for other services available in the community and develop contingency plans for consumers whose physical condition or environment deteriorates significantly.

(8) train consumers in skills needed to select, instruct, and supervise personal assistants, preparation of personal assistant timesheets, and their obligations to the Internal Revenue Service in the block grant and VFI models.

(9) initiate services as quickly as possible if the contractor is not at full capacity and an applicant is determined to be at risk. If the at-risk applicant meets all other eligibility criteria, a physician's verbal statement of the consumer's physical disability is adequate for up to 30 days. For services to continue beyond 30 days, the contractor must possess a written physician's statement that verifies the consumer's disability and the date of the verbal statement. To initiate services under these circumstances, the contractor may use personal assistants of their choice. If the contractor is at full capacity when the application is received, the contractor must make a referral to other community resources. The consumer is allowed to interview permanent personal assistants after services have been initiated.

(10) send a letter to all consumers and personal assistants giving them the effective contract termination date within 10 days of contractor termination notification. The letter must also provide the name of the new contractor, procedures to transfer employment records to the new contractor, and a statement of the intent to effect a smooth transition with as little disruption in service as possible. The contractor must provide the new contractor with the names, addresses, and telephone numbers of consumers and personal assistants within ten days of notification of loss of contract. For each consumer, the contractor must also provide a copy of the current DHS Authorization for Community Care Services and Community Care Intake forms and copies of all documentation necessary for the consumer to participate in this program.

(11) comply with the rules in Chapter 49 of this title (relating to Contracting for Community Care Services).

(12) review with the consumer and provide a copy of the DHS Community Care for the Aged and Disabled Client's Rights and Responsibilities at initial assessment and reassessment.

(13) comply with §49.13(a)-(d) of this title (relating to Client Rights and Responsibilities) regarding consumer's rights and responsibilities and complaint procedures.

(14) notify the ineligible applicant in writing using DHS form Notification of Community Care Services within three calendar days of the date of the decision.

(15) notify the consumer and the department of implementing any suspension reduction, or termination of services or increase in copayment at least 12 days before the effective date of the decision in accordance with §48.2613 of this title (relating to Suspension and Termination of Services.

(16) instruct consumers and personal assistants that personal assistants should provide only those tasks and those hours authorized on the DHS form Authorization for Community Care Services; unless the consumer privately pays for additional hours;

(17) instruct consumers to complete the timesheet as required.

(18) assure that family members or relatives employed as personal assistants and providing additional or non-covered services as informal caregivers meet all employment qualifications of the home-health agency and is not disqualified. A family member is disqualified if the applicant or participant does not want the family member as the paid contractor, there is evidence that the family member has abused or exploited the applicant/ participant; or there is evidence that the family member has not delivered services in accordance with the personnel requirements of the contractor.

(19) receive and process personal assistant timesheets.

(20) prepare payroll and distribute checks to appropriate parties.

(21) complete tax form and reports.

§48.2606. Additional Contractor Responsibilities Under the Agency Model.

In addition to the responsibilities listed in §48.2605 of this title (relating to Contractor Responsibilities Under Agency, Block Grant and Vendor Fiscal Intermediary Models), contractors in the agency model:

(1) must maintain a pool of substitute personal assistants to use as substitutes and as a referral pool for consumers who do not choose the VFI option. Substitutes provide emergency back-up personal assistant capability upon request of the consumer. In the agency model the contractor is the employer of substitute personal assistants it provides. When a personal assistant's employment is terminated, replacement personal assistants are supervised by the contractor until the consumer selects another personal assistant.

(2) may hire any personal assistant who meets licensure. Prospective personal assistants are referred to consumers of the program until a satisfactory match is achieved. In the event the consumer delays hiring a personal assistant for more than seven calendar days after eligibility has been determined, the person conducting the assessment must confer with the consumer to identify the reasons for failure to hire a personal assistant and to provide training when necessary to enable the applicant or consumer to choose a personal assistant.

(3) are the employers of record for the personal assistant in the agency model. The contractor must:

(A) be responsible for the initial orientation of personal assistants for consumers who participate in the agency model. The personal assistant is notified of his rights and responsibilities as part of this training. Required subjects for orientation are basic interpersonal skills; needs of persons with disabilities; overview of the types of tasks the personal assistant will be performing; first aid, safety and emergency procedures, proper completion of required forms; explanation of the consumer's role as supervisor; and explanation of the contractor's responsibilities to personal assistants. This training is provided on or before services are provided for a consumer. The consumer provides the personal assistant all additional training needed to meet his needs. In the block grant or vendor fiscal intermediary model, the consumer provides all the training for the personal assistant.

(B) determine the consumer's preference regarding resuscitation. When there is documentation that the consumer desires resuscitation, the contractor must ensure that the personal assistant for the consumer has a current course completion card for adult cardiopulmonary resuscitation (CPR) from either the Red Cross or American Heart Association. When the consumer desires CPR, new personal assistants must complete the course paid for by the contractor within 60 days from employment.

(C) assume all responsibility for filing of employee income and unemployment taxes.

(D) assume liability for employee work-related injuries.

(E) prepare payroll and distribute payroll checks to personal assistants.

(F) conduct criminal history check prior to placement of personal assistant on the job to the consumer.

(G) resolve problems between the consumer and the personal assistant.

(H) make payroll spending decisions regarding salary of personal assistant and benefit package.

(I) not discriminate against personal assistant or applicants.

(J) accept responsibility for acts of personal assistant on the job.

(K) provide registered nurse supervision of personal assistants and back-up assistants performing health-related tasks ordered by a physician and delegated by a nurse. The Home and Community Support Services Agencies (HCSSA) agency registered nurse must verify the competence of the personal assistant(s) to perform the health-related tasks delegated by a registered nurse.

§48.2607. Additional Contractor Responsibilities Under the Block Grant Model.

In addition to the responsibilities listed in §48.2605 of this title (relating to Contract or Responsibilities Under Agency, Block Grant, and Vendor Fiscal Intermediary (VFI) Models), contractors in the block grant model must:

(1) reimburse the consumer for personal assistant wages and the employer share of Social Security. The amount of funds retained by the contractor under this model is negotiated with the consumer based upon cost of providing backup and other services.

(2) maintain a pool of personal assistants to use as substitutes and as a referral pool for consumers who do not choose the VFI option. Substitute assistants provide emergency back-up capability upon request of the consumer. The contractor is the employer of substitute personal assistants it provides. When a personal assistant's

employment is terminated, the contractor supervises replacement personnel until the consumer hires another personal assistant. Prospective personal assistants are referred to consumers of the program until a satisfactory match is achieved. If the consumer delays hiring a personal assistant for more than seven calendar days after eligibility has been determined, the person conducting the assessment must confer with the consumer to identify the reasons for failure to hire a personal assistant. The person conducting the assessment must also provide training when necessary to enable the applicant or consumer to hire a personal assistant.

§48.2609. Applicant and Consumer Rights and Responsibilities Under the Agency, Block Grant, and Vendor Fiscal Intermediary Models.

The applicant or consumer is responsible for:

(1) obtaining the physician's statement of physical disability as specified in §48.2604 of this title (relating to Consumer Eligibility Criteria);

(2) choosing the method of payment to the personal assistant as specified in §48.2605(5) of this title (relating to Contractor Responsibilities) by completing the Texas Department of Human Services' (DHS's) Consumer Selection of Consumer-Managed Personal Assistance Services (CMPAS) Payment Option form;

(3) negotiating the number of hours and tasks with the contractor and establishing the schedule for the personal assistant to provide services;

(4) selecting and dismissing the personal assistant;

(5) training the personal assistant in the delivery of services, using acceptable and/or necessary procedures;

(6) supervising the personal assistant in the delivery of services or arranging for a friend or relative to provide direct supervision of the personal assistant;

(7) supervising the personal assistant's recording of hours worked and signing and dating the personal assistant's timesheet on or after the last day of the reporting period services were provided;

(8) submitting the signed and dated timesheet to the fiscal agent, according to the payroll schedule established by the fiscal agent. The consumer understands that late arrival of timesheets may result in delay in the personal assistant(s) being paid;

(9) notifying the contractor of duplicate disallowed services provided by DHS, such as primary home care or family care;

(10) submitting to the contractor any copayment amounts required;

(11) providing proof of income for the initial assessment, annual reassessment, and when income changes;

(12) obtaining standing physician's orders to delegate any of the health-related tasks specified in §48.2602(a)(4) of this title (relating to Program Services) and authorized in the service plan. Standing physician's delegation orders must specify the following:

(A) the delegated health-related tasks;

(B) the personal assistant(s) and back-up personal assistant(s) to whom the health-related tasks are delegated;

(C) the consumer's name; and

(D) the date;

(13) appealing the suspension or termination of services according to applicable agency rules; and

(14) informing the contractor and DHS of any changes in the consumer's status which include, but are not limited to, changes in the consumer's address, telephone number, and changes in the consumer's physical condition that may affect the need for services.

§48.2611. Additional Consumer Responsibilities Under the Block Grant Model.

In addition to the responsibilities listed in §48.2609 of this title (relating to Applicant and Consumer Rights and Responsibilities in Agency, Block Grant, and Vendor Fiscal Intermediary Models), consumers who choose the block grant model are responsible for:

(1) resolving any employer or employee-related problems or disagreements directly with his personal assistant(s);

(2) not discriminating against personal assistants or applicants based on race, creed, color, national origin, sex, age, disability, or sexual orientation;

(3) assuming liability for work-related injuries to personal assistant. Personal assistants of consumers participating in the block grant model are considered employees of the consumer. The consumer is the employer and retains control over the hiring, management, and dismissal of an individual providing personal assistance services. Personal assistants are not employees of the contractor or the Texas Department of Human Services (DHS), and the contractor and DHS are not responsible or liable for any negligent acts or omissions by the personal assistant;

(4) spending all funds received from the contractor on wages, employer share of social security, and employee benefits;

(5) preparing and signing an agreement with the personal assistant. This agreement includes:

(A) the tasks the personal assistant is to perform for the consumer;

(B) the schedule the personal assistant will work for the consumer;

(C) the hourly rate the consumer will pay the personal assistant, which must be at least the amount the contractor normally pays personal assistants, and timeframes (at least twice a month);

(D) under what conditions the personal assistant may be dismissed; and

(E) the requirements that the personal assistant must let the consumer know at least 24 hours in advance of the personal assistant not being able to work for the consumer;

(6) supervising the personal assistant's recording of hours worked and signing and dating the personal assistant's timesheet on or after the last day of the reporting period services were provided; and

(7) submitting the signed and dated timesheet to the contractor.

§48.2614. Consumer Copayment.

(a) The copayment amount is based on the monthly net income of both the consumer and the consumer's spouse. Monthly net income is computed according to procedures outlined in §48.2615 of this title (relating to Determination of Monthly Total Income) and §48.2616 of this title (relating to Computation of Net Income and Income and Income Eligibles). A copayment percentage is then applied according to the following tables. When the consumer suffers undue hardship as a result of financial obligations, the co-pay schedule can be reduced or waived if approved by the department.

(b) The percentage in the right column is multiplied by the cost of the consumer's monthly services to determine the consumer's monthly copay amount.
Figure: 40 TAC §48.2614(b)

(c) The contractor must collect payment from the consumer by the 10th work day of the month. If payment is not made by the 10th work day of the month, the contractor must send notice to the consumer by the 11th work day of the same month. The contractor cannot charge the consumer a fee for late payment. The contractor may terminate services for failure to pay a copayment.

(d) The contractor must keep receipts for all copayments collected. The contractor must deduct the copayment amount (assessed on the authorization for community care services form) from reimbursement claims submitted to the Texas Department of Human Services.

(e) The contractor must maintain a current consumer copayment ledger system that reflects all charges and all payments made by the consumer. The ledger must reflect all copayment charges, payments, and balances, and must be maintained in accordance with generally accepted accounting principles.

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 January 30, 2001.

TRD-200100567
Paul Leche
General Counsel
Texas Department of Human Services
Effective date: March 1, 2001
Proposal publication date: October 13, 2000
For further information, please call: (512) 438-3108

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40 TAC §§48.2601 - 48.2616

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

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

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General Counsel
Texas Department of Human Services
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For further information, please call: (512) 438-3108

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PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 183. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

SUBCHAPTER A. DEFINITIONS AND BOARD OPERATIONS

40 TAC §183.17

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §183.17, paragraph (2) concerning Board Membership, without changes to the text published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12635). This rule will allow the Commission more flexibility regarding the terms of members of the BEI Advisory Committee.

No comments were received on the proposed changes.

This amendment is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adoption.

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

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TRD-200100633
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: February 20, 2001
Proposal publication date: December 22, 2000
For further information, please call: (512) 407-3250

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40 TAC §183.29

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §183.29 without changes to the text published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12636). This rule will establish the pay rates for compensating evaluators.

No comments were received on the proposed changes.

This amendment is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this adoption.

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

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David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
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For further information, please call: (512) 407-3250

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

The Texas Workforce Commission (Commission) adopts the repeal of and new Chapter 800, General Administration, §800.2, relating to definitions, without changes to the proposal as published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12351). The text will not be republished.

Purpose: The purpose of the repeal and new section 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 repeal and new section 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.

No comments were received on the proposed repeal and new rule.

The repeal is adopted 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.

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 January 30, 2001.

TRD-200100563
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: February 19, 2001
Proposal publication date: December 15, 2000
For further information, please call: (512) 463-2573

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The new section is adopted 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.

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 January 30, 2001.

TRD-200100564
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
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Proposal publication date: December 15, 2000
For further information, please call: (512) 463-2573

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CHAPTER 811. CHOICES

The Texas Workforce Commission adopts the repeal of Chapter 811, Choices, Subchapter A, General Provisions, §811.1 and §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, and Subchapter G, Appeals, §811.101; and adopts new Chapter 811, Choices, Subchapter A, General Provisions, §811.1 and §811.2, Subchapter B, Access to Choices Services, §§811.12-811.14, Subchapter C, Choices Services, §§811.22, 811.24-811.28, and 811.30-811.33, Subchapter D, Restrictions on Choices Services, §811.51, Subchapter E, Support Services and Other Initiatives, §§811.61-811.63 and §811.66, and Subchapter F, Appeals, §811.71 and §811.72, relating to Choices services and the participation requirements for persons receiving temporary cash assistance from the Texas Department of Human Services, without changes to the proposed rules as published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12353). The text will not be republished. Chapter 811, Choices, Subchapter A, General Provisions, §811.3 and §811.4, Subchapter B, Access to Choices Services, §811.11, Subchapter C, Choices Services, §§811.21, 811.23, 811.29, and 811.34-811.37, and Subchapter E, Support Services and Other Initiatives, §§811.64, 811.65, and 811.67 are adopted with changes to the proposed rules and will be republished.

The four principles of Texas' vision are: limited and efficient state government, local control, personal responsibility, and support for strong families. 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 planning, 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 and §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 may be eligible for and receive services funded through other resources, such as 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 WIA-funded services should be utilized only after other funding sources, including Choices funds, are exhausted.

Comments were received from one commenter, the West Central Workforce Development Board. The comments and responses are as follows.

Comment: The commenter stated that the Commission is to be commended for identifying areas of local board flexibility as well as expanding the definitions to clarify all individuals who can be served under the Choices program. The commenter also stated that there was only one area of concern about the rule overall regarding the use of the term "Board." In some instances it appears to refer to services that would be delivered by a contractor or other Texas Workforce Center partner, such as regarding on-going assessment, follow-up, and retention. The commenter recommended that language be added throughout the rule, as appropriate, in those instances where a Texas Workforce Center partner or the Board's contractor is actually providing the services, such as in §811.71(a) which specifies a "Texas Workforce Center partner" or by stating that the "The Board shall ensure" rather than "The Board shall ...".

Response: The Commission agrees that Boards are prohibited from delivering services and agrees with clarifying the language. The Commission will change the language throughout, where applicable, to state more clearly the Board's role by using "The Boards shall ensure" and similar language. The Commission does not agree with referencing to the "Texas Workforce Network" and/or the "Board's contractor" because it may create less clarity regarding the Board's role.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §811.1, §811.2

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.

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

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40 TAC §§811.1-811.4

The rules are adopted 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.

§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.

(e) Board monitoring. A Board shall ensure that monitoring activities are performed as required by Chapter 800, Subchapter I of this title.

§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 shall ensure that applicants are provided 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ELIGIBILITY AND PARTICIPATION

40 TAC §§811.11-811.20

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.

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SUBCHAPTER B. ACCESS TO CHOICES SERVICES

40 TAC §§811.11-811.14

The rules are adopted 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.

§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 ensure that:

(1) verification that an applicant attends Workforce Orientation for Applicants, in accordance with DHS rule, 40 T.A.C. §3.7301, is completed; or

(2) notification is made to DHS if a recipient fails to comply with Choices services requirements.

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.21-811.37

The rules are adopted 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.

§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, through local policies and procedures, require the use of 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, through local policies and procedures, make available 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 work-site activity.

(f) A Board may, through local policies and procedures, make available 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.

§811.23. Employability Plan.

(a) A 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 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.

§811.29. Self-Employment Assistance.

(a) Subject to available resources, the Agency shall, or a Board may set local policy to 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.

§811.34. Vocational Educational 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 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 §811.51 of this title.

§811.35. Parenting Skills Training.

A Board shall ensure that a determination is made, 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 ensure that a determination is made, 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 §811.51 of this title.

§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 ensure that job retention services are monitored, 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) A Board shall ensure that 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 ensure that follow-up methods are established and that those follow-up methods include client follow-up no less often than monthly.

(e) A Board may, through local policies and procedures, make available 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.

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SUBCHAPTER C. JOB SEARCH-RELATED ACTIVITIES

40 TAC §§811.31-811.34

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.

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SUBCHAPTER D. WORK-BASED PROGRAMS

40 TAC §§811.41 - 811.45

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.

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SUBCHAPTER D. RESTRICTIONS ON CHOICES SERVICES

40 TAC §811.51

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SUBCHAPTER E. EDUCATION AND OTHER TRAINING ACTIVITIES

40 TAC §§811.61 - 811.65

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.

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SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §§811.61 - 811.67

The rules are adopted 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.

§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 ensure that written policies are developed 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, through local policies and procedures, establish services to 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.

§811.67. Individual Development Accounts.

(a) A Board may set local policy and procedures to provide for implementation and oversight of individual development accounts (IDA) 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 shall 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.

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SUBCHAPTER F. APPEALS

40 TAC §811.71, §811.72

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SUBCHAPTER F. SUPPORT SERVICES

40 TAC §§811.81 - 811.87

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.

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 January 30, 2001.

TRD-200100554
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: February 19, 2001
Proposal publication date: December 15, 2000
For further information, please call: (512) 463-2573

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SUBCHAPTER G. APPEALS

40 TAC §811.101

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.

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 January 30, 2001.

TRD-200100555
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: February 19, 2001
Proposal publication date: December 15, 2000
For further information, please call: (512) 463-2573

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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 adopts an amendment to Chapter 835, Subchapter A, General Provisions Regarding the Self-Sufficiency Fund, §835.2, relating to Self-Sufficiency Fund Definitions, without changes to the proposed text as published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12365). The text will not be republished.

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.

No comments were received on the proposed rules.

The amendment is adopted 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.

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 January 30, 2001.

TRD-200100562
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: February 19, 2001
Proposal publication date: December 15, 2000
For further information, please call: (512) 463-2573

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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.

Agency Rule Review Plan

Credit Union Department

Title 7, Part 6

Filed: February 5, 2001

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Proposed Rule Reviews

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 101, Dental Licensure, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes amendments to, §101.7 and §101.8 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100597
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

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The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 102, Fees, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100598
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 103, Dental Hygiene Licensure, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes amendments to, §103.2 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100599
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V,

Examining Board, Chapter 104, Continuing Education, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes amendments to, §104.2 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100600
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

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The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 111, Professional Corporations, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes the repeal of §111.6 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100601
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

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The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 112, Visual Dental Health Inspections, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100602
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 113, Requirement for Dental Offices, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes amendments to, §113.2, the repeal of §113.3 and §113.4 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100603
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

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The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 114, Extension of Duties of Auxiliary Personnel Dental Assistants, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100604
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 115, Extension of Duties of Auxiliary Personnel Dental Hygiene, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei

Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100605
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 116, Dental Laboratories, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes amendments to, §§116.2, 116.3, 116.4, 116.5, 116.20, 116.21, 116.22, 116.24 and 116.25 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100606
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 117, Faculty Students in Accredited Dental Schools, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100607
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 119, Special Areas of Dental Practice, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes amendments to, §§119.6, 119.7 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100608
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

♦ ♦ ♦

The State Board of Dental Examiners files this notice of intent to review the rules contained in Title 22, Texas Administrative Code, Part V, Examining Board, Chapter 125, Applications for Special Consideration or Exception to Board Rules, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act, Article IX, Rider 167, passed by the 75th legislature. As part of the review process the Board may adopt, readopt, readopt with amendments, or repeal rules in this chapter.

As a part of the rule review process, the State Board of Dental Examiners proposes amendments to, §125.1 that may be found in the Proposed Rules Section of this issue of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

TRD-200100609
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

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General Land Office

Title 31, Part 1

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 4 relating to General Rules of Practice and Procedures.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office,

1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200100739
Larry Soward
Chief Clerk
General Land Office
Filed: February 5, 2001

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In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 8 relating to Gas and Marketing Program.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200100740
Larry Soward
Chief Clerk
General Land Office
Filed: February 5, 2001

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Adopted Rule Reviews

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners adopts the review of Chapter 109, Conduct, in accordance with §2001.039 of the Texas Government Code, (Vernon 2000) and with the General Appropriations Act of 1997, House Bill 1, Article IX, §167. The proposed review of Chapter 109 was published in the September 22 issue of the *Texas Register* (25 TexReg 9333).

No comments were received regarding this rule review.

As a result of the agency's review process, the State Board of Dental Examiners adopts the repeal of Chapter 109, Subchapter A through Subchapter T. Pursuant to the rule review process, the General Appropriations Act of 1997, Article IX, §167, Acts of the 75th Legislature Regular Session, 1997, the State Board of Dental Examiners determined that many of the rules found in Chapter 109, Conduct, were duplicative, obsolete and irrelevant. Many of the rules had not been visited for several years and were found to be inapplicable to agency policies and procedures and the realities of dental practice in the 21st century. Rules pertaining to particular subject matter, such as Advertising, were scattered throughout the chapter, creating confusion. The process of reorganizing, amending, repealing and readopting the rules found in Chapter 109 would have created an administrative and logistical nightmare. The Board determined that it is more efficient to propose the repeal of Chapter 109, Conduct, in its entirety and replace it with the proposed new Chapter 108. The conceptual content of the rules governing conduct found in Chapter 109 will not cease to exist, but will be supplanted by the rules in new Chapter 108 adopted by the Board on January 26, 2001 and published in the Adopted Rules Section of this issue of the *Texas Register*.

This concludes the review of Chapter 109, Conduct.

TRD-200100610
Jeffry Hill
Executive Director
State Board of Dental Examiners
Filed: January 31, 2001

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Texas Parks and Wildlife Department

Title 31, Part 2

The Texas Parks and Wildlife Commission adopts the rules review of the contents of Chapter 51, Executive as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10198). As a result of the review, the commission adopted the following repeals, amendments, and readoptions:

Subchapter A: Procedures for Adoption of Rules. The repeal of §51.1, concerning Definitions. An amendment to §51.2, concerning Petitions for Rulemaking. The repeal of §51.3, concerning Consideration and Disposition. New §51.3, concerning Consideration and Disposition. The repeal of §51.4., concerning Subsequent Petition.

NOTE: The rule action on the sections of this subchapter not readopted without change appear elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: Government Code, Chapter 2001, requires each state agency to prescribe the form for a petition and the procedure for its submission, consideration, and disposition. The action of the commission is necessary to comply with legislative mandate.

Subchapter B: Practice and Procedure in Contested Cases. The repeal of the following:

§51.21. Definitions.

§51.22. Scope of Rules.

§51.23. Construction of Rules.

§51.24. Licenses.

§51.25. Contested Proceedings.

§51.26. Uncontested Proceedings.

§51.27. Place and Nature of Hearings.

§51.28. Hearing Officer.

§51.29. Conduct.

§51.30. Parties in Interest.

§51.31. Appearances.

§51.32. Informal Disposition.

§51.33. Filing Documents.

§51.34. Examination by Director.

§51.35. Pleadings.

§51.36. Motions.

§51.37. Amendments.

§51.38. Order of Procedure.

§51.39. Reporter and Transcript.

§51.40. Formal Exceptions.

§51.41. Rules of Evidence.

§51.42. Witnesses.

§51.43. Documentary Evidence.

§51.44. Official Notice of Facts.

§51.45. Exhibits.

§51.46. Offer of Proof.

§51.47. Depositions.

§51.48. Subpoenas.

§51.49. Submission to Director and Commission.

§51.50. Decisions and Orders.

§51.51. Administrative Finality.

§51.52. Motions for Rehearing.

§51.53. The Record.

§51.54. Ex Parte Consultations.

§51.55. Show Cause Orders.

§51.56. Licenses of Continuing Nature.

§51.57. Effective Date.

NOTE: The rule action affecting these sections appears elsewhere in this issue.

Subchapter C: Easement Requests and Unauthorized Easement Activity. §51.92. Easement Requests

NOTE: This section was proposed for repeal; however, further review has revealed a continuing need for the section. The commission therefore withdraws the proposed repeal and readopts the section without change.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations to provide for an orderly and equitable process to develop easement recommendations for presentation to the Board for Lease of the General Land Office.

Subchapter D: Department Litigation. An amendment to §51.131, concerning Litigation and Other Legal Action

NOTE: The rule action affecting this section appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations to delineate the circumstances under which the department may seek legal assistance from the Office of Attorney General.

Subchapter E: Sick Leave Pool. §51.141. Sick Leave Pool.

NOTE: This section is readopted without change.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations concerning a sick leave pool because such rules are required by state law.

Subchapter F: Use of Uninscribed Vehicles §51.151 Use of Uninscribed Vehicles.

NOTE: This section is readopted without change.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations to prescribe the circumstances under which uninscribed vehicles may be used by department personnel.

Subchapter G: Nonprofit Organizations The readoption without change of §51.161, concerning Definitions.An amendment to §51.162, concerning Closely Related Nonprofit Organizations. The readoption without change of §51.163, concerning Conflict of Interest, Performance of Services, and Use of Department Facilities. The readoption without change of §51.164, concerning Gifts to the Department.

NOTE: The rule action affecting §51.162 appears elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing the relationship between the department and non-profit organizations that may receive public funds.

The commission's actions are pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

The department received no comment regarding readoption of the subchapter.

TRD-200100741
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: February 5, 2001

♦ ♦ ♦

The Texas Parks and Wildlife Commission adopts the rules review of the contents of Chapter 52, Wildlife and Fisheries, as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10199). As a result of the review, the commission readopted the subchapter without change:

Chapter 52: WILDLIFE AND FISHERIES

§52.101. Purpose and Scope.

§52.102. Definitions.

§52.103. Goals.

§52.104. Policy of the Department.

§52.105. Powers and Duties of the Executive Director.

§52.201. Departmental Stocking under Federal Funding Guidelines.

§52.202. Conditions for Stockings Made or Authorized by the Department.

§52.301. Non-Federally funded Departmental Stocking .

§52.401. Fish Stocking in Private Waters.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to establish a uniform policy to set forth the appropriate conditions and circumstances under which fish and wildlife may be collected and relocated for the public good.

This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

The commission received no comment concerning readoption of the subchapter.

TRD-200100742
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: February 5, 2001

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The Texas Parks and Wildlife Commission adopts the rules review of the contents of Chapter 55, Law Enforcement, as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10199). As a result of the review, the commission readopted the subchapter without change:

CHAPTER 55. LAW ENFORCEMENT Subchapter B. Seizure, Care, and Disposition of Contraband

§55.10. Application.

§55.12. Definitions.

§55.14. Notice of Forfeiture Proceeding.

§55.16. Property Subject to Lien or Perfected Security Instrument.

§55.18. Care and Custody of Seized Property Pending Court Hearing.

§55.20. Setting of Forfeiture Hearing.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to establish regulations to implement a uniform process by which property seized under the provisions of Parks and Wildlife Code, Chapter 12, Subchapter B is held in custodianship pending a decision of the court, until its ultimate use, sale, transfer, or destruction.

Subchapter C. Deputy and Special Game Warden Commission

§55.61. Definitions

§55.62. Deputy Game Wardens

§55.63. Special Game Wardens

§55.64. Additional Requirements

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that Parks and Wildlife Code, §11.020 and §11.0201 require the promulgation of regulations governing the qualifications, conduct, and duties of deputy and special game wardens.

Subchapter D. Operation Game Thief Fund

§55.111. Definitions.

§55.112. Donations and Disbursements.

§55.113. Reporting Violations; Eligibility of Applicant.

§55.114. Rewards: Payment.

§55.115. Limitations: Unclaimed Rewards.

§55.116. Death Benefits: Payment.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that Parks and Wildlife Code, §12.201, requires the adoption of rules for the implementation of the Operation Game Thief program and the maintenance of the Operation Game Thief fund.

Subchapter E. Permits for Aerial Management of Wildlife and Exotic Species

§55.141. Applicability.

§55.142. Definitions.

§55.143. General Rules.

§55.144. Application for Permit.

§55.145. Issuance of Permit.

§55.146. Period of Validity of Permit.

§55.147. Amendment of Permit.

§55.148. Renewal of Permit.

§55.149. Permit Not Transferable.

§55.150. Permit Fee.

§55.151. Landowner Authorization.

§55.152. Reports.

§55.153. Penalty.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing the use of aircraft to manage wildlife and exotic animals.

Subchapter G. Boat Speed Limit and Buoy Standard

§55.301. Application.

§55.302. Definitions.

§55.303. General Rules.

§55.304. System of Markers.

§55.305. Penalties.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing speed limits and buoys in order to provide uniform standards for the protection of human life and property.

Subchapter I. Disposition of Dangerous Wild Animals

§55.501. Application.

§55.503. Disposition of Live Animals.

§55.505. Disposition of Carcass, Hide, or Part of Animal, or Product Made from Animal.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations concerning the disposition of dangerous wild animals in order to comply with the provisions of Parks and Wildlife Code, §62.104.

Subchapter J. Mandatory Hunter Education Program

§55.603. Hunter Education Course and Instructors.

§55.605. Hunter Education Requirements.

§55.607. Other Non-Certified Persons.

§55.609. Hunter Education Fees.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing the operation of a hunter education program in order to comply with the provisions of Parks and Wildlife Code, §62.014.

Subchapter K. Mandatory Boater Education Program

§55.701. Boater Education Program.

§55.703. Boater Education Requirements.

§55.705. Boater Education Exemptions.

§55.707. Effective Date.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to comply with the provisions of Parks and Wildlife Code, §31.108.

Subchapter L. Marine Safety Enforcement - Training and Certification Standards

§55.801. Application.

§55.802. Definitions.

§55.803. General Rules.

§55.804. Marine Safety Enforcement Officer Course Standards.

§55.805. Marine Safety Enforcement Officer Instructor Course Standards.

§55.806. Reporting Requirements.

§55.807. Fees.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing the administration of a marine safety enforcement program in order to comply with the provisions of Parks and Wildlife Code, §31.121.

This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

The commission received no comment concerning readoption of the subchapter.

TRD-200100743
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: February 5, 2001

♦ ♦ ♦

The Texas Parks and Wildlife Commission adopts the rules review of the contents of Chapter 61, Design and Construction, as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10199). As a result of the review, the commission adopted the following amendments and readoptions:

CHAPTER 61. DESIGN AND CONSTRUCTION

Subchapter A. Contracts for Public Works

§61.21. General.

§61.22. Soliciting Bids.

§61.23. Submission and Receipts of Bids.

§61.24. Award of Bids.

§61.25. Solicitation, Evaluation, and Selection of Proposals.

§61.26. Award in Response to Proposals.

NOTE: Section 61.22 is proposed for amendment elsewhere in this issue.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations providing a uniform procedure for soliciting and awarding contracts for public works.

Subchapter B. Procedural Guide for Land and Water Conservation Fund Program

§61.81. Application Procedures.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations to provide assistance to local governments in making application for federal funds, as well as for the disbursement of such funds.

Subchapter C. Boat Ramp Construction and Rehabilitation

§61.101. General.

§61.102. Fees.

§61.103. Requirements of Applicants.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing the criteria for the distribution of boat ramps funded by public money under the control of the department.

Subchapter D. Guidelines for Administration of Local Land and Water Conservation Fund Projects

§61.121. Policy.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing assistance to local governments, in making application for funds, and for the disbursement of such funds.

Subchapter E. Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Program

§61.131.Policy.

§61.132. Texas Recreation and Parks Account Grants Manual.

§61.133. Grants for Outdoor Recreation Programs.

§61.134. Grants for Indoor Recreation Programs.

§61.135. Grants for Community Outdoor Outreach Programs.

STATEMENT OF NEED FOR CONTINUING EXISTENCE: The commission finds that it is necessary to maintain regulations governing assistance to local governments, in making application for state funds, and for the disbursement of such funds.

This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, 75th Legislature, Regular Session.

The commission received no comment concerning readoption of the subchapter.

TRD-200100744
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: February 5, 2001

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §48.2614(b)

Copay Schedule for the Consumer-Managed Personal Assistance Services (CMPAS) Pro

Monthly Net Income	Copay (as % of Billed Services)
$1,200.01-$1,350.00	3%
$1,350.01-$1,400.00	5%
$1,400.01-$1,600.00	7%
$1,600.01-$1,800.00	10%
$1,800.01-$2,000.00	15%
$2,000.01-$2,200.00	22%
$2,200.01-$2,400.00	30%
$2,400.01-$2,600.00	35%
$2,600.01-$2,800.00	40%
$2,800.01-$3,000.00	45%
$3,000.01-$3,300.00	50%
$3,300.01-$3,600.00	55%
$3,600.01-$4,000.00	60%
$4,000.01-$4,400.00	65%
$4,400.01-$4,800.00	70%
$4,800.01-$5,200.00	75%
$5,200.01-$5,600.00	80%
$5,600.01-$6,000.00	85%
$6,000.01-$6,500.00	90%
$6,500.01-$7,000.00	95%
$7,000.01-$7,500.00	Full Pay

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.

Office of the Attorney General

Sexual Assault Victim Assistance Grants Funding Notice

The Office of the Attorney General is accepting applications for statewide training for programs that benefit victims of sexual assault and to purchase forensic exam equipment under the Victim Assistance Grants program, Crime Victim Compensation Excess Funds. The grant period will be September 1, 2001 through August 31, 2003. Grant applications for funds should be sent no later than 5:00 on May 1, 2001 to Melissa G. Foley, Grants Coordinator, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Mail Code 005, Austin, Texas 78711-2548.

Eligible entities include statewide nonprofit organizations whose membership consists of individuals or groups of individuals who have expertise in establishing training programs that benefit victims of sexual assault, and which purchases forensic exam equipment for communities with SANE programs that have been certified by the OAG . The maximum amount of the grant is $250,000 per grant year ($500,000 total for the two year grant period).

Rules for the Sexual Assault Victim Assistance Grants can be found in Title 1 Tex. Admin. Code, Chapter 63, Subchapter A, C, D-F (Adopted April 21, 2000). Availability of funds is subject to and based upon legislative appropriation.

To obtain a grant application kit or for more information please contact Melissa G. Foley, Grants Coordinator, (512) 463-0826.

For information regarding this publication, please call A. G. Younger at 512-463-2110.

TRD-200100723
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 5, 2001

♦ ♦ ♦

Texas Health and Safety Code and Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas, and the State of Texas, et al. v. Houshang Solhjou, Individually and d/b/a Melrose Mobile Home Park, Defendant and Third Party Plaintiff v. Rita Karbalia and Ronnie Swint, et al., Case No. 2000-33731, 61st District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant Houshang Solhjou, owns and operates a sewage treatment plant at Melrose Mobile Home Park in Harris County. The alleged violations are the result of the sewage treatment plant malfunctioning. The violations create a public health nuisance and violate state public health and environmental protection laws.

Proposed Agreed Final Judgment and Permanent Injunction: The judgment enjoins the Defendant from violating the terms of TPDES Permit No. 1226-001 at the Melrose Mobile Home Park and from any expansion of the Melrose Mobile Home Park to accommodate in excess of sixty-two trailers without first consulting with professional engineers experienced in wastewater treatment. The judgment requires that Defendant pay Fifty Thousand Dollar and no cents ($50,000.00) in civil penalties divided equally between Harris County and the State of Texas (each to receive $25,000.00). Defendant is also required to pay Ten Thousand Dollars and no cents ($10,000.00) in the a attorney fees divided equally between Harris County and the State of Texas (each to receive $5,000.00). Defendant is also required to pay all cost of court.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please call A.G. Younger at 512-463-2110.

TRD-200100738
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 5, 2001

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Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: State of Texas v. Pablo R. Montes, Case No. 96-14405, 98th District Court of Travis County, Texas

Nature of Defendant's Operations: Defendant was an installer of on-site sewage systems. The Texas Natural Resource Conservation Commission entered a Default Order against Defendant requiring him to pay $9,600 in administrative penalties and revoked Defendant's OSSF Installer Certificate. This lawsuit seeks enforcement of that Default Order.

Proposed Agreed Final Judgment: The judgment requires Defendant to pay Seventeen Thousand Six Hundred Dollars and no cents ($17,600.00), divided as follows: (1) $9,600.00 in administrative penalties; (2) $4,000.00 in civil penalties; and (3) $4,000.00 in attorney fees. Defendant is also required to pay all cost of court. A compromise has been reach that Defendant is permanently enjoined from constructing, installing, altering or repairing on-site sewage disposal systems until such time that Defendant has been fully licensed and issued a valid Installer Certificate of Registration by the Texas Natural Resource Conservation Commission and any other permits, licenses, or certificates as needed by the TNRCC or any other successor agency regarding such activities.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please call A. G. Younger at 512-463-2110.

TRD-200100737
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 5, 2001

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Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: State of Texas v. Kingsbury Metal Finishing Company, Inc., Case No. 97-01850, in the District Court of Travis County, Texas, 98th Judicial District

Nature of Defendant's Operations: Defendant operated an electroplating facility in Guadalupe County that the State contends was in violation of the Texas Water Code and an administrative order and rules of the Texas Natural Resource Conservation Commission. The site is now a State Superfund site.

Proposed Agreed Judgment: The judgment permanently enjoins Defendant and its officers to desist from the operation of any type of plating or metal finishing operation in the State of Texas and to continue to provide access to the site in accordance with the terms of a Property Access Agreement. The judgment provides for $83,600.00 in penalties and $10,000.00 in attorney's fees.

For a complete description of the proposed settlement, the actual proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please call A.G. Younger at 512-463-2110.

TRD-200100761
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 6, 2001

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Victim Assistance Grants Funding Notice

The Office of the Attorney General is accepting applications for crime victim coordinators and liaisons under the Victim Assistance Grants program, Crime Victim Compensation Excess Funds. The grant period will be September 1, 2001 through August 31, 2003. Grant applications for funds should be sent no later than 5:00 on May 1, 2001 to Melissa G. Foley, Grants Coordinator, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Mail Code 005, Austin, Texas 78711-2548.

Eligible entities include local criminal prosecutor and local law enforcement agencies. The local criminal prosecutors' offices can apply for a grant to fund the position of a victim assistance coordinator. The local law enforcement agencies can apply to fund the position of crime victim liaison. The maximum amount to apply for is $30,000 per grant year ($60,000 per two year grant period).

Rules for the Victim Assistance Grants can be found in Title 1 Tex. Admin. Code, Chapter 63, Subchapter A-B, D-F (Adopted April 21, 2000). Availability of funds is subject to and based upon legislative appropriation.

To obtain a grant application kit or for more information please contact Melissa G. Foley, Grants Coordinator, (512) 463-0826.

For information regarding this publication, please call A.G. Younger at 512-463-2110.

TRD-200100724
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 5, 2001

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Texas Bond Review Board

Biweekly Report of the 2001 Private Activity Bond Allocation Program

The information that follows is a report of the 2001 Private Activity Bond Allocation Program for the period of January 20, 2001 through February 2, 2001.

Total amount of state ceiling remaining unreserved for the $325,809,688 subceiling for qualified mortgage bonds under the Act as of February 2, 2001: $112,752,708

Total amount of state ceiling remaining unreserved for the $143,356,262 subceiling for state-voted issue bonds under the Act as of February 2, 2001: $143,356,262

Total amount of state ceiling remaining unreserved for the $97,742,906 subceiling for qualified small issue bonds under the Act as of February 2, 2001: $71,342,906

Total amount of state ceiling remaining unreserved for the $215,034,394 subceiling for residential rental project bonds under the Act as of February 2, 2001: $10,099,394

Total amount of state ceiling remaining unreserved for the $136,840,069 subceiling for student loans bonds under the Act as of February 2, 2001: $31,840,069

Total amount of state ceiling remaining unreserved for the $384,455,431 subceiling for all other issue bonds under the Act as of February 2, 2001: $4,455,431

Total amount of the $1,303,238,750 state ceiling remaining unreserved under the Act as of February 2, 2001: $373,846,770

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from January 20, 2001 through February 2, 2001, 2001:

1) Issuer: Alamo Area HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $15,089,300

2) Issuer: Midland County HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $10,641,600

3) Issuer: Brazos County HFC

User: College Station Southgate Village

Description: Multifamily Residential Rental Project--Southgate Village Apts.

Amount: $7,000,000

4) Issuer: Panhandle-Plains Higher Education Authority, Inc.

User: Eligible Borrowers

Description: Student Loan Bonds

Amount: $35,000,000

5) Issuer: Capital IDC

User: Texas Disposal Systems, Inc.

Description: All Other Issue--Austin, Texas

Amount: $15,500,000

6) Issuer: Brazos River Harbor Navigation District of Brazoria County, Texas

User: The Dow Chemical Co.

Description: All Other Issue--Freeport, Texas

Amount: $25,000,000

7) Issuer: Gulf Coast Waste Disposal Authority

User: Amoco Oil Co.

Description: All Other Issue--Texas City, Texas

Amount: $25,000,000

8) Issuer: Brazos River Authority

User: Brazos River Authority/Morris Sheppard Dam

Description: All Other Issue--Graford, Texas

Amount: $12,000,000

9) Issuer: Port of Corpus Christi Authority of Nueces County, Texas

User: Koch Petroleum Group

Description: All Other Issue--Corpus Christi, Texas

Amount: $25,000,000

10) Issuer: Montgomery County HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $18,219,900

11) Issuer: Sunbelt IDC

User: American Foodservice Corp.

Description: Qualified Small Issue Bond

Amount: $10,000,000

12) Issuer: North Central Texas HFC

User: Silverton Ltd.

Description: Multifamily Residential Rental Project--Silverton Apts.

Amount: $13,530,000

13) Issuer: South Texas Higher Education Authority, Inc.

User: Eligible Borrowers

Description: Student Loan Bonds

Amount: $35,000,000

14) Issuer: Port Arthur Navigation District IDC

User: Air Products and Chemicals Inc.

Description: All Other Issue--Port Arthur, Texas

Amount: $25,000,000

15) Issuer: North Central Texas HFC

User: Ranch View, Ltd.

Description: Multifamily Residential Rental Project--Ranch View Apts.

Amount: $13,350,000

Following is a comprehensive listing of applications, which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from January 20, 2001 through February 2, 2001:

Issuer: Laredo HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $12,289,680

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from January 20, 2001 through February 2, 2001:

1) Issuer: Bexar County HFC

User: San Antonio Alternative Housing Corp.

Description: Multifamily Residential Rental Project-- San Antonio Alternative Housing Corp. for Seniors

Amount: $3,100,000

2) Issuer: Schulenberg EDC

User: Double B Foods, Inc.

Description: Qualified Small Issue Bond

Amount: $2,250,000

3) Issuer: TDHCA

User: Ascot Park Townhomes Ltd.

Description: Multifamily Residential Rental Project--Ascot Park Townhomes

Amount: $13,045,000

Following is a comprehensive listing of applications, which released a portion or their entire reserved amount pursuant to the Act from January 20, 2001 through February 2, 2001:

Issuer: Laredo HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $220

For a more comprehensive and up-to-date summary of the 2001 Private Activity Bond Allocation Program, please visit the website (www.brb.state.tx.us). If you have any questions or comments, please contact Steve Alvarez, Program Administrator, at 512/475-4803 or via email at alvarez@brb.state.tx.us.

TRD-200100705
Steve Alvarez
Program Administrator
Texas Bond Review Board
Filed: February 5, 2001

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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 December 28, 2000, through January 18, 2001. The public comment period for these projects will close at 5:00 p.m. on February 19, 2001.

FEDERAL AGENCY ACTIONS

Applicant: U.S. Environmental Protection Agency Region 6; Location: The project site is located in coastal waters along the Texas coast. CCC Project Number: 01-0027-F2; Description of Proposed Action: EPA Region 6 is proposing to reissue General NPDES Permit Number TXG290000, produced water and produced sand discharges to coastal water in Texas, and combine that permit with NPDES General Permit TX330000 concerning regulating discharges from oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category in Texas. Type of Application: U.S.E.P.A. permit application TXG330000 and TXG290000.

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-200100809
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: February 7, 2001

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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 02/12/01 - 02/18/01 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 02/12/01 - 02/18/01 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-200100751
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 6, 2001

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Texas Department of Criminal Justice

Notice to Bidders

The Texas Department of Criminal Justice invites bids for the construction of Road & Parking Lot Improvements at Marlin, Texas. The project consists of reconstruction of existing pavements including the Main and Truck Entrance Roads, the Perimeter Road, the dog kennel road, the Warden's residence driveway and the main parking lot along with associated drainage and grading improvements at the existing William P. Hobby Unit, Route 2 Box 600, Marlin, Tx.. The work includes civil, mechanical, plumbing, structural and concrete as further shown in the Contract Documents prepared by : Everett Griffith, Jr. & Associates, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have worked in his trade for five consecutive years and have completed at least three projects of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

C. Must provide references from at least three similar projects.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $30.00 (Thirty Dollars and no cent, non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Everett Griffith, Jr. & Associates, Inc., 408 North Third Street, P. O. Box 1746, Attn: Rick Freeman, Lufkin, Texas 75902-1746; Phone: 936-634-5528; Fax: 936-634-7989.

A Pre-Bid conference will be held at 9:30 AM on February 26, 2001 at the Hobby Unit, Marlin Texas, followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2:00 PM on March 22, 2001, in the Blue Conference Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (formally Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2 % of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200100701
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: February 5, 2001

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Office of the Governor

Notice of Request for Grant Applications for Texas Crime Stoppers Fund Programs

The Criminal Justice Division of the Governor's Office is soliciting applications for local Crime Stoppers assistance grants to enhance and assist the affected community's efforts in solving crimes under the year 2002 grant cycle.

Purpose: The purpose of the projects is to involve citizens in solving felony crimes by creating a liaison with local law enforcement agencies whereby persons may anonymously provide information concerning felony crimes, and receive monetary rewards if their information results in arrest and indictment of a felon.

Eligible projects and activities include public awareness projects, training projects, hot-line services, resource development projects, technical assistance, and innovative projects that benefit Crime Stoppers programs statewide.

Available Funding: State funding is authorized for these projects under Article 102.013, Code of Criminal Procedure, which designates CJD as the funds administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Standards: Grantees must comply with the applicable grant management standards adopted under Title 1, Part 1, Chapter 3, Texas Administrative Code.

Prohibitions: Grantees may not use grant funds for promotional advertisements of any kind, office space rental, entertainment or refreshments, purchase or improvement of real estate, rewards, lobbying, attorney fees, extended equipment services arrangements, and contributions, subscription fees, or dues.

Eligible Applicants: Crime Stoppers organizations as defined by §414.001, Texas Government Code.

CJD may approve grants for public awareness projects, training projects, hot-line services, resource development projects, technical assistance, and innovative projects that benefit Crime Stoppers programs statewide.

Beginning Date: Grant funded projects must begin on or after November 1, 2001.

Application Process: Interested applicants should call or write Ed Dickens, Criminal Justice Division, for information on submission requirements. Detailed specifications are in the application kits, which are available from the Crime Stoppers Coordinator, Criminal Justice Division.

Closing Date for Receipt of Applications: All applications are due in the Criminal Justice Division no later than May 1, 2001.

Selection Process: Staff members will review the applications for eligibility, reasonableness, and cost-effectiveness. A review group selected by the Executive Director will rank the applications. The review group may include staff members and outside experts. When the staff review and committee selection is complete, their recommendations will be forwarded to the Executive Director, who will make the final funding decision.

Contact Person: If additional information is needed contact CJD Texas Crime Stoppers at (512) 463-1784.

TRD-200100694
Claudia Nadig
Assistant General Counsel
Office of the Governor
Filed: February 2, 2001

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	Sayed Feghali Cardiology Association	L05403	Houston	00	01/17/01
Trinity	East Texas Medical Center Trinity	L05392	Trinity	00	01/16/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	NC-Schi Inc	L02434	Abilene	65	01/24/01
Abilene	NC-Schi Inc	L02434	Abilene	64	01/18/01
Abilene	Abilene Cardiology	L04315	Abilene	23	01/17/01
Abilene	Hendrick Medical Center	L02433	Abilene	68	01/17/01
Austin	Radian International LLC	L01692	Austin	37	01/22/01
Austin	Austin Radiological Association	L00545	Austin	92	01/17/01
Austin	Abbott Laboratories	L03340	Austin	13	01/17/01
Baytown	Baycoast Medical Center	L02462	Baytown	34	01/24/01
Bryan	St Joseph Regional Health Center	L00573	Bryan	53	01/24/01
Center	Texas Healthcare Inc	L03908	Center	23	01/24/01
Colorado City	Mitchell County Hospital	L01643	Colorado City	18	01/29/01
Dallas	Texas Instruments Inc	L05048	Dallas	04	01/24/01
Dallas	Syncor International Corporation	L02048	Dallas	101	01/19/01
Dallas	Baylor University Medical Center	L01290	Dallas	52	01/29/01
Dallas	Columbia Hospital at Medical City Dallas	L01976	Dallas	129	01/29/01
Dallas	Texas Oncology PA	L04878	Dallas	16	01/26/01
Denton	International Isotopes Inc	L05159	Denton	17	01/30/01
DFW Airport	Delta Airlines Inc	L03967	DFW Airport	18	01/30/01
El Paso	Texas Imaging Services of El Paso Inc	L05207	El Paso	02	01/17/01
Ft Worth	Harris Methodist Ft Worth	L01837	Ft Worth	77	01/24/01
Ft Worth	Radiology Associates	L03953	Ft Worth	24	01/18/01
Ft Worth	All Saints Episcopal Hospital	L02212	Ft Worth	51	01/25/01
Houston	Memorial Hermann Hospital	L00439	Houston	69	01/24/01
Houston	St Lukes Episcopal Hospital	L00581	Houston	68	01/23/01
Houston	Mallinckrodt Medical Inc	L03008	Houston	54	01/22/01
Houston	Columbia HCA Healthcare Corp	L02473	Houston	39	01/24/01
Houston	Cypress Fairbanks Cardiology	L04353	Houston	14	01/22/01
Houston	South Texas Nuclear Pharmacy	L05304	Houston	01	01/18/01
Houston	SIMPRO Inc	L04419	Houston	08	01/17/01
Houston	Texas Nuclear Imaging Inc	L05009	Houston	13	01/18/01
Houston	Southwest Cardiovascular Consultants	L05396	Houston	01	01/17/10
Houston	Domingo G Gonzales Jr MD PA	L05283	Houston	01	01/25/01
Houston	Park Plaza Hospital	L02071	Houston	39	01/26/01
Houston	Guidant Corporation VI	L05178	Houston	06	01/26/01

CONT. AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Irving	Columbia Medical Center of Las Colinas Inc	L05084	Irving	07	01/22/01
Kingsville	Spohn Kleberg Memorial Hospital	L02917	Kingsville	24	01/30/01
Lake Jackson	Brazosport Cardiology	L05359	Lake Jackson	02	01/23/01
LaPorte	Fina Oil & Chemical Company	L04640	LaPorte	08	01/17/01
Llano	Llano Bay Health Care	L04438	Llano	15	01/25/01
Lubbock	Covenant Medical Center	L00483	Lubbock	110	01/18/01
Lubbock	University Medical Center	L04719	Lubbock	39	01/17/01
Midlothian	TXI Operations LP	L01421	Midlothian	35	01/30/01
New Braunfels	Cemex USA	L02809	New Braunfels	23	01/24/01
Port LaVaca	Union Carbide Corporation	L00051	Port LaVaca	68	01/30/01
San Antonio	Baptist Imaging Center	L04506	San Antonio	24	01/24/01
San Benito	Healthmont of Texas ILLC	L04567	San Benito	06	01/23/01
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	17	01/26/01
Texas City	Amoco Oil Company	L00254	Texas City	50	01/24/01
Throughout Tx	Holt Engineering Inc	L02752	Austin	13	01/23/01
Throughout Tx	Eastland	L05383	Eastland	03	01/30/01
Throughout Tx	Computalog Wireline Products Inc	L00747	Ft Worth	61	01/31/01
Throughout Tx	Henley Enterprises	L05372	Hewitt	01	01/30/01
Throughout Tx	PLPS Inc	L04955	Houston	02	01/12/01
Throughout Tx	Kinsel Ind Inc	L05345	Houston	01	01/30/01
Throughout Tx	Goolsby Testing Laboratories Inc	L03115	Humble	69	01/24/01
Throughout Tx	Southern Services Inc	L05270	Lake Jackson	11	01/16/01
Throughout Tx	Non Destructive Inspection	L02712	Lake Jackson	84	01/30/01
Throughout Tx	High Tech Testing Service Inc	L05021	Longview	31	01/30/01
Throughout Tx	Rhodes Testing	L04702	Longview	08	01/30/01
Throughout Tx	Anatec Inc	L04865	Nederland	38	01/30/01
Throughout Tx	Desert Industrial XRay LP	L04590	Odessa	28	01/30/01
Throughout Tx	Celanese LTD	L04210	Pampa	14	01/17/01
Throughout Tx	Superior Testing Services	L05145	Pasadena	18	01/24/01
Throughout Tx	Thermo Measuretech	L03524	Round Rock	59	01/16/01
Throughout Tx	City of San Antonio	L05052	San Antonio	01	01/17/01
Througout Tx	Petrochem Inspection Services	L04460	Houston	51	01/19/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	81	01/23/01
Waco	Baylor University	L01136	Waco	21	01/23/01
Weslaco	Knapp Medical Center	L03290	Weslaco	29	01/29/01
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	83	01/08/01
Throughout Tx	PMI Specialist Inc	L04686	Liberty	07	01/05/01
Throughout Tx	Reeves Wireline Services Inc	L04405	Midland	10	01/08/01
Throughout Tx	Chevron Phillips Chemical Company LP	L00230	Pasadena	67	01/10/01
Throughout Tx	TN Technologies Inc	L03524	Round Rock	58	01/02/01
Throughout Tx	All American Maintenance	L01336	San Antonio	36	01/12/01
Throughout Tx	Pitt Des Moines Inc	L04502	Santa Fe	25	01/05/01
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	07	01/12/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	80	01/05/01
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	51	01/10/01
Waco	Hillcrest Baptist Medical Center	L00845	Waco	66	01/12/01
Webster	CHCA Clear Lake LP	L01680	Webster	47	01/10/01
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	77	01/02/01
Wichita Falls	United Regional Healthcare System Inc	L00403	Wichita Falls	35	01/04/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Amarillo	Amarillo Diagnostic Clinic	L04085	Amarillo	11	01/16/01
Austin	Cedra Corporation	L04427	Austin	10	01/22/01
Galena Park	United States Gypsum Company	L03896	Galena Park	06	01/16/01
Midland	Norm Decon Services LLC	L04917	Midland	12	01/24/01
Odessa	Ector County Hospital District	L01223	Odessa	68	01/29/01
Throughout Tx	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	42	01/30/01
Throughout Tx	Component Sales and Service Inc	L02243	Houston	20	01/22/01
Throughout Tx	Independent Testing Laboratories	L03795	Houston	29	01/30/01
Throughout Tx	Houston Inc	L04362	Houston	07	01/31/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Greenville	Greenville Transformer Company	L03247	Greenville	05	01/31/01
Throughout Tx	Scientific Measurement Systems Inc	L02696	Leander	32	01/30/01
Whitney	Lake Whitney Medical Center	L05024	Whitney	02	01/17/01

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 demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200100736
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 5, 2001

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Notice of Emergency Cease and Desist Order on O. J. Rodriguez, M.D., P.A.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered O. J. Rodriguez, M.D., P.A. (registrant-R23225) of Kingsville to cease and desist performing chest (PA) (Grid) procedures with the Fischer x-ray unit (Model Number 366001; Serial Number S2302) until the exposure at skin entrance is within regulatory limits. The bureau determined that the resulting excessive radiation exposure to patients constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

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-200100735
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 5, 2001

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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: T. Bradley Benedict, M.D., Arlington, R07417; Phy Med, Inc., Dallas, R19696; Mesa Family Clinic, Houston, R21454; Phymed Contracted Services, Inc., Dallas, R24280; Edinburg Physicians Network, PLLC, Pharr, R24449; Professional Health Services, Inc., Havertown, Pennsylvania, R19495; Houston Hi Tension Sales and Services, Inc., R20777; The University of Texas At Tyler, Tyler, R22738; Grand Industries, Ltd., Taylor, R19175; Jose E. Aguirre, D.M.D., San Antonio, R13232; Ann Sharkey, D.C., Granbury, R23446.

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-200100759
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 6, 2001

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Beverage Canners, Incorporated of Texas, Fort Worth, G02107; STH Corporation, Houston, L01737; NuOnocology Labs, Inc., Houston, L04978.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees 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 licensees for a hearing to show cause why the radioactive material licenses 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 licenses 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-200100758
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 6, 2001

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Notice of Revocation of Certificates of Registration

Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following certificates of registration: Theodore R. McMillin, Jr., M.D., Harlingen, R05479, January 31, 2001; Phelgar D. Mosely, D.D.S., Amarillo, R10112, January 31, 2001; Debra G. Stewart D.D.S. and Donald R. Tamplen, D.D.S., Stafford, R10144, January 31, 2001; Linda F. Doerfler, D.D.S., Amarillo, R20504, January 31, 2001; Twin Oaks Dental, Houston, R24085, January 31, 2001; Houston Metropolitan Medical Associates, Houston, R24145; Top Health Chiropractic, Houston, R24881, January 31, 2001; Hall Chiropractic, Kingsland, R24884, January 31, 2001.

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-200100787
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 7, 2001

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Texas Department of Housing and Community Affairs

Request for Proposals to Provide Technical Assistance Educational Services to a Thirty-Two County Area in the Alamo Area, Coastal Bend, Concho Valley, Lower Rio Grande Valley, Middle Rio Grande, Permian Basin, Rio Grande, South Texas Development, and the West Central Texas

The Texas Department of Housing and Community Affairs (TDHCA), Office of Colonia Initiatives (OCI), is accepting proposals for a one-year contract with a competent entity or individual to provide contract for deed consumer education workshops in designated counties located within 200 miles of the Texas-Mexico border. The entity or individual will provide contract for deed consumer education workshops on the provisions of the contract for deed legislation and the rights of a buyer who purchases residential land with a contract for deed.

1. Andrews
2. Brooks
3. Cameron
4. Coleman
5. Culberson

6. Dimmit
7. Duval
8. El Paso
9. Frio
10. Hidalgo
11. Jim Hogg
12. Jim Wells
13. Kinney
14. Kleberg
15. La Salle
16. Maverick
17. Mitchell
18. Nolan
19. Pecos
20. Presidio
21. Reagan
22. Reeves
23. San Patricio
24. Starr
25. Uvalde
26. Val Verde
27. Ward
28. Webb
29. Willacy
30. Winkler
31. Zapata
32. Zavala

The successful candidate will provide contract for deed consumer education as outlined in the workshop curriculum: Contract For Deed; Negative Aspects of the Contract For Deed; Determination & Notice of Applicability; Spanish Language Requirement; Seller's Disclosure of Condition of the Property; Seller's Disclosure of Financial Terms; Contract Terms Prohibited; Annual Accounting Statement; Buyer's Right to Cancel Contract Without Cause; Forfeiture and Acceleration or of Rescission; Notice of Forfeiture and Acceleration or of Rescission; Equity Protection: Sale of Property, Placement of Lien for Utility Service; The Buyer's Right to Pledge Interest In Property On Contracts Entered Into Before September 1, 1995; Recording Requirements; and Title Transfer.

Interested parties should have experience in executing educational workshops, considerable experience working with colonia residents and/or low income populations, experience teaching workshops in Spanish, have geographical knowledge of colonias and/or substandard living conditions in the designated counties, experience in affordable housing, real estate, or home ownership counseling programs, knowledge of the basic process of a contract for deed transaction, knowledge of or previous experience with state government or related entities, and experience with marketing to colonia residents or low income populations.

Proposals must be received at TDHCA headquarters no later than 5 p.m. on Friday, March 2, 2001. To obtain an application and/or additional information, please contact Juan Palacios or Susana Garza with the OCI at 1-800-462-4251, or visit our website at www.tdhca.state.tx.us.

TRD-200100810
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 7, 2001

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance adopted amendments to 28 TAC §5.4007 and §5.4008, concerning building code specifications in the plan of operation of the Texas Windstorm Insurance Association (TWIA). The rules appeared in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1151).

On page 1152, the effective date, February 7, 2001, is incorrect. The correct effective date is April 1, 2001.

TRD-200100854

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Insurer Services

Application for admission to the State of Texas by FIRST LIFE AMERICA CORPORATION, a foreign life company. The home office is in Topeka, Kansas.

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-200100788
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 7, 2001

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Notice

On January 30, 2001, in order number 01-0083, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan Association, Plan of Operation.

For copies of Commissioner's order number 01-0083 and the amendments to the Texas Automobile Insurance Association Plan of Operation, contact Sylvia Gutierrez at (512) 463-6327 (refer to file number A-0900-23).

TRD-200100754
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 6, 2001

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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 Urban Dental Management of Texas, Inc., a domestic third party administrator. The home office is Houston, Texas.

Application for admission to Texas of Health Market Administrative Services, Inc., (doing business under the assumed name of Health Exchange Administrative Services, Inc.), a foreign third party administrator. The home office is Wilmington, Delaware.

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-200100760
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 6, 2001

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Texas Department of Licensing and Regulation

Vacancies on Architectural Barriers Advisory Committee

The Texas Commission of Licensing and Regulation announces vacancies on the Architectural Barriers Advisory Committee established by Texas Civil Statutes, Article 9102, Architectural Barriers. The pertinent rules may be found in 16 TAC §68.65. The purpose of the Architectural Barriers Advisory Committee is to review rules and Technical Memoranda relating to the Architectural Barriers program and recommend changes in the rules and Technical Memoranda to the Commission and the Executive Director

The Committee is appointed by the Texas Commission of Licensing and Regulation and is composed of building professionals such as architects, engineers, interior designers and landscape architects, and persons with disabilities who are familiar with architectural barrier problems and solutions. This announcement is for the positions of two (2) building professionals and two (2) consumers with a disability.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-7348 or (512) 463-7357, FAX (512) 475-2872 or Email caroline.jackson@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us. Applications must be returned to the Department of Licensing and Regulation no later than March 2nd, 2001.

Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-200100650
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 1, 2001

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Vacancy on Property Tax Consultants Advisory Council

The Texas Commission of Licensing and Regulation announces vacancies on the Property Tax Consultants Advisory Council established by Texas Civil Statutes, Article 8886, Registration of Property Tax Consultants. The pertinent rules may be found in 16 TAC §66.65. The purpose of the Property Tax Consultants Advisory Council is to advise the commissioner on standards of practice, conduct, and ethics for registrants, fees, examination contents and standards of performance for senior property tax consultant examinations, recognition of continuing educational programs and courses, and establishing educational requirements for initial applicants.

The Council is composed of six members, appointed by the Texas Commission of Licensing and Regulation. Three of the members are registered property tax consultants and three are consumers. Applications are being accepted for two (2) registered property tax consultant positions and two (2) consumer positions. Applicants for consumer membership must utilize the services of property tax consultants to be considered. To be eligible for consideration for the registered property tax consultant membership, applicants must: be a registered senior property tax consultant; be a member of a nonprofit, voluntary trade association that has a membership primarily composed of individuals who perform property tax consulting services in this state or who engage in property tax management in this state for other persons, has written requirements of experience and examination as a prerequisite for an individual's membership, and subscribes to a code of professional conduct or ethics; be a resident of this state for the five years preceding the date of the appointment; and have performed or supervised the performance of property tax consulting services as the individual's primary occupation continuously for the five years preceding the date of the appointment.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-7348 or (512) 463-7357, FAX (512) 475-2872 or Email caroline.jackson@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us. Applications must be returned to the Department of Licensing and Regulation no later than March 2nd, 2001.

Applicants may be asked to appear for an interview with members of the Texas Commission of Licensing and Regulation, however any required travel for an interview would be at the applicant's expense.

TRD-200100651
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 1, 2001

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Texas Department of Mental Health and Mental Retardation

Public Hearing Notice on Reimbursement Rates for Small State-Operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) under Management Service Agreements.

Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on the proposed reimbursement rates for small state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR) under management service agreements. The rates will be effective January 1, 2001, through December 31, 2001. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs. Payment rates are proposed to be effective January 1, 2001, as follows:

Contract	Facility	Managed By	Current Rate	Proposed 2001 Rates
714301	Blake House	BLUEBONNET TRAILS	$160.56	$152.03
712601	Broken Spoke	BLUEBONNET TRAILS	$156.62	$151.95
714201	Community Crossroads	BLUEBONNET TRAILS	$149.14	$160.36
713901	Golden Oaks	BLUEBONNET TRAILS	$177.02	$160.67
714401	Plum Creek	BLUEBONNET TRAILS	$135.89	$148.27
712101	Casa Alegra	BORDER REGION	$133.32	$128.66
715401	Casa Bonita	BORDER REGION	$227.21	$209.16
714001	Casa Linda de Laredo	BORDER REGION	$253.92	$195.83
713701	Casa Soledad	BORDER REGION	$244.17	$175.83
715501	Casa Unida	BORDER REGION	$178.74	$143.57
713601	Wildflower Grp Home	CAMINO REAL	$236.48	$151.75
1000830	Castle River Grp Home	CORPUS CHRISTI SS	$224.39	$231.59
1000829	Riverforest Grp Home	CORPUS CHRISTI SS	$226.87	$231.92
716201	Calm Lake	CTR FOR HEALTH CARE	$154.03	$149.14
715901	Linkwood Grp Home	CTR FOR HEALTH CARE	$176.28	$165.13
716701	Lone Shadow	CTR FOR HEALTH CARE	$164.31	$167.15
714501	Ash House	HEART OF TEXAS	$180.68	$198.46
713201	Foster	HEART OF TEXAS	$157.50	$166.73
715801	Jane	HEART OF TEXAS	$157.96	$167.80
713401	Parkside	HEART OF TEXAS	$174.17	$181.64
713301	Robert E. Lee	HEART OF TEXAS	$164.28	$179.16
714601	Twin Circle	HEART OF TEXAS	$174.45	$191.15
712201	Paradise	HELEN FARÁBEE	$150.24	$146.35
714701	Bolner House	HILL COUNTRY	$155.06	$153.41
715701	Johnston	Johnson-Ellis-Navarro	$178.76	$188.51
714801	Joseph	Johnson-Ellis-Navarro	$164.25	$166.27
715601	Royal Haven	Johnson-Ellis-Navarro	$177.94	$201.04
999992	35th Street	LAKES REGIONAL	$258.46	$137.88
716501	9th Street Home	LAKES REGIONAL	$193.24	$194.76
716601	Kessler	LAKES REGIONAL	$132.27	$141.69
999919	Park Avenue	LAKES REGIONAL	$250.57	$140.71
712501	Tenth Street Grp Home	SPINDLETOP	$249.20	$195.65
716001	Beasley Grp Home	TEXANA	$178.80	$149.57
716101	North Street	TEXANA	$180.37	$152.44
713001	Camp Lane Grp Home	TX PANHANDLE	$321.18	$172.98
713101	Club Meadows Grp Home	TX PANHANDLE	$339.56	$199.55
712901	VanTassel Grp Home	TX PANHANDLE	$425.35	$299.98
712801	Westcliff Grp Home	TX PANHANDLE	$326.25	$212.44
711501	Wisdom I	TX PANHANDLE	$133.83	$107.14
712001	Wisdom II	TX PANHANDLE	$133.83	$109.69
715101	Fordham	WEST TEXAS	$143.43	$149.25
715001	Hamilton	WEST TEXAS	$139.25	$159.01
715201	Main Street	WEST TEXAS	$180.49	$181.06
714901	Town Creek	WEST TEXAS	$181.80	$186.08

Methodology and justification: The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter D (relating to Reimbursement Methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program), §355.451(b)(2), §355.456(c), and subsequently adjusted in accordance with §355.456(e) (relating to Rate Determination).

The public hearing will be held on Tuesday, March 6, 2001, at 1:30 p.m. in room 328 of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to the Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by 4:00 p.m. on Tuesday, March 6, 2001.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Tom Wooldridge by calling (512) 206-5753 or the TDY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the hearing.

TRD-200100808
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 7, 2001

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Public Hearing Notice on Reimbursement Rates for State-Operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR).

Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on the proposed reimbursement rates for state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR). The rates will be effective January 1, 2001, through December 31, 2001. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs. Payment rates are proposed to be effective January 1, 2001, as follows:

School	Current Rate	Proposed 2001 Rates
Abilene State	$220.80	$228.21
Austin State	$226.29	$250.14
Brenham State	$207.66	$213.17
Corpus Christi State	$210.86	$215.30
Denton State	$210.87	$220.85
Lubbock State	$212.25	$211.17
Lufkin State	$204.59	$209.34
Mexia State	$233.91	$250.70
Richmond State	$222.36	$248.66
San Angelo State	$228.13	$249.10
San Antonio State	$235.93	$235.60
Center		
El Paso State	$244.59	$218.99
Rio Grande State	$214.30	$244.10

Methodology and justification: The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter D (relating to Reimbursement Methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program), §355.451(b)(2), §355.456(c), and subsequently adjusted in accordance with §355.456(e) (relating to Rate Determination).

The public hearing will be held on Tuesday, March 6, 2001, at 2:30 p.m. in room 328 of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to the Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by 4:00 p.m. on Tuesday, March 6, 2001.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Tom Wooldridge by calling (512) 206-5753 or the TDY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the hearing.

TRD-200100807
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 7, 2001

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Texas Natural Resource Conservation Commission

Invitation to Comment on Draft Memorandum of Agreement

The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC or commission) is requesting comment on a draft memorandum of agreement (MOA) between the Executive Director of the TNRCC and Executive Administrator of the Texas Water Development Board (TWDB). This MOA sets forth the coordination of program responsibilities related to groundwater conservation district management planning certification, review, and oversight. The MOA is intended to clarify and outline the necessary coordination required for the agencies to document their respective duties, responsibilities, and functions as provided under Texas Water Code, Chapter 36.

A copy of the draft MOA may be found on the commission's web page at **http://home.tnrcc.state.tx.us/water/quality/gw/index.html**. Copies of the draft MOA and further information may also be obtained by contacting Mr. Thomas Weber, Strategic Assessment Division, Texas Natural Resource Conservation Commission at (512) 239-6928 or by e-mail at **tweber@tnrcc.state.tx.us**.

Written comments on the draft MOA should be submitted to Mr. Thomas Weber, Texas Natural Resource Conservation Commission, Strategic Assessment Division, MC 206, P. O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-5687, but should be followed up with the submission of the written comments within three working days of when the comments were faxed. Written comments should mention the MOA between the commission and the TWDB and must be submitted **no later than 5:00 p.m. on April 2, 2001**.

TRD-200100766
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 6, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 19, 2001**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 19, 2001**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Alliant Energy Desdemona, L.P.; DOCKET NUMBER: 2000-1093-AIR-E; IDENTIFIER: Air Account Number EA-0085-H; LOCATION: Desdemona, Eastland County, Texas; TYPE OF FACILITY: natural gas compression; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by failing to certify compliance with the Title V General Operation Permit Number O-00323; PENALTY: $3,125; ENFORCEMENT COORDINATOR: James Beauchamp, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: Casey Development Company LC and Carl H. Casey and D. M. Casey; DOCKET NUMBER: 2000-0936-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1520188; LOCATION: Wolfforth, Lubbock County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(F)(ii) and (iii), by failing to meet the minimum water system capacity requirements for total storage and service pump capacity; PENALTY: $750; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(3) COMPANY: Debbie and Melvin Block dba Community Water System; DOCKET NUMBER: 2000-0883-PWS-E; IDENTIFIER: PWS Numbers 1810018, 1810023, 1810025, 1810034, 1810062, 1810083, and 1810178; LOCATION: Bridge City and Vidor, Orange County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.6(a)(1), by failing to collect bacteriological samples; 30 TAC §290.46(f)(2)(B) and (w), by failing to record sample site locations for the weekly chlorine residuals taken and post a sign with accurate information; 30 TAC §290.41(c)(3)(N), by failing to provide a well discharge flow meter; 30 TAC §290.117(e)(2), (formerly 30 TAC §290.120(e)(2)), and the Code §341.0315(c), by failing to conduct reduced monitoring tap sampling for lead and copper; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $2,318; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Empak, Incorporated; DOCKET NUMBER: 2000-1232-AIR-E; IDENTIFIER: Air Account Number HG-4566-C; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: railcar washing; RULE VIOLATED: 30 TAC §101.10 and the Code, §382.085(b), by failing to submit an emissions inventory questionnaire; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Larry Gardner dba Gardner Dairy; DOCKET NUMBER: 2000-1007-AGR-E; IDENTIFIER: Enforcement Identification Number 15212; LOCATION: Bonanza, Hopkins County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121, by failing to prevent the discharge of waste and/or wastewater; and 30 TAC §321.39(f)(18), by failing to provide a lagoon liner certification and to prevent access of animals to the lagoon; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535- 5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Maxey Road Water Supply Corporation; DOCKET NUMBER: 2000-0633- MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13503-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1), (4), and (5), 317.4(a)(7), and 317.3(e)(5), and TPDES Permit Number 13503-001, by failing to maintain grease trap waste disposal records, maintain the overall integrity of the treatment plant, provide access to the bar screen for routine operation and maintenance, and provide an alarm system on the lift station; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Mobil Chemical Company, Inc.; DOCKET NUMBER: 2000-0923-AIR-E; IDENTIFIER: Air Account Number JE-0062-S; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §117.211(e) and §117.520(a)(1)(A), by failing to properly conduct the initial demonstration of compliance with nitrous oxides, carbon monoxide, and oxygen emission limits; and 30 TAC §334.21 and §335.323, by failing to pay petroleum storage tank, underground storage tank, and late fees; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Mr. Odie Nehring dba Chaparral III Water System, Green Acres Water System, Walburg Water System, and Weir Water Works; DOCKET NUMBER: 2000-0094-PWS-E; IDENTIFIER: PWS Numbers 2460047, 2460054, 2460016, and 2460017; LOCATION: Weir, Williamson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(A) and (K), and §290.46(x), by failing to properly plug and abandon well number two, establish a sanitary control easement, seal the wellhead, submit well completion data, and provide well number one with a 16-mesh or finer corrosion-resistant screening casing vent; 30 TAC §290.103(2) and the Code §341.031(a) and §341.0315(c), by allegedly distributing drinking water that exceeded the maximum contaminant level for fluoride; 30 TAC §290.51(a)(3) and the Code, §341.041, by failing to pay public health service fees; 30 TAC §290.113(a), by failing to submit a written request for approval to use drinking water that exceeds the secondary constituent level for fluoride; 30 TAC §290.46(d), (m), (p), (s), (t), and (y), and §290.47(h), by failing to provide complete monthly operation reports and copies of the inspection reports for the ground storage and pressure tanks, maintain cleanliness and the general appearance of all plant facilities, maintain the exterior paint coating of the ground storage tank, issue a boil water notice, maintain all related appurtenances in a watertight condition, and have water system wiring installed in a securely mounted conduit; 30 TAC §290.45(b)(1)(C)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.43(c)(1) and (3), by failing to provide the above ground storage tank with a 16-mesh or finer vent screen and provide an above ground storage tank overflow pipe with an appropriate weighted cover; 30 TAC §290.44(a)(4), (b)(1)(C)(i), (ii), and (iv), and (h)(4)(D), by failing to provide a test report for each backflow assembly, provide a well capacity of 0.6 gallons per minute (gpm) per connection, provide a total storage tank capacity of 200 gallons per connection, provide a pressure tank capacity of 20 gpm per connection, and bury all water transmission lines at least 24 inches below ground level; and 30 TAC §291.76 and the Code, §5.235(n), by failing to pay regulatory assessment fees; PENALTY: $2,226; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Alvin Kidd and Mitch Kidd dba Old West Mobile Home Park; DOCKET NUMBER: 2000-0849-PWS-E; IDENTIFIER: PWS Number 1910045; LOCATION: Amarillo, Randall County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e), by failing to conduct reduced tap monitoring for lead and copper; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $313; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Scythian, Ltd.; DOCKET NUMBER: 2000-0715-AIR-E; IDENTIFIER: Air Account Number TD-0054-J; LOCATION: Tokio, Terry County, Texas; TYPE OF FACILITY: tank battery; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.0518(a) and §382.085(a) and (b), by failing to obtain a permit or to satisfy the conditions for exempt facilities; the Code, §382.085(b), by failing to operate a flare device; and 30 TAC §101.7(b) and the Code, §382.085(a) and (b), by failing to notify the commission's regional office prior to the shutdown of the flare device; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(11) COMPANY: Slaton Motors, L.P. dba All American Chevrolet; DOCKET NUMBER: 2000- 1279-PWS-E; IDENTIFIER: PWS Number 1520238; LOCATION: Slaton, Lubbock County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c), (formerly 30 TAC §290.106(a)), and the Code, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; and 30 TAC §290.109(g) and §290.122, (formerly 30 TAC §290.106(e)(2) and §290.103(5)), by failing to provide public notice; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(12) COMPANY: Southeastern Pipe Line Company; DOCKET NUMBER: 2000-0856-AIR-E; IDENTIFIER: Air Account Number WF-0119-C; LOCATION: East Bernard, Wharton County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §122.121 and §122.130(a)(2), and the Code, §382.054 and §382.085(b), by failing to submit a completed Title V permit application; and 30 TAC §101.10(b)(2) and (3), and the Code, §382.085(b), by failing to submit an annual emissions inventory update; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Southwest Powder Coatings, Inc.; DOCKET NUMBER: 2000-0980-IHW-E; IDENTIFIER: Solid Waste Registration Number F0625; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: powder coating; RULE VIOLATED: 30 TAC §335.2(a) and 40 Code of Federal Regulations (CFR) §270.1(c), by failing to obtain a hazardous waste permit; 30 TAC §335.12(a)(1), by allegedly accepting delivery of hazardous waste without a hazardous waste manifest; 30 TAC §335.15(3) and 40 CFR §265.76, by failing to submit a report summarizing the types and volumes of any hazardous waste received; 30 TAC §116.110(a) and the Code, §382.0158(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions for exempt facilities prior to the operation of the electric oven; 30 TAC §335.10(b) and 40 CFR §262.20(a), by failing to include the generator's United States Environmental Protection Agency (EPA) identification number, the generator's TNRCC registration number, and the designated facility's EPA identification number on the waste manifest; and 30 TAC §335.431 and 40 CFR §268.7(a), by failing to provide a land disposal restriction notice; PENALTY: $600;

ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Structural Metals, Inc.; DOCKET NUMBER: 2000-1048-AIR-E; IDENTIFIER: Air Account Number GL-0028-H and Air Permit Number 37740; LOCATION: Seguin, Guadalupe County, Texas; TYPE OF FACILITY: electric arc furnace; RULE VIOLATED: 30 TAC §122.121 and the Code, §382.054, by failing to stop operation of a unit having major emissions of sulfur dioxide; 30 TAC §116.115(b)(2)(G), Permit Number 8248, and the Code, §382.085(b), by failing to limit sulfur dioxide emissions from the electric arc furnace; 30 TAC §113.615(2), by failing to obtain permit authorization to emit large quantities of sulfur dioxide; and 30 TAC §122.136(b) and the Code, §382.085(b), by failing to correct the federal operating permit application within 60 days of discovering that the facility is a major source of sulfur dioxide emissions; PENALTY: $12,000; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Texas A&M University; DOCKET NUMBER: 2000-0193-MWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number TX0108146 and Water Quality Permit Number 10968-003; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17), NPDES Permit Number TX0108146, and Water Quality Permit Number 10968-003, by failing to submit in a timely manner a semi-annual discharge monitoring report; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: United Galvanizing, Inc.; DOCKET NUMBER: 2000-1167-PWS-E; IDENTIFIER: PWS Number 1011940; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(e), (formerly 30 TAC §290.120(e)), by failing to conduct annual reduced monitoring tap sampling for lead and copper analysis; PENALTY: $938; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: U.S. Liquids, Inc. dba National Grease; DOCKET NUMBER: 2000-0913- MLM-E; IDENTIFIER: Municipal Solid Waste Registration Number 61006, Sludge Transporter Identification Number 22805, and Air Account Number AC-0143-S; LOCATION: Diboll, Angelina County, Texas; TYPE OF FACILITY: liquid waste transfer; RULE VIOLATED: 30 TAC §101.4 and the Code, §382.085(a) and (b), by failing to prevent the discharge of one or more air contaminants; 30 TAC §312.142(f), by failing to provide notification of the relocation of transporter and processing operations; 30 TAC §312.143, by failing to transport and deposit waste at a facility which has written authorization by permit or registration to receive wastes; 30 TAC §§330.4, 312.146, and 330.72, and the Code, §26.121, by storing grease trap waste at an unauthorized facility and spills of grease trap waste on the ground at the unauthorized facility; 30 TAC §330.5, by failing to obtain a permit for a liquid waste transfer facility; 30 TAC §312.144(d) and (f), by failing to have sight gauges on all closed vehicles and prominently mark discharge valves and ports on containers of liquid waste; PENALTY: $5,760; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Zaineb Investments, Incorporated dba Texaco Food and Laundry Mat; DOCKET NUMBER: 2000-1101-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0047819; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475, by failing to install a method of corrosion protection for the underground storage tank (UST); 30 TAC §334.7(d)(3), by failing to amend registration for any change or additional information; and 30 TAC §334.21, by failing to pay the UST fees; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200100763
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 6, 2001

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Notice of Water Rights Applications

CENTEX HOMES, 16414 San Pedro, Suite 700, San Antonio, Texas 78232, applicant, seeks a Water Use Permit pursuant to §11.143, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, et seq. Notice will be published and mailed to all the downstream water rights holders pursuant to §295.153 (c)(1). The applicant seeks authorization to maintain an existing dam and on-channel reservoir pursuant to §11.143 for in-place recreational use in a residential subdivision. The reservoir is located on Lorence Creek , tributary of Salado Creek, tributary of San Antonio River, in the San Antonio River Basin, in Bexar County, Texas approximately 13 miles north of San Antonio, Texas, within the corporate limits of Hollywood Park. Station 0+00 on the centerline of the dam is S 49.58° W, 1,220 feet from the northwest corner of J. Boatwright Original Survey No. 334 3/4, Abstract No. 993, in Bexar County, Texas, also being at Latitude 29.59°N, Longitude 98.48°W. The reservoir has a capacity of 6.787 acre-feet of water with the surface area of 1.81 acre and was constructed prior to 1980.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200100656
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 1, 2001

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Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on January 19, 2001. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Star Fuels Inc. d/b/a Beechnut Texaco #049-878; Harwin Texaco; Hillcroft Texaco; Texaco#049-1357; Westheimer Super Mart; and West Side Texaco, Respondent; SOAH Docket No.582-00-0847; TNRCC Docket No.1998-1217-PST-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200100655
Doug Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: February 1, 2001

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Nortex Regional Planning Commission

Request for Proposals

The Nortex Regional Planning Commission is requesting bids for a Mobile Workforce Center. This unit will be a recreational vehicle (trailer), minimum of 36 ft. in length; converted for classroom and computer lab use, to provide services within the eleven county region. Basic specifications that must be included in all bids: Full accessibility in compliance with the Americans with Disabilities Act, to include an attached wheel chair lift. Restroom must also be accessible. Unit should include two empty rooms to be used as a classroom (tip-out desired), and a separate area for computer lab, electric outlets, water storage, and waste-water storage, due to computer usage it is suggested that there are two roof mounted a/c units, additionally outside security lights are required. Kitchen are not required, however ample overhead storage is needed, along with a closet area.

Please send bids to: Nortex Regional Planning Commission, 4309 Jacksboro Hwy, Suite 200, Wichita Falls, TX 76302, Attention: Charles Moore. For additional information, please call (940) 322-1801. Deadline for bids is 5:00 PM, March 16, 2001.

TRD-200100765
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: February 6, 2001

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North Texas Local Workforce Development Board

Workforce Investment Act (WIA) Youth Programs

Proposals are requested for the Workforce Investment Act (WIA) youth program to serve economically disadvantaged youth, ages 14 through 21. Youth programs should provide for comprehensive youth services which improve educational achievement, prepare youth for succeeding in employment, supports youth, and offers services intended to develop the potential of youth as citizens and leaders.

North Texas Workforce Development area includes the following 11 counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young.

To obtain Request for Proposal packets contact Nita Keck, Administrative Technician, North Texas WDB, 1101 Eleventh Street, P.O. Box 4671, Wichita Falls, Texas 76308. Phone (940) 767-1432, fax (940) 322-2683, or email: nita.keck@twc.state.tx.us. You may also contact us through TDD at 1-800-RELAYTX or 1-800-735-2989 for more information. Deadline to submit proposals is 4 p.m., Friday, March 9, 2001.

No questions will be answered over the telephone. Questions will be accepted in writing until 4 p.m. on Friday, February 23. Questions may be faxed to (940) 322-2683, attention Nita Keck.

North Texas Workforce Development Board is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Program operation dependent upon availability of funds from Texas Workforce Commission.

TRD-200100699
Mona Williams-Statser
Executive Director
North Texas Local Workforce Development Board
Filed: February 2, 2001

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission is soliciting bids for a contract to purchase office furniture for the Texas Workforce Centers located in Dumas and Hereford, Texas.

PRPC will only accept bids for modular style furniture meeting the following criteria: panels must be of a steel clad/hardboard construction, must be 3 inches thick with height options ranging from 33 to 83 inches and width options ranging from 24 to 60 inches and must be tackable and acoustical; system must incorporate channels and access grommets for electrical and wire management, and must not require balanced loads to be stable and rigid; work surfaces must be available in rectangular and curvilinear configurations, and a free standing desk system must be available to match the system's components.

The full bid specifications may be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Ave., Amarillo, Texas 79101. For further information, please contact Leslie Hardin, lhardin@prpc.cog.tx.us, or at (806) 372-3381.

Bids must be submitted to the Panhandle Regional Planning Commission no later than 5:00 p.m., February 16, 2001. Bids received after the indicated date and time will not be accepted or considered for award. PRPC reserves the right to reject any and all bids, to waive any irregularities in any bids or in the bidding process, and may accept the bid or bids deemed to be in its best interest.

TRD-200100646
Tom Dressler
Workforce Development Director
Panhandle Regional Planning Commission
Filed: January 31, 2001

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Texas State Board of Public Accountancy

Correction of Error

The Texas State Board of Public Accountancy proposed an amendment to 22 TAC §527.4, concerning Quality Review Program. The rule appeared in the January 26, 2001, *Texas Register* (26 TexReg 871.)

Due to an error in the preamble the date for submitting comments was published as January 12. The correct date is March 9, 2001. The paragraph on page 872 should read as follows.

"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 March 9, 2001. 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."

TRD-200100669

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Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience for Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on January 25, 2001, for a certificate of convenience for a proposed transmission line in Dallas County pursuant to P.U.C. Substantive Rule §25.101(c)(1)(C) and §§14.001, 37.051, 37.054, 37.056 and 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows.

Docket Style and Number: Application of TXU Electric Company for a Certificate of Convenience and Necessity (CCN) for Proposed Transmission Line within Dallas County, Texas. Docket Number 23604.

The Application: In 2002, the southwestern part of Dallas County will be served by four 138 kV lines extending into the area from Cedar Hill Switching Station, DeSoto Switching Station, Watermill Switching Station and Venus Station. Studies indicate the flow on the DeSoto Switching Station - Cedar Hill Substation 138 kV Line will be about 104% of the emergency rating of the line with all other lines in service. This normal condition overload is primarily due to the construction of merchant plants south of the area which cause a significant amount of power to flow into the area from the south. The outage of the Cedar Hill Switching Station - Cedar Hill Substation 138 kV Line or the Watermill Switching Station - Cedar Hill Substation 138 kV Line will cause the flow on the DeSoto Switching Station - Cedar Hill Substation 138 kV Line to be approximately 119% or 124% of the emergency rating, respectively. Additionally, cities (Dallas, Cedar Hill and Lancaster) in the area continue to experience new residential and commercial development. This development causes a sizeable growth in the demand for electricity, and this demand for electricity is expected to continue to grow. The proposed project entails building a second 138 kV circuit from DeSoto Switching Station to Cedar Hill Substation prior to the summer of 2002 to alleviate the projected line overloads.

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-200100657
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 1, 2001

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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 February 1, 2001, 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 Occidental Power Marketing, L.P. for Retail Electric Provider (REP) certification, Docket Number 23630 before the Public Utility Commission of Texas.

Applicant's requested service area is defined by a specific list of customers, each of whom contract for one megawatt or more of capacity.

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 February 23, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200100756
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2001

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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 February 6, 2001, 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 Calpine Power America, L.P. for Retail Electric Provider (REP) certification, Docket Number 23659 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) 936-7150 no later than March 2, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7003.

TRD-200100802
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 31, 2001, ClearWorks.net, Inc. 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 60267. Applicant intends to reflect its reorganization with Eagle Wireless International, Inc., whereby the Applicant will become a wholly-owned subsidiary of Eagle Wireless International, Inc.

The Application: Application of ClearWorks.net, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23628.

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 February 21, 2001. 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 23628.

TRD-200100667
Rhonda Dempsey
Executive Director
Public Utility Commission of Texas
Filed: February 1, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 1, 2001, PhoneSense, Inc. 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 60206. Applicant intends to expand its geographic area to include the entire state of Texas, and change its name to PhoneSense.

The Application: Application of PhoneSense, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23533.

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 February 21, 2001. 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 23533.

TRD-200100668
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 1, 2001

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Notice of Application for 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 February 2, 2001, for a certificate of operating authority (COA), pursuant to §§54.101-54.105 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of BBC Telephone, Inc. for a Certificate of Operating Authority, Docket Number 23645 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested COA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company.

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) 936-7150 no later than February 21, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7003.

TRD-200100757
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2001

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Notice of Application for Sale, Transfer, or Merger

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 on February 2, 2001, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101 (Vernon 1998 & Supplement 2000).

Docket Style and Number: Application for Sale, Transfer, or Merger of El Paso Electric Company and Hueco Mountains Wind Ranch, Docket Number 23642.

The Application: El Paso Electric Company filed an application for acquisition of a wind generation plant from Texas Wind Power Company. There are no territorial certificate rights affected by this transaction.

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.

TRD-200100801
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2001

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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 February 1, 2001, 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 North County Communications Corporation for a Service Provider Certificate of Operating Authority, Docket Number 23468 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the geographic area of Texas currently served by Southwestern Bell Telephone Company.

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 February 21, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200100755
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2001

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Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.25

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 2, 2001, for good cause waiver of the requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of Southwestern Bell Telephone Company (SWBT) for Good Cause Waiver Regarding Certain Aspects of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23639.

The Application: SWBT requests a good cause waiver of the February 15, 2001 deadline to April 15, 2001 to complete the bill format changes that SWBT understood would bring SWBT's bills into compliance with P.U.C. Substantive Rule §26.25. In the alternative, if the commission determines that SWBT's bills will not be in compliance until additional changes requested by the commission staff are completed, SWBT requests a good cause waiver until October 15, 2001. SWBT will not be able to complete all the programming changes required to make the agreed changes until April 15, 2001. However, as of April 15, 2001, SWBT's bills will be in full compliance with P.U.C. Substantive Rule §26.25. SWBT is also making additional changes to its bills by April 15, 2001 and October 15, 2001, at the latest. These changes are based on staff's requests of October 4, November 9, and November 14 and on the commissioners' comments during the open meeting of December 1, 2000.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or 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 comments should reference Docket Number 23639.

TRD-200100767
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2001

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Notice of Application for Waiver of Requirements in P.U.C. Substantive Rule §26.130

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 22, 2001, for waiver of requirements in P.U.C. Substantive Rule §26.34, Telephone Prepaid Calling Services.

Docket Title and Number: Application of AT&T Communications of Texas, L.P. (AT&T) for Good Cause Waiver of Certain Requirements in P.U.C. Substantive Rule §26.34. Docket Number 23592.

The Application:. AT&T states that through these waivers, it is proposing an alternative that results in substantial compliance with the rule, providing the needed information to customers, while avoiding portions of the rule that are impossible to implement. AT&T seeks waiver of certain written disclosure requirements that all prepaid calling cards must be issued with the following information printed on the card: (1) the maximum rate per minute for local, intrastate, and interstate calls; (2) the cost for a one minute call, if higher than the maximum rate per minute; (3) the actual value of the card and applicable surcharges expressed in minutes; and (4) a listing of all applicable surcharges to be printed on or in any packaging at the point of sale. In addition, AT&T requests waiver that the requirements contained in the rule relating to information required to be available at the point of sale or printed on the card, do not apply to cards issued prior to February 15, 2001.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or 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 comments should reference Docket Number 23592.

TRD-200100649
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2001

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Notice of Application of El Paso Electric Company for Approval of Renewable Energy Tariff

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for approval of a renewable energy tariff of El Paso Electric Company (El Paso) filed on February 2, 2001. A summary of the application follows:

Docket Style and Number: Application of El Paso Electric Company for Approval of Renewable Energy Tariff. Docket Number 23644.

The Application: As part of a stipulation with parties in Docket Number 19545--*Application of El Paso Electric Company for Approval of Preliminary Integrated Resource Plan*, El Paso committed Palo Verde

performance rewards in the amount of $3.6 million to the development of a renewable energy program, including the acquisition of renewable resources. In its Order adopting the stipulation, the commission approved El Paso's targeted solicitation for renewable energy tariff within 45 days of completing the targeted solicitation. El Paso has now completed the targeted solicitation and has negotiated the terms of the relevant contracts for the acquisition, operation, and maintenance of a 1.32 MW wind generation project in El Paso's Texas service territory.

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.

TRD-200100768
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2001

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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, filed on January 29, 2001, to amend certificated service area boundaries pursuant to §§14.001, 37.051, 37.054, 37.056 and 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville (BPUB) to Amend Certificated Service Area Boundaries within Cameron County, Texas. Docket Number 23614.

The Application: BPUB has received a request from El Valle Properties, Ltd., owner of a 230-acre tract for electrical service to the tract that is being developed as a subdivision to be called El Valle Grande Subdivision. The 230 acres will be developed into 1,167 residential lots and one 11-acre panel. The area is bounded on the west by Flor de Mayo Road, on the north by the Rodeo Subdivision, on the east by undeveloped farmland, and on the south by undeveloped farmland that has recently been annexed by the City of Brownsville. The land is unimproved at this time; Central Power & Light (CPL) is providing temporary service to a construction site on the property at this time. No other electric service is being provided. CPL is presently singly certificated to the area. BPUB will be providing water and wastewater service to the subdivision. CPL presently has a small single-phase electric line along the west side of the property along Flor de Mayo Road. There are also two short single-phase tap lines owned by CPL going into the project (one for temporary service and one not serving any customers). BPUB is proposing to extend a three-phase line from a point 500 feet south of the project along Flor de Mayo Road. On site the project will be served by underground distribution lines to the individual lots.

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-200100658
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 1, 2001

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Public Notice of Amendment to Interconnection Agreement

On January 30, 2001, Southwestern Bell Telephone Company and Santa Rosa Telephone Cooperative, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23620. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 23620. 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 February 26, 2001, 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 23620.

TRD-200100659
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 1, 2001

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Public Notice of Amendment to Interconnection Agreement

On January 29, 2001, Southwestern Bell Telephone Company and AT&T Wireless Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23615. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 23615. 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 February 26, 2001, 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 23615.

TRD-200100660
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 1, 2001

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Public Notice of Interconnection Agreement

On February 5, 2001, Rhythms Links, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23652. 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 23652. 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 February 27, 2001, 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 23652.

TRD-200100805
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2001

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Public Notice of Interconnection Agreement

On February 5, 2001, MVX.com Communications, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23653. 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 23653. 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 February 27, 2001, 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 23653.

TRD-200100806
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2001

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Public Notice of Interconnection Agreement

On February 5, 2001, Dialtone Depot, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23649. 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 23649. 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 February 27, 2001, 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 23649.

TRD-200100803
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2001

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Public Notice of Interconnection Agreement

On February 5, 2001, Allegiance Telecom of Texas, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23650. 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 23650. 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 February 27, 2001, 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 23650.

TRD-200100804
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2001

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Request for Information for Real Estate Appraisal Firms to Study the Electric Utility Infrastructure at Lubbock Reese Airforce Base and to Recommend a Reasonable Purchase Price for the Infrastructure

A Request for Information (RFI) will be issued in Project Number 23034 pursuant to the Texas Local Government Code §396.005(c)(2), which requires the Public Utility Commission of Texas (commission) to study the electric utility infrastructure of the Lubbock Reese Airforce Base Authority (Authority) and to determine a reasonable purchase price for the infrastructure. The Local Government Code also authorizes the Authority to reimburse the commission if hiring a consultant is necessary to complete the study. Government Code §2254.001 permits a governmental entity to enter into a contract for professional services for real estate appraisals.

Eligible Respondents. The commission is requesting responses from entities with experience in evaluating and appraising electric utility transmission and distribution facilities that have an interest in providing these services to the commission. Entities that meet the definition of a historically underutilized business (HUB), as defined in Texas Government Code, Chapter 2161, §2161.001, are encouraged to submit a response.

Project Description. The selected appraisal firm will study the electric utility infrastructure and facilities at Lubbock Reese Airforce Base and recommend a reasonable purchase price for the infrastructure to the commission. The facilities include the Reese AFB Main Substation. Southwestern Public Service Company (SPS) serves the Reese Main Substation by a 23 kilovolts (kV) circuit from its Carlisle Interchange. The Reese Main Substation 7500 kilovolt-ampere (KVA) transformer steps the voltage down from 23 kV to 12.47 kV. A set of three 12.47 kV 333 kVA single-phase voltage regulators in the Reese Main Substation regulates voltage on the distribution feeders. Also in the substation are a 2400 KVAR capacitor bank, a station power transformer, and a set of three-phase current transformers and voltage transformers. Five 12.47 kV feeder distribution circuits are routed out of the Reese Main Substation, consisting of four overhead three-phase grounded neutral primary electrical system feeders, and one 12.47 kV underground feeder. Two hundred ninety-one wood poles support the overhead feeders.

Selection Criteria. An appraisal firm will be selected on the basis of demonstrated competence and qualifications necessary to perform the requested services for a fair and reasonable price. Evaluation criteria will include, but are not limited to: experience of the organization in the appraisal of electric utility assets; qualifications and experience of assigned personnel; evidence or examples of completed appraisals of similar nature; descriptions of the methodologies used by the organization in developing appraisals; the total estimated fee and a detailed breakdown of the basis used to develop such estimate; the existence of potential conflicts of interest; the estimated time required to complete the appraisal; and other general evidence of ability to develop a reasonable appraised value.

The commission will evaluate responses to assist it in locating the most highly qualified appraisal firm to conduct the appraisal. The commission is not required to make its selection for an appraisal firm from among the respondents to the RFI. Respondents will be notified in writing of the selection.

Requesting a copy of the Request for Information. A complete copy of the RFI for Services to Provide a Study of the Electric Utility Infrastructure at Lubbock Reese Airforce Base and to make a recommendation on a reasonable purchase price may be obtained by writing Susan K. Durso, General Counsel, Room 7-170F, Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, or emailing susan.durso@puc.state.tx.us, or calling (512) 936-7146. The RFI will be available February 16, 2001, and will be mailed to all parties who request a copy. You may also download the RFI from the commission's website www.puc.state.tx.us, under "What's New", and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at www.marketplace.state.tx.us.

For Further Information. For clarifying information about the RFI, contact Susan Durso, General Counsel, Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, Fax (512) 936-7003, or susan.durso@puc.state.tx.us.

Deadline for Receipt of Responses. Responses must be filed under seal with a cover letter for filing in Project Number 23034 and received no later than 3:00 p.m. on Monday, March 26, 2001, in the Central Records Division (Central Records) of the Public Utility Commission of Texas, Room G-113, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Central Records is open for filing between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on state holidays. Regardless of the method of submission of the response, the commission will rely solely on Central Records' time/date stamp in establishing the time and date of receipt.

TRD-200100700
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 2, 2001

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Waterstone Environmental Hydrology and Engineering, Inc., 1650 38th St. No. 201E, Boulder, Colorado, 80301, received November 29, 2000, application for financial assistance from the Research and Planning Fund.

Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C., 111 Congress Avenue, Suite No.1800, Austin, Texas, 78701, received November 29, 2000, application for financial assistance from the Research and Planning Fund.

Daniel B. Stephens & Associates, Inc. (DBS&A), 6020 Academy NE, Suite No. 100, Albuquerque, New Mexico, 87109, received November 29, 2000, application for financial assistance from the Research and Planning Fund.

GDS Associates, Inc., 919 Congress Avenue, Suite No. 800, Austin, Texas, 78701, received November 29, 2000, application for financial assistance from the Research and Planning Fund.

LBJ-Guyton Associates, 1101 S. Capital of Texas Hwy, Suite B-220, Austin, Texas, 78746, received November 29, 2000, application for financial assistance from the Research and Planning Fund.

Nueces County Water Control and Improvement District No. 3, 501 East Main Street, Robstown, Texas, 78380, received November 29, 2000, application for financial assistance in an amount of $9,250,000 from the Texas Water Development Funds.

TRD-200100811
Gail L. Allan
Director of Project-Related Legal Services
Texas Water Development Board
Filed: February 7, 2001

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

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