TEXAS REGISTER

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This month's front cover artwork:

Artist: *Cindy Armstrong*
11th grade
Tatum High School

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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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.texas.gov/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for March 6, 2001.

Appointed to the Texas Lottery Commission for terms to expire February 1, 2003, Walter H. Criner, Sr. of Houston (replaced Anthony Sadberry of Houston whose term expired).

Appointed to the Texas Lottery Commission for terms to expire February 1, 2007, Betsy Whitaker of Dallas (reappointed).

Appointed to the Texas Board of Human Services for terms to expire January 20, 2003, Jon M. Bradley of Dallas (replaced Bill Jones of Houston who resigned).

Appointed to the Texas Board of Human Services for terms to expire January 20, 2007, Manson B. Johnson of Houston (replaced Carole Woodard of Galveston whose term expired).

Appointed to the Board of Vocational Nurse Examiners for terms to expire September 6, 2001, Joyce M. Adams, PhD, RN of Houston (filled the unexpired term of Betty Sims of Beeville who resigned).

Appointed to the Texas Environmental Education Partnership Fund for terms to expire February 1, 2003, Carolyn M. Appleton of Corpus Christi (replaced Catriona Glazebrook whose term expired).

Appointments for March 9, 2001.

Appointed to be Commissioner of Education for a term of office commensurate with the term of the Governor, James E. Nelson of Austin (reappointed).

Appointments for March 13, 2001.

Appointed to the Texas Department of Housing and Community Affairs for terms to expire January 31, 2007, Vidal Gonzalez of Del Rio (replaced Florita Bell Griffin of Bryan whose term expired) and Shadrick Bogany of Missouri City (replaced Donald Bethel of Lamesa whose term expired).

Appointments for March 14, 2001.

Appointed to the Texas A&M University Board of Regents for terms to expire February 1, 2007, Phillip David Adams of College Station (replaced Robert H. Allen of Houston whose term expired), Lester Lowry Mays of San Antonio (replaced Frederick D. McClure of Dallas whose term expired), and Wendy Lee Gramm of College Station (replaced Donald Powell of Amarillo whose term expired).

Appointed to be Justice of the Supreme Court of Texas until the next General Election and until his successor shall be duly elected and qualified, Wallace B. Jefferson of San Antonio (replaced Alberto R. Gonzales of Austin who resigned).

TRD-200101537

Rick Perry, Governor

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OFFICE OF THE ATTORNEY GENERAL

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

Open Records Decision

Open Records Decision No. 673 (ORQ-55)(ID# 139312) March 19, 2001

No Requestor. Issued under authority of section 552.011, Tex. Gov't. Code.

RE: Which attorney general decisions are "previous determinations" and which are not? When can a court decision function as a previous determination? When does a previous determination expire or become invalid? To which documents does a previous determination apply? To which governmental bodies does a previous determination apply? What is the result if a governmental body does not seek an attorney general ruling because it believes that it has a previous determination, but; in fact, the governmental body does not have a previous determination?

SUMMARY: The term "previous determination" under section 552.301(a) of the Government Code means only one of two types of attorney general decisions. So long as the law, the facts, and the circumstances on which the ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure. The second type is an attorney general decision which may be relied upon so long as the elements of law, fact, and circumstances are met to support the previous decision's conclusion, the decision concludes that a specific, clearly delineated category of information is or is not excepted from disclosure, and the decision explicitly provides that the governmental body or type of governmental body from which the information is requested, in response to future requests, is not required to seek a decision from the attorney general in order to withhold the information.

TRD-200101608
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: March 21, 2001

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Opinions

Opinion No. JC-0353

Mr. Charles W. Heald, P.E. Executive Director Texas Department of Transportation 125 East 11th Street Austin, Texas 78701-2483

Re: Whether state highway revenues may be invested in a toll road project without a requirement for repayment (RQ-0319-JC)

S U M M A R Y

Absent an amendment to article III, section 52-b of the Texas Constitution, the Texas Department of Transportation may not provide the Texas Turnpike Authority with funds for the costs of turnpikes, toll bridges, or toll roads without requiring the repayment of such funds from tolls or other turnpike revenue.

Opinion No. JC-0354

The Honorable Ron Lewis Chair, Committee on Energy Resources Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Whether the Port of Port Arthur Navigation District may adopt a policy limiting the number of years it will consent to allow an existing loading and unloading contract to automatically renew to five (RQ-0298-JC)

S U M M A R Y

The Port of Port Arthur Navigation District may adopt a policy limiting to five the number of years it will permit a contract for loading and unloading services automatically to renew, assuming that the policy does not contravene any restrictions or covenants in the District's tax-exempt revenue bonds.

Opinion No. JC-0355

The Honorable David Cain Chair, Committee on Administration Texas State Senate P.O. Box 12068 Austin, Texas 78711

Re: Application of chapter 711 of the Health and Safety Code to cemeteries not dedicated under that chapter, and related questions (RQ-0304-JC)

S U M M A R Y

The provisions in chapter 711 of the Health and Safety Code that refer broadly to cemeteries, as opposed to cemetery organizations, apply as a general matter to the cemeteries dedicated in the late nineteenth century. Land dedicated as a cemetery under common law, as opposed to chapter 711, may be conveyed, but the conveyance may not interfere with the land's dedicated use. Section 711.041 requires the owner of a cemetery or private burial ground to provide reasonable public access for visiting purposes.

Opinion No. JC-0356

The Honorable Homero Ramirez Webb County Attorney P.O. Box 420268 Laredo, Texas 78042-0268

Re: Whether the 406th District Court of Webb County has criminal jurisdiction (RQ-0299-JC)

S U M M A R Y

The 406th District Court of Webb County has criminal jurisdiction.

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

TRD-200101596
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: March 20, 2001

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Request for Opinions

RQ-0360-JC

The Honorable Royce West Chair, Jurisprudence Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether a child who is excused from attendance at school for medical reasons is ineligible for class credit by virtue of section 25.092 of the Education Code (Request No. 0360-JC)

Briefs requested by April 19, 2001

RQ-0361-JC

The Honorable Florence Shapiro, Chair, State Affairs Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether renting a portion of one's residence disqualifies that portion for the homestead exemption, and related questions (Request No. 0361-JC)

Briefs requested by April 15, 2001

RQ-0362-JC

The Honorable Tim Curry, Tarrant County, Criminal District Attorney, 100 North Houston, Fort Worth, Texas 76196

Re: Whether the Board of Managers of the Tarrant County Hospital District may appoint its own members to the board of the district's health maintenance organization, and related questions (Request No. 0362-JC)

Briefs requested by April 15, 2001

RQ-0363-JC

Mr. Robert J. Huston, Chair, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087

Re: Constitutionality of section 26.179 of the Water Code (Request No. 0363-JC)

Briefs requested by April 15, 2001

For further information, please call 512 463-2110.

TRD-200101620
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: March 21, 2001

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-478. The Texas Ethics Commission has been asked about the application of the revolving door provision in Government Code §572.054(b) to a former employee of the Health and Human Services Commission. As an employee of the Health and Human Services Commission, the requestor was responsible for designing a particular health-care program. Two other state agencies were responsible for letting contracts under the program. The question raised is whether the requestor may work for a private provider who contracted to provide services under the program.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200101531
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: March 14, 2001

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EMERGENCY RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES
SUBCHAPTER P. SUGARCANE ROOTSTOCK BORER WEEVIL QUARANTINE

4 TAC §§19.160 - 19.164

The Texas Department of Agriculture (the department) adopts on an emergency basis, new §§19.160-19.164, concerning a quarantine for the sugarcane rootstock borer weevil, *Diaprepes abbreviatus* (L). The new sections are adopted on an emergency basis to prevent the spread of the sugarcane rootstock borer weevil and facilitate its eradication. The new sections require application of treatments to achieve eradication and prescribe specific restrictions on the handling and movement of quarantined articles. To date, five adult and several larvae of the sugarcane rootstock borer weevil have been found in an orange grove located 0.2 miles West of the intersection of Hobbs Drive and North 2nd Street in McAllen, Texas. Adult emergence of this pest begins in the spring as new foliage appears during the bloom period.

The department believes that it is necessary to take this immediate action to prevent the spread of the sugarcane rootstock borer weevil into other citrus and nursery growing areas of Texas, and adoption of this quarantine on an emergency basis is both necessary and appropriate. The citrus and nursery industries are in peril because without this emergency quarantine and treatment of the infestation, other states may quarantine Texas. As a result, Texas could lose important export markets and would require regulatory treatments to export citrus plants and nursery stocks, which would result in increased production costs to producers. The emergency quarantine takes the necessary steps to prevent artificial spread of the quarantined pest and provides for its elimination, thus protecting the industry.

New §19.160 defines the quarantined pest. New §19.161 designates quarantine areas based on the location of sugarcane rootstock borer weevil detection. New §19.162 lists the quarantined articles. New §19.163 identifies articles exempt from regulations and provides for restrictions on the movement of quarantined articles, and new §19.164 provides for treatment or destruction of quarantined articles. The department may propose adoption of this rule on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020 which authorizes the department to assess administrative penalties for violations of Chapter 71; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.160. Quarantined Pest.

The quarantined pest is the sugarcane rootstock borer weevil, *Diaprepes abbreviatus*(L) in any living stage of development.

§19.161. Quarantined Areas.

The quarantined areas are:

(1) Within Texas: The citrus grove located in Hidalgo County, McAllen, TX, 0.20 miles West of the intersection of Hobbs Drive and North 2nd Street and to include 300 yards in each direction: and

(2) Other areas: State of Florida: Counties of Broward, Dade, DeSoto, Collier, Glades, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Orange, Osceola, Palm Beach, Pasco, Polk, Seminole, St. Lucie, Sumter, Volusia; the Commonwealth of Puerto Rico, the islands of the West Indies, and any other area where the quarantined pest is detected.

§19.162. Quarantined Articles.

The quarantined articles are:

(1) the quarantined pest;

(2) soil, sand, or gravel separately or with other potting media;

(3) all propagation material to include all plants and plant parts;

(4) citrus and all plants considered to be a host of the quarantined pest. A list of host plants is available for reference and may be obtained by contacting the Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711; and

(5) all nursery stock and field grown ornamentals that are potted or balled and burlaped.

§19.163. Restrictions.

(a) General. Movement of quarantined articles from a quarantined area into or through a non-quarantined area is prohibited, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. The following articles are exempt from the provisions of this subchapter:

(1) seed;

(2) bare rooted cacti;

(3) fruits and vegetables grown above ground;

(4) fleshy roots, corms, tubers, and rhizomes that are free of soil;

(5) defoliated bare-rooted nursery stock; and

(6) privately-owned indoor decorative houseplants.

(c) Exceptions.

(1) All quarantined articles from outside Texas are admissible into Texas from a quarantined area if accompanied by a phytosanitary certificate issued by an authorized inspector of the state of origin and have been treated for the quarantined pest as prescribed by the department and is free of the quarantined pest, or has originated in an area free of the quarantined pest.

(2) Quarantined articles from quarantined areas in Texas may be moved to non-quarantined areas under the following provisions:

(A) a signed compliance agreement is in effect with the department requiring treatment of all nursery stock as prescribed by the department and is free of the quarantined pest; or

(B) the quarantined article or articles have been treated prior to shipment as prescribed by the department and are accompanied by a phytosanitary certificate issued by an authorized representative of the department; or

(C) the quarantined article or articles are grown within an enclosed structure approved by the department and accompanied by a phytosanitary certificate issued by an authorized representative of the department stating the quarantined article is free of the quarantined pest.

§19.164. Treatment of Quarantined Areas Within Texas.

(a) The business manager or property owner will bear all treatment expenses.

(b) The business manager or property owner shall enter into a compliance agreement with the department to make the required treatments and handle nursery stock and host plants as prescribed by the department.

(c) In addition to assessment of administrative penalties as provided in the Texas Agriculture Code, §12.020, a violation of this subchapter may require destruction of quarantined articles.

(d) If the producer or handler of quarantined articles required to be treated or destroyed refuses to treat or destroy the articles, the department may treat or destroy the quarantined articles and charge the cost of treatment and/or destruction to the producer or handler, in accordance with the Texas Agricultural Code, §71.009.

(e) The quarantined pest shall be considered eradicated when the pest in any development stage is not detected by surveys and trapping during 24 consecutive months.

Filed with the Office of the Secretary of State, on March 16, 2001.

TRD-200101562
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: March 16, 2001
Expiration date: July 14, 2001
For further information, please call: (512) 463-4075

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 9. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §9.1, §9.7

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

The amendments are being proposed to establish the standards and procedures by which TDHCA will allocate 2001 fiscal year economic development funds. The amendments are being proposed to make changes to the application and selection criteria for the Texas Capital Fund.

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

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

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

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

No other code, article, or statute is affected by the proposed amendments to §9.1 and § 9.7.

§9.1. General Provisions.

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

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the Texas Community Development Program.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current Texas Community Development Program application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses; pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a Texas Community Development Program contract;[~~prisons/detention centers; government supported facilities;~~] and racetracks.

(2) The following activities and/or uses are specifically ineligible under the Texas Capital Fund: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefitting business or its owners and related parties for expenditures.[~~Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefitting business. Ineligible infrastructure activities/ improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are~~

an ineligible use of funds.] Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) - (k) (No change).

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income (except program income recovered from local revolving loan funds) generated by Texas Capital Fund projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from Texas Capital Fund projects will be used by TDHCA for eligible Texas Community Development Program activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any Texas Community Development Program Fund, including program income recovered from Texas Capital Fund local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the TDHCA Executive Director, or when applicable, approved of the Board of Directors of the Texas Department of Economic Development on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; and the Department's special targeted activities (e.g., colonias, special housing projects, Texas Small Town Environment Program (STEP), Texas Capital Fund, etc.) as the next highest priority.[Deobligated funds, unobligated funds and program income (except program income recovered from local revolving loan funds) generated by Texas Capital Fund projects shall be retained for expenditure within the Texas Capital Fund subject to approval of the Board of Directors of the Texas Department of Economic Development. Any deobligated funds, unobligated funds, program income, and unused funds from previous years' allocations derived from any Texas Community Development Program Fund other than the Texas Capital Fund, program income recovered from Texas Capital Fund local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established fund categories, except the Texas Capital Fund, for otherwise eligible projects. The selection of eligible projects to receive such funds will be approved by the executive director of the Department on a priority basis with eligible disaster relief and urgent need projects as the highest priority; and the Department's special targeted activities (e.g., colonias, special housing projects, Texas Small Town Environment Program (STEP), etc.) as the next highest priority.]

(m) (No change.)

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

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

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

(5) (No change.)

(o) - (q) (No change).

§9.7. Texas Capital Fund.

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

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

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less (except for the main street improvements program in which case a 0.5:1 match for cities with a population of less than 5,000 is acceptable), 4:1 for awards of $750,100[$750,001] to $1,000,000, and 9:1 for awards of $1,000,100[$1,000,001] to $1,500,000.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed $25,000 for awards of $750,000 or less; $10,000 for awards of $750,100[$750,001] to $1,000,000; and $5,000 for awards of $1,000,100[$1,000,001] to $1,500,000. These requirements do not apply to the Main Street and Float Loan Programs[Program].

(6) - (8) (No change.)

(9) All Texas Capital Fund applications must support proposed activities of a business. This is the benefiting business, the business that is proposing to create and/or retain jobs and make capital expenditures in the jurisdiction of the applicant. This must be a for-profit or a non-profit business. Non-profits must have language in their corporate articles and/or by-laws that specifically authorizes them to engage in economic development activities. Governmental entities/units may not qualify as the benefiting business.

(10) The TDED will only consider applications that provide assistance for one specific business. Projects with multiple benefiting businesses are not eligible for consideration. Divisions, branch offices, units of a business with the same ownership or businesses with a common bond of ownership, where some entity owns at least 50% of the business(es), are not considered separate businesses. In these scenarios a parent entity/organization will be considered the benefiting business. Businesses that have an award and subsequently submit a new application, that have a common bond of ownership, are not eligible when submitted by the same applicant community.

(11) [(9)] With the exception of the main street improvements program, the Texas Department of Economic Development will only consider applications that provide funding for one business.

(12) [(10)] The Texas Department of Economic Development will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. Cities may not sponsor an application for a business located in their county, if that business is currently participating in a TCF project with that county. TDED may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county that the city is located and will consider a project proposed by a

county that is within an incorporated city. TDED may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county that the city is located and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least 51% of the principal beneficiaries reside within the applicant's jurisdiction. Note: The project activities and benefiting business may not be located in an entitlement area.

~~[(11) A business which is currently being provided assistance from the Texas Capital Fund must create at least 50 permanent jobs in each additional proposed Texas capital fund project in order for such project to be considered for funding.]~~

~~[(12) A Texas Capital Fund contractor must satisfactorily close out a contract in support of a specific business or main street improvements project in order to be eligible to receive additional funds under the Texas Capital Fund for the same business or main street city. The contractor is eligible for an additional Texas Capital Fund award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street geographic area or if the main street project selected the elimination of slums and blight as its national program objective and the assisted business will create or retain jobs to meet the national program objective.]~~

~~[(13) The Texas Department of Economic Development will not consider or accept an application for funding from a community, in support of a business project that is currently receiving Texas Capital Fund assistance through that same community.]~~

(13) The number of TCF applications which a city or county may submit (and have funded, if feasible) is determined by factors affecting both the city/county and business, as follows:

(A) Applicant components:

(i) The program income choice selected on a previous approved application;

(ii) Contractual compliance on existing contracts;

(iii) Applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted; and

(iv) The applicant must satisfactorily close-out an open TCF contract before the applicant can receive another TCF award for the same business.

(B) Business components:

(i) Contractual compliance on existing TCF contracts, leases and loans; and

(ii) A business or a business with a common bond of ownership, which is currently being provided assistance through an eligible applicant from the Texas Capital Fund, must create/retain at least 50 permanent jobs in each additional proposed location (with a different applicant).

(14) The minimum and maximum award amount that may be requested/awarded for a project funded under the Texas Capital Fund infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed $4,500,000 in total awards during the program year, unless a jumbo award is deobligated during the program year, in which case another jumbo award, of up to $1,500,000, may be awarded as a replacement. Additionally, no more than $3,000,000 in jumbo awards will be approved in either of the first two rounds. The maximum amount for a jumbo award is $1.5 million and the minimum award amount is $750,100[~~$750,001~~]. The maximum amount for a normal award is $750,000 and the minimum award amount is $50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDED and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(15) TCF will only provide financial assistance to a community and business that commit to create and/or retain jobs where at least 51% of the jobs benefit low and moderate income (LMI) individuals. LMI levels are provided annually by HUD and are the same income levels used for Section 8 housing. The level of financial assistance is directly related to the number of created/retained jobs. At no time will this program consider an application for assistance where the cost per job exceeds $25,000. Only full-time permanent and part-time permanent created/retained jobs, as defined below, are eligible for consideration. Credit will only be given for jobs created/retained at the project site described in the application, which generally must be within the jurisdiction of the applicant. No credit will be given for transferred jobs or positions held by principals. A job is defined as a permanent full-time position held by one employee or two part-time employees. Jobs must be held/occupied by individuals for a minimum of one (1) month to be eligible for consideration. The calculation compares the starting and ending payroll to determine the number of jobs created/retained. For projects creating jobs, jobs created prior to the award date, but not prior to the application deadline date for each round, may be counted towards meeting the job creation requirement. Jobs are further defined below.

(A) A full-time job is defined as permanent employment for 1,820 hours or more per year or 35 hours or more per week per person on an annualized basis.

(B) A part-time job is generally defined as permanent employment for at least 1,040 hours per year and 20 hours or more per week per person on an annualized basis. Two part-time jobs equal one full-time job. Employees working less than 20 hours per week may be considered individually or in combination/aggregate towards meeting the job goal of the business.

(C) Leased employees are eligible to be counted, but must meet the same requirements as described above, as long as the business has control over the leased employee(s). Contract labor employees and owners of the business are not eligible to be counted towards meeting the job creation/retention requirements.

(D) In order to consider jobs retained as a result of TCF assistance, documentation must be submitted providing clear and objective evidence that permanent jobs will be lost without TCF assistance. For these purposes, "clear and objective" evidence that jobs will be lost would include:

(i) Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or

(ii) Analysis of relevant financial records which clearly and convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.

(E) Businesses claiming consideration for retained jobs as part of a project proposal must also provide documentation verifying that they will meet at least one of the following requirements and provide income certifications in the application. The income certification must document that a minimum of 51% of the retained jobs are held by LMI individuals.

(i) That some or all of the employees will be permanently laid off; or

(ii) That the business will close down its existing operation/facility; or

(iii) That the business will relocate out of state. Requires 3rd party documentation.

(F) No retained jobs will be considered for a minimum of one year after a contract has been closed out with the same business in the same community.

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

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

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

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

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

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad improvements[~~spurs~~].

(2) The real estate program. The real estate program provides funds to purchase, construct, or rehabilitate real estate that is wholly or partially owned by the community and leased to a specific benefitting business (either a for-profit entity or a non-profit entity).

(3) The main street improvements program. The main street improvements program provides public improvements in support of Texas main street program designated municipalities.

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

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

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDED has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDED and may not be for the maximum of 20 years for smaller award amounts. The minimum monthly payment should not be less than $500. There is no interest expense associated with an award. Payments begin the first day of the third[~~first~~] month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five years after the contract closeout[~~minimum five year ownership requirement~~] and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

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

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

~~*[(i)* Awards of $375,000 or less require no repayment.]~~

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

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

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

(e) Application process for the infrastructure and real estate programs. TDED will only accept applications during the months identified in the Application Dates section of the Guidelines. After the application deadline, the scores are verified, staff analysis is performed, recommendation is made by staff and the executive director before the application is awarded by the TDED Board of Directors (Board). The application and award procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDED. No changes to the application will be allowed after the application deadline date, unless they are a recommended by TDED.

(2) After the application deadline TDED staff reviews application scores for validity and ranks them in descending order. The applications that rank high enough to receive the available funds are identified.

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

(4) TDED staff then reviews each complete application to make threshold determinations with respect to:

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

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

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

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

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

(F) The ability of the applicant to operate or maintain any public facility, improvements, or

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

(6) TDED staff prepares a project report with recommendations (for approval or denial) for credit committee. TDED staff may initiate the need to negotiate some elements of the application that would be in the TCF contract if it is awarded. Then credit committee makes a recommendation to TDED's executive director.

(7) The TDED executive director reviews the recommendation and forwards it for the final decision of award to be made by the Board.

(8) TDED staff works with the award recipient to execute the TCF contract. The TCF contract must be based on the information provided to the Board that resulted in the award.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Award amounts from $750,100 to $1,500,000 are referred to as jumbo awards. These require a significantly higher job creation/retention commitment and capital investment/match. Texas Capital Funds are not specifically reserved for projects that could receive up to the $1,500,000 increased maximum amount, however, projects that receive an amount greater than $750,000 may not exceed $4,500,000 in total awards during the program year (only three jumbo awards are normally permitted each year), unless a jumbo award is deobligated during the program year, in which case another jumbo award, of up to $1,500,000, may be awarded as a replacement. No more than two jumbo awards may be made in either of the first two application rounds. Jumbo award requirements follow:

(A) For a jumbo award from $750,100 to $1,000,000:

(i) The maximum cost-per-job is $10,000.

(ii) The minimum number of jobs is 75 to 100 jobs.

(iii) The maximum amount of award funds for administration is $60,000.

(iv) The minimum amount of matching funds must be at least 400% or more of the TCF funds requested.

(B) For a jumbo award from $1,000,100 to $1,500,000:

(i) The maximum cost-per-job is $5,000.

(ii) The minimum number of jobs is 200 to 300 jobs.

(iii) The maximum amount of award funds for administration is $70,000.

(iv) The minimum amount of matching funds must be at least 900% or more of the TCF funds requested.

(3) [(2)] Community Need (maximum 35[30] points) Measures the economic distress of the applicant community.

(A) Unemployment (maximum 5 points). Awarded if the applicant's[average county] rate (for cities the prior annual city rate will be used; for counties the prior annual census tract rate, for where the business site is located will be used) is higher than the annual state rate, indicating that the community is economically below the state average.

(B) Poverty (maximum 15 points). Awarded if the applicant's [average county]poverty rate (for cities the prior annual city rate will be used; for counties the prior annual census tract rate, for where the business site is located will be used) is higher than the annual state rate, indicating that the community is economically below the state average.

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

(D) Open Contracts (Maximum 5 Points). Awarded to applicants that have no[two (2) or less] open TCF contracts.

(E) Community Population (maximum 5 points). Points are awarded to applying cities with populations of 3,000 or less and counties with a population of 30,000 or less, using 1990 census data.

(4) [(3)] Jobs (maximum 30 points).

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

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

(i) Below $10,000--15 points.

(ii) Below $15,000--10 points.

(iii) Below $20,000-- 5 points.

(5) [~~(4)~~] Business Emphasis (maximum 25[~~20~~] points).

(A) Manufacturers (max 15[~~10~~] points). Awarded if the Business' primary Standard Industrial Classification (SIC) code number starts with 20-39 or if their primary North American Industrial Classification System (NAICS) code number starts with 31-33. This is based on the SIC number reported on the Business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3 or their IRS business tax return. Foreign or start-up businesses that have not had an SIC/NAICS code number assigned to them by either the TWC or IRS may submit alternative documentation to support manufacturing as their primary business activity to be eligible for these points.

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

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

(6) Match (maximum 10 points). Awarded by dividing the total amount of other funds committed to this project divided by the requested TCF amount, including administration. An applicant is awarded 5 points if the ratio of matching funds to TCF funds is at least 1.25 to 1 (125%). An applicant is awarded 10 points if the ratio of matching funds to TCF funds is at least 2.00 to 1 (200%).

[~~(5) Leverage/Match (maximum 20 points).~~]

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

[~~(i) 1.25 : 1 (125 percent)-- 5 points. ~~]

[~~(ii) 2.00 : 1 (200 percent)--10 points.~~]

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

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

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

[~~(iii) Counties earn 5 points if they have passed the County Development District Tax and if annual receipts are less than $50,000. These points are earned whether or not the county makes a financial contribution to the project. If the county makes a contribution the county can receive an additional 1 point for each full 1% of community contribution, not to exceed 5 additional points.~~]

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three (3) years and is accessing the R/E program. TDED staff will consider a business to have been operating for at least three years if:

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

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

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

(h) Contract extensions: TCF contracts allow a three year period to complete the activities identified in the Performance Statement (Exhibit A) of the contract. Sometimes, however. extenuating circumstances prevent the completion of contract activities within the prescribed contract period. If a contractor Is reasonably assured that contract costs will be incurred beyond the contract ending date and that incurring these costs is beyond the control of the locality and/or other contract activities, such as job creation, have not been completed yet an amendment may be requested from the TDED to extend the original contract ending date.

(i) Cost savings: The amount of the award is based on the cost estimates provided in the application and staff's determination of what constitutes the "minimum necessary" activities/improvements. The "minimum necessary" activities/improvements include only those improvements needed to adequately serve the benefiting business. If the actual costs for these "minimum necessary" improvements/activities come in under the proposed budget, the cost savings for these improvements/activities shall be shared on a pro-rate basis with other sources of match funds, for those same improvements/activities. It is program policy that reductions in local match will not be approved and that each funding source will be expected to expend substantially the same ratio of funds to TCF funds as specified in the original application. Waivers of this policy will be reviewed on a case-by-case basis, but reductions can only be approved for projects that included a match in excess of the TCF grant funds, with possible reduction to only a 50/50 ratio (i.e., equal amounts of grant funds and match funds to fund the total project costs), If, however, any reduction in the amount of match funds would adversely affect the application score, to the extent the locality would not have been originally funded, a reduction will not be approved. Any attempt to address over-sizing or activities/improvements in addition to the "minimum necessary" shall be separate from the basic bid for the minimum necessary activities/improvements, since these additional improvements/activities are ineligible for payment with program funds. The awarded locality is responsible for the cost of any activities/improvements exceeding the "minimum necessary" and any cost overruns.

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

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

be considered through the amendment/modification process after the contract is signed.

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

(3) TDED staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. Applications with excessive[~~13 or more~~] deficiencies will be considered ineligible, unless staff determines that they are minor. If that occurs than the next highest ranking application will be substituted. In those instances where the staff determines that the application does not contain excessive[~~has 12 or less~~] deficiencies on the Application Checklist, unless an extension is granted, the applicant will be given 10 business days to rectify all deficiencies. In the event staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

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

(A) The project feasibility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Historic preservation ethic--(10 points)

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

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

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

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

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

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

(3) Applicant (maximum 10 points).

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

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

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

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

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

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

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

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

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

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

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

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

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

This 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 March 14, 2001.

TRD-200101507
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 475-3726

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TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 32. MEMORANDA OF UNDERSTANDING

13 TAC §32.1

The Texas Commission on the Arts proposes new §32.1, concerning Memorandum of Understanding with the Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts, and the Texas Historical Commission.

Government Code, §481.028, requires the Texas Department of Economic Development to develop a memorandum of understanding with the Texas Department of Transportation (TxDOT) and the Texas Parks and Wildlife Department to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers, and requires each agency to adopt the MOU by rule. This section adopts by reference the provisions of the MOU proposed by the Texas Department of Economic Development and published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12878). The Texas Department of Economic Development adopted the rule in the March 9, 2001, issue of the *Texas Register* (26 TexReg 2017).

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the new section as proposed.

Mr. Snell also has determined that for each year of the first five years the new section is in effect the MOU will enhance coordination among the various state agencies with statutory responsibilities concerning travel and tourism. There will be no effect on small businesses.

Comments on the proposal may be submitted to Ricardo Hernandez, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register.*

The new section is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§32.1. Memorandum of Understanding with the Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts, and the Texas Historical Commission.

In order to comply with Government Code, §481.028, the provisions of 10 TAC §195.6, concerning a Memorandum of Understanding with the Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts, and the Texas Historical Commission, relating to the coordination of travel and tourism responsibilities, are adopted by reference.

This 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 March 19, 2001.

TRD-200101568

John Paul Batiste
Executive Director
Texas Commission on the Arts
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 463-5535

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.403, 26.417, 26.420

The Public Utility Commission of Texas (commission) proposes amendments to §26.403 relating to Texas High Cost Universal Service Plan (THCUSP), §26.417 relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), and §26.420 relating to Administration of Texas Universal Service Fund (TUSF). The proposed amendments are comprised of several minor non-substantive changes and clarifications and one substantive revision to §26.403(e)(3)(C). Project Number 22472 has been assigned to this proceeding.

Non-substantive changes to rule language

Proposed §26.403 includes minor non-substantive corrections or clarifications and revisions related to the timing of the commission's subsequent determinations regarding the Texas High Cost Universal Service Plan (THCUSP). As directed by Order Number 1, Granting Waiver for Good Cause, issued on February 16, 2001 in Project Number 22472, the amendment revises the review date to three years from March 1, 2000, the date in which the THCUSP was implemented.

Proposed §26.417 amends internal references and reflects minor non-substantive changes implementing PURA §56.021 and §56.023, as amended by Senate Bill 560, 76th Legislative Session (SB 560). Specifically, proposed §26.417(b)(1) replaces the use of "census block groups" (CBGs) in the determination of a THCUSP service area with the use of "wire centers." The revision is in accordance with the Final Order in Project Number 18515, *Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan*, issued on January 14, 2000.

Proposed §26.420 revises internal references and reflects minor non-substantive changes relating to the implementation and administration of the TUSF. The revisions reflect decisions made in Project Number 19655, *Implementation of P.U.C. SUBST. R. §23.150 (f) and (g)*, and the implementation of PURA §56.026(c), as amended by SB 560.

Substantive change to rule language

Proposed §26.403(e)(3)(C)(i) and (ii) amend the adjustments for services provided solely or partially through unbundled network elements (UNEs). As directed by Order Number 1, Granting Waiver for Good Cause, issued on February 16, 2001 in Project Number 22472, the proposed amendments make the provisioning of services via unbundled network elements (UNEs) more attractive in rural areas, therefore, stimulating competition in rural Texas.

Patricia Zacharie, Staff Attorney, Legal 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.

Patricia Zacharie 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 these sections will be to implement a competitively neutral mechanism that enables all residents of the state to obtain basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. 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 these sections as proposed.

Patricia Zacharie 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, beginning at 10:00 a.m. in the Commissioners' Hearing Room on Wednesday, May 23, 2001.

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 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 22472.

In addition to general comments on the proposed amendments, the commission seeks specific comments on whether a new rulemaking should be opened to expand the quality of service rules (§26.52, Emergency Operations, §26.53, Inspections and Tests, and §26.54, Service Objectives and Performance Benchmarks) to include wireless technologies.

The commission also seeks specific comments on alternative methods for the implementation of the sharing mechanism in §26.403(e)(3)(C)(i) and (ii). Comments should include actual examples of how the alternative method would impact wire centers in the state.

These amendments are 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, including rules of practice and procedure; specifically, PURA §56.021 which requires the commission to adopt and enforce

rules requiring local exchange companies to establish a universal service fund; and §56.023 which requires the commission to adopt rules for the administration of the universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.021- 56.028.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) (No change.)

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

(1) - (5) (No change.)

(6) Zone 2 - Loop rate that includes Rate Groups 4, 5, and 6 (suburban) as defined in the ETP's local exchange tariff.

(c) (No change.)

(d) Service to be supported by the THCUSP. The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) Initial determination of the definition of basic local telecommunications service. Basic local telecommunications service shall consist of the following:

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

(F) telecommunications[~~dual party~~] relay service;

(G) - (J) (No change.)

(2) Subsequent determinations.

(A) Timing of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from March 1, 2000[~~February 10, 1998~~].

(ii) (No change.)

(B) (No change.)

(e) Criteria for determining amount of support under THCUSP. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3) of this subsection.

(1) (No change.)

(2) Proceedings to determine THCUSP base support.

(A) Timing of determinations.

(i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from March 1, 2000[~~February 10, 1998~~].

(ii) (No change.)

(B) (No change.)

(3) Calculating amount of THCUSP support payments to individual ETPs. After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.

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

(C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). [~~If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.~~]

(i) If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, and the price of the UNE is greater than the statewide average loop rate for the ETP provisioning the UNE, then the ETP providing the service to the end user shall receive the difference between the price of the UNE and the statewide average loop rate. If the ETP provisioning the UNE does not have a statewide average loop rate, the Zone 2 loop rate shall be used. If the THCUSP support amount is not adequate to reimburse the ETP providing the service to the end user for the difference between the price of the UNE and the statewide average loop rate, then the ETP providing the service to the end user shall receive the entire support amount. If the THCUSP support amount is greater than the difference between the price of the UNE and the statewide average loop rate, then the remainder of the THCUSP support shall be allocated to the ETP provisioning the UNE.[~~Solely through UNEs.~~]

~~*[(I)* USF cost > (UNE rate + retail cost additive (R)) >revenue benchmark (RB). USF support should be explicitly shared between the ETP serving the end user and the ILEC selling the UNEs in the instance in which the area-specific USF cost/line exceeds the sum of (combined UNE rate/line + R), and the latter exceeds the RB. Specifically, the ILEC would receive the difference between USF cost and (UNE rate + R), while the ETP would receive the difference between (UNE rate + R) and RB. Splitting the USF support payment in this way allows both the ILEC and the ETP to recover, on average, the costs of serving the subscriber at rates consistent with the benchmark. Moreover, this solution is competitively neutral in an additional respect: the ILEC, as the carrier of last resort (COLR), is indifferent between directly serving the average end user and indirectly doing so through the sale of UNEs to a competing ETP. Also, facilities- based competition is encouraged only if it is economic, i.e., reflective of real cost advantages in serving the customer; or]~~

~~*[(II)* USF cost > RB > (UNE rate + R). The ILEC would receive the difference between USF cost and RB. In this case, where USF cost > RB > (UNE rate + R), giving (USF cost - RB) to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover (USF cost -RB) would minimize financial harm to the ILEC; or]~~

~~*[(III)* (UNE rate + R)> USF cost > RB. The ETP would receive the difference between USF cost and RB. Where (UNE rate + R)> USF cost > RB, giving (USF cost - RB) to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover (USF cost - RB) would minimize financial harm to the ETP.]~~

(ii) If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, and the price of the UNE is equal to or less than the statewide average loop rate for the ETP provisioning the UNE, then the THCUSP support shall be allocated to the ETP provisioning the UNE. If the ETP provisioning the UNE does not have a statewide average loop rate, the Zone 2 loop rate

shall be used. [Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self-provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the HAI model costs for five UNEs (loop, line port, end-office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.]

(f) - (g) (No change.)

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) (No change.)

(b) Requirements for establishing ETP service areas.

(1) THCUSP service area. THCUSP service area shall be based upon wire centers (WCs)[census block groups (CBGs)] or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs[CBGs] that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC[CBG], or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC[CBG], or other geographic area as determined appropriate by the commission.

(2) (No change.)

(c) Criteria for designation of ETPs.

(1) Telecommunications providers. A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10)[§26.5 of this title (relating to Definitions)], shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) (No change.)

(B) the telecommunications provider defines its ETP service area pursuant to subsection (b)[(c)] of this section and assumes the obligation to offer any customer in its ETP service area basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) - (F) (No change.)

(2) ILECs. If the telecommunications provider[LEC] is an ILEC, as defined in §26.5 of this title (relating to Definitions), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

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

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

(f) Requirements for application for ETP designation and commission processing of application.

(1) Requirements for notice and contents of application for ETP designation.

(A) (No change.)

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.

(i) Telecommunications providers. The application shall:

(I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10)[§26.5 of this title];

(II) - (XI) (No change.)

(ii) (No change.)

(2) (No change.)

(g) - (h) (No change.)

§26.420. Administration of Texas Universal Service Fund (TUSF).

(a) (No change.)

(b) Programs included in the TUSF.

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

(5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);

(6) [(5)] Section 26.412 of this title (relating to Lifeline Service and Link Up Service Programs);

(7) [(6)] Section 26.413 of this title (relating to Tel-Assistance Service);

(8) [(7)] Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));

(9) [(8)] Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));

(10) [(9)] Section 26.417 of this title (relating to Designation [of Local Exchange Companies]as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

(11) [(10)] Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds); and

(12) [(11)] Section 26.420 of this title (relating to Administration of Texas Universal Service Funds (TUSF)).

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

[(e) Transition from existing USF programs to the TUSF.]

[(1) Continuation of assessments and disbursements for periods prior to the implementation of TUSF programs. The TUSF administrator shall administer all outstanding assessment and disbursement obligations to support mechanisms existing on the effective date of this section, for periods prior to the implementation date of the programs in subsection (b) of this section.]

[(2) Implementation of programs included in the TUSF and termination of existing support mechanisms. The TUSF administrator shall ensure that the collection of assessments from telecommunication providers pursuant to subsection (g) of this section, the disbursement of support amounts to ETPs pursuant to subsection (h) of this section, and the termination of support mechanisms existing on the effective date of this section, occur on a uniform date. In the event that interim assessments and disbursements are necessary prior to the establishment of final assessment and disbursement levels, they shall be subject to true-up to the final level of funding.]

(e) [(f)] Determination of the amount needed to fund the TUSF.

(1) Amount needed to fund the TUSF. The amount needed to fund the TUSF shall be composed of the following elements.

(A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:

(i) Texas High Cost Universal Service Plan, §26.403 of this title;

(ii) Small and Rural ILEC Universal Service Plan, §26.404 of this title;

(iii) Implementation of the Public Utility Regulatory Act §56.025, §26.406 of this title;

(iv) Additional Financial Assistance, §26.408 of this title;

(v) Reimbursement for Certain IntraLATA Service, §26.410 of this title;

(vi) [~~(v)~~] Lifeline Service and Link Up Service, §26.412 of this title;

(vii) [~~(vi)~~] Tel-Assistance Service, §26.413 of this title;

(viii) [~~(vii)~~] Telecommunications Relay Service, §26.414 of this title; and

(ix) [~~(viii)~~] Specialized Telecommunications Assistance Program (STAP), §26.415 of this title.

(B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by the TUSF administrator on behalf of the commission), any costs incurred by the Texas Department of Human Services caused by its administration of the [~~Lifeline, Link Up, and~~] Tel-Assistance programs, and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Telecommunications Assistance Program (STAP) and the Telecommunications Relay Service programs.

(C) Reserve for contingencies. The TUSF administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.

(2) Determination of amount needed. After the initial determination, the TUSF administrator shall determine, on a periodic basis, the amount needed to fund the TUSF. The determined amount shall be approved by the commission.

(f) [~~(g)~~] Assessments for the TUSF.

(1) Providers subject to assessments. The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.

(2) Basis for assessments. Assessments shall be made to each telecommunications provider based upon its monthly taxable telecommunications receipts reported by that telecommunications provider under Chapter 151, Tax Code.

(3) Assessment. Each telecommunications provider shall pay its TUSF assessment each month as calculated using the following procedures.

(A) Calculation of assessment rate. The TUSF administrator shall determine an assessment rate to be applied to all telecommunications providers on a periodic basis approved by the commission.

(B) Calculation of assessment amount. Payments to the TUSF shall be computed by multiplying the assessment rate determined pursuant to subparagraph (A) of this paragraph by the basis for assessments as determined pursuant to paragraph (2)[~~subsection (g)(2)~~] of this subsection[~~section~~].

(4) Reporting requirements. Each[~~Every month, each~~] telecommunications provider shall be required to report taxable telecommunications receipts under Chapter 151, Tax Code as required by [~~to~~] the commission or the TUSF administrator.

(5) Recovery of assessments. A telecommunications provider may recover the amount of its TUSF assessment only from its retail customers who are subject to tax under Chapter 151 of the Tax Code, except for Lifeline, Link Up, and Tel-Assistance services. The commission may order modifications in a telecommunications provider's method of recovery.

(A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills;

(i) the surcharge must be listed on the retail customers' bills as "Texas Universal Service[~~TX USF Charge x.xx%~~]"; and

(ii) the surcharge must be assessed as a percentage of every retail customers' bill, except Lifeline, Link Up, and Tel-Assistance services.

(B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail customers' bills must file for commission approval of the surcharge mechanism.

(C) Tariff changes. A telecommunications provider choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes to its tariff and provide supporting documentation for the method of recovery.

(D) Recovery period. A single universal service fund surcharge shall not recover more than one month of assessments.

(6) Disputing assessments. Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.

(g) [~~(h)~~] Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.

(1) ETPs, ILECs, other entities, and agencies.

(A) ETPs. The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:

(i) Texas High Cost Universal Service Plan;

(ii) Small and Rural ILEC Universal Service Plan;

(iii) Lifeline Service and Link Up Service; and/or

(iv) Tel-Assistance Service.

(B) ILECs. The commission shall determine whether an ILEC qualifies to receive support from the following TUSF programs:

(i) Implementation of the Public Utility Regulatory Act §56.025; and/or

(ii) Additional Financial Assistance program.

(C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:

(i) Telecommunications Relay Service; and/or

(ii) Specialized Telecommunications Assistance Program.

(D) Agencies. The commission, the Texas Department of Human Services, the Texas Commission for the Deaf and Hard of Hearing, and the TUSF administrator are eligible for reimbursement of the costs directly and reasonably associated with the implementation of the provisions of PURA Chapters 56 and 57[~~the TUSF~~].

(2) Reporting requirements.

(A) ETPs. An ETP shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

(B) Other entities. A qualifying entity shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

(C) Agencies. A qualifying agency shall report its qualifying expenses to the TUSF administrator each month.

(3) Disbursements.

(A) The TUSF administrator shall verify that the appropriate information has been provided by each ETP, local exchange company (LEC), other entities or agencies and shall issue disbursements to ETPs, LECs, other entities and agencies within 45[~~30~~] days of the due date of their reports except as otherwise provided.

(B) If an electing LEC, as defined in §26.5 of this title (relating to Definitions), reduces rates in conjunction with receiving disbursements from the TUSF, the commission may not reduce the amount of those disbursements below the initial level of disbursements upon implementation of the TUSF, except that:

(i) if a local end user customer of the electing company switches to another local service provider that serves the customer entirely through the use of its own facilities and not partially or solely through the use of unbundled network elements, the electing LEC's disbursement may be reduced by the amount attributable to that customer under PURA §56.021(1); or

(ii) if a local end user customer of the electing company switches to another local service provider, and the new local service provider serves the customer partially or solely through the use of unbundled network elements provided by the electing LEC, the electing LEC's disbursement attributable to that customer under PURA §56.021(1) may be reduced according to the commission established equitable allocation formula for the disbursement as described in §26.403(e)(3)(C) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(h) [~~(i)~~] True-up. The assessment amount determined pursuant to subsections (e)and (f) [~~and (g)~~] of this section shall be subject to true-up as determined by the TUSF administrator and approved by the commission. True-ups shall be limited to a three year period for under-reporting and a one year period for over- reporting.

(i) [~~(j)~~] Sale or transfer of exchanges.

(1) An ETP that acquires exchanges from an unaffiliated small or rural ILEC receiving support for those exchanges pursuant to §26.404 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the sale or transfer.

(2) An ETP that acquires exchanges from an unaffiliated ETP receiving support for those exchanges pursuant to §26.403 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the transfer of the exchanges.

(j) [~~(k)~~] Proprietary information. The commission and the TUSF administrator are subject to the Texas Open Records Act, Texas Government Code, Chapter 552. Information received by the TUSF administrator from the individual telecommunications providers shall be treated as proprietary only under the following circumstances:

(1) An individual telecommunications provider who submits information to the TUSF administrator shall be responsible for designating it as proprietary at the time of submission. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision, may be properly designated as proprietary.

(2) An individual telecommunications provider who submits information designated as proprietary shall stamp on the face of such information "PROPRIETARY PURSUANT TO PUC SUBST. R. §26.420 (j)[~~(k)~~]".

(3) The TUSF administrator may disclose all information from an individual telecommunications provider to the telecommunications provider who submitted it or to the commission and its designated representatives without notifying the telecommunications provider.

(4) All third party requests for information shall be directed through the commission. If the commission or the TUSF administrator receives a third party request for information that a telecommunications provider has designated proprietary, the commission shall notify the telecommunications provider. If the telecommunications provider does not voluntarily waive the proprietary designation, the commission shall submit the request and the responsive information to the Office of the Attorney General for an opinion regarding disclosure pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, Subchapter G.

This 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 March 16, 2001.

TRD-200101548
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 936-7308

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

16 TAC §75.20

The Texas Department of Licensing and Regulation proposes an amendment to §75.20 concerning air conditioning and refrigeration contractors. The amendment to §75.20 proposes to correct an omission in the last rule adoption. The Department proposed and adopted amendments to §75.20 in the last rule adoption, however, subsection (c) was inadvertently omitted and the Secretary of State's rules on correction do not allow an agency to submit corrections after the effective date of a rule. The Department is correcting this oversight by adding subsection (c) in this rule proposal.

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

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

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

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

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

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

§75.20. Licensing Requirements - Application and Experience Requirements.

(a) An applicant shall submit a complete application and appropriate fees. An applicant must complete all requirements, including passing the exam, within one year of the date the application is filed.

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

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

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

(3) transcript of courses taken without earning a certificate or diploma emphasizing hands-on training with the tools of the trade. Transcripts must be from schools authorized or approved by the Texas Workforce Commission, the U.S. Department of Education, the Coordinating Board of the Texas College & University System, or other organizations recognized by the Department. Credit will be allowed at the rate of one month credit for every two months of completed training. Thirty semester hours are equivalent to six months credit of experience. For schools issuing certificates based on classroom hours, fifteen lecture hours are equivalent to one semester hour and 30 lab hours are equivalent to one semester hour.

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

This 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 March 14, 2001.

TRD-200101525
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 241. PRINCIPAL CERTIFICATE

19 TAC §§241.5, 241.10, 241.20, 241.25, 241.30, 241.40

On January 5, 2001, the State Board for Educator Certification (SBEC) proposed amendments to 19 Texas Administrative Code §§241.5, 241.10, 241.20, 241.25, 241.30, and 241.40, relating to the standard principal certificate.

These proposed amendments are designed to eliminate unnecessary barriers to candidates seeking the standard principal certificate and to remove unduly prescriptive language in the rules. The proposed amendments would remove unnecessarily prescriptive language and allow preparation entities the full authority to set admission criteria, assessments and benchmarks, and coursework and other training for candidates for the standard principal certificate. These amendments will make Chapter 241 consistent with the guidance contained in SBEC's rules at 19 Texas Administrative Code Chapters 227 and 228, which generally governing educator preparation programs. Deleting the requirement for employment on a conditional certificate before receiving the standard certificate would allow candidates to proceed to full certification more expeditiously without unduly compromising their preparation. The proposed amendments allow candidates to complete all requirements and then be recommended for the standard principal certificate. In lieu of the conditional certificate, the amendments offer guidance for school districts in establishing induction programs to help newly certified principals succeed during their initial employment as such in Texas. The induction program amendment would become effective September 1, 2002.

No fiscal impact is anticipated for the new standard principal certificate. SBEC did not change the fee for issuing the principal certificate. There will be no effect on state or local government.

Barry Alaimo, Director of Accounting and Financial Operations, was responsible for preparing this fiscal-impact note.

The public would benefit from the revisions to the principal certification rules by allowing certified principals to assume their duties more expeditiously without unduly compromising their preparation. The public should incur no additional costs as a result of the implementation of the proposed rules. There will be no effect on small businesses.

Dan Junell, General Counsel, was responsible for preparing this public benefits and costs note.

Interested persons wishing to comment on the proposed rules must submit their comments in writing to Dan Junell, General Counsel, State Board for Educator Certification, 1001 Trinity, Austin, Texas 78701-2603, within the 30-day comment period, which begins on the date of publication of this issue of the *Texas Register*. The comments should contain the following title or reference: "Comments on proposed amendments to 19 TAC Chapter 241, relating to the standard principal certificate."

The amendments relating to the standard principal certificate were proposed under the authority of the following sections of the Texas Education Code: §21.040(4), which requires the Board to appoint for each class of educator certificate an advisory committee composed of members of that class to recommend standards for that class to the Board; §21.041(b)(2)-(4), which requires the Board to specify the classes of certificates to be issued, specify the period of validity for each class of educator certificate, and specify requirements for the issuance and renewal of an educator certificate; §21.046, which specify the minimum qualifications for certification as a principal; and §21.054, which requires the Board to establish a process for identifying continuing education courses and programs that fulfill continuing education requirements, including an individual assessment of a principal's knowledge, skills, and proficiencies.

No other statute, code, or article is affected by these proposed amendments.

§241.5. Minimum Requirements for Admission to a Principal Preparation Program.

(a) Prior to admission to a preparation program leading to the Principal Certificate, an individual must[~~:~~]

[~~(1)~~)] hold a baccalaureate degree from an accredited institution of higher education.[~~;~~]

[~~(2) demonstrate an acceptable combination of a score on a nationally-normed assessment and grade point average, as determined by the preparation program.~~]

(b) Preparation programs may adopt requirements for admission in addition to those required in subsection (a) of this section

(c) The entity shall implement procedures that include screening activities to determine the candidate's appropriateness for the Principal Certificate.

(d) [~~(c)~~] Each preparation program must develop and implement specific criteria and procedures that allow admitted individuals to substitute experience and/or professional training directly related to the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate) for part of the preparation requirements.

§241.10. Preparation Requirements.

(a) The standards identified in §241.15 of this title (relating to Standards for the Principal Certificate) shall be the curricular basis for programs preparing individuals to be principals. Entities shall establish benchmarks and structured assessments of the candidate's progress and needed growth throughout the program based on the standards identified in §241.15 of this title [~~After completion of one-third of the preparation program, the individual must complete a program-approved screening instrument based on the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate) and devise a corresponding professional development plan~~].

(b) Structured, field-based practicum with experiences at diverse types of campuses [~~training~~] must be focused on actual experiences with each of the standards identified in §241.15 of this title whereby candidates must demonstrate proficiency in each of the standards. [~~to include:~~]

[~~(1) experiences at diverse types of campuses; and~~]

[~~(2) development and implementation of an action research plan for change based on a need linked to a campus improvement plan.~~]

§241.20. Requirements for the First-Time Principal in Texas[~~Issuance of the Conditional Principal Certificate and the Induction Period~~].

(a) Principals or assistant principals employed for the first time as campus administrators (including the first time in the state) shall participate in, at least, a one-year induction period.

(b) The induction period should incorporate the assessment and professional growth requirements contained in §241.30 (b) of this title (relating to Requirements to Renew the Standard Principal Certificate).

(c) The induction period should be a structured, systemic process for assisting the new principal or assistant principal in further developing skill in guiding the everyday operation of a school, adjusting to the particular culture of a school district, and developing a personal awareness of self in the campus administrator role. Mentoring support must be an integral component of the induction period.

[~~(a) To be eligible to receive the Conditional Principal Certificate, the individual must: ~~]

[~~(1) successfully complete the assessments required under Chapter 230, Subchapter A, §230.5 of this title (relating to Educator Assessment); and ~~]

[~~(2) have two years of creditable teaching experience as a classroom teacher, as defined by Chapter 230, Subchapter Y of this title (relating to Definitions).~~]

[~~(b) The induction period must occur during employment as an assistant principal or principal in a Texas public or private school, as defined by Chapter 230, Subchapter Y of this title. An individual seeking to enter the induction period more than five years after the date of issuance of the Conditional Principal Certificate must be approved by the educator preparation program that recommended him or her for the certificate. To ensure that the individual possesses the knowledge and skills identified in the standards under §241.15 of this title (relating to Standards for the Principal Certificate), the preparation program may require the individual to satisfy certain requirements prior to entering and/or during the induction period.~~]

§241.25. Requirements for the Issuance of the Standard Principal Certificate.

To be eligible to receive the Standard Principal Certificate, the individual must:

(1) successfully complete the assessments required under Chapter 230, Subchapter A [~~§230.5~~] of this title (relating to Educator Assessment);

(2) hold a master's degree from an accredited institution of higher education; and

(3) have two years of creditable teaching experience as a classroom teacher, as defined by Chapter 230, Subchapter Y of this title (relating to Definitions)[successfully complete the induction period required under this chapter].

§241.30. Requirements to Renew the Standard Principal Certificate.

(a) Each individual who holds the Standard Principal or Mid-Management Certificate, issued on or after September 1, 1999, is subject to Chapter 232, Subchapter R of this title (relating to Certificate Renewal and Continuing Professional Education Requirements), except that 200 hours of continuing professional education must be completed every five years.

(b) [(d)] Individuals holding the Standard Principal Certificate or Standard Mid-Management must select an assessment from the list approved under §241.35 of this title and should participate in the assessment the first year of employment as a principal or assistant principal. Follow-up assessments should be completed in the first year of each five-year renewal period. The individual seeking to renew is solely responsible for selecting the assessment used to satisfy the requirements of this subsection.

(c) [(e)] Based on the results of the assessment required under subsection (b)[(d)] of this section, each individual shall develop a professional growth plan which is directly related to the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate), and must allow for the prioritization of professional growth needs.

(d) [(f)] Consistent with TEC §21.054(b), the results of the individual assessment and the professional growth plan shall be used exclusively for professional growth purposes, and may only be released with the approval of the individual assessed.

(e) [(b)] An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is employed as a principal or assistant principal or fulfills the functions of a principal or assistant principal:

(1) must complete an assessment approved under §241.35 of this title (relating to Assessment Process Definition and Approval of Individual Assessments) and develop a professional growth plan as described in subsection (c) [(e)] no later than August 31, 2004 and once in each subsequent five year period; and

(2) may voluntarily comply with the requirements of subsection (a) under procedures adopted by the executive director under Subchapter R, §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators). The executive director shall report to the employing school district those individuals who choose to renew under this subsection.

(f) [(c)] An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is not employed as an assistant principal or principal may voluntarily comply with the requirements of this section under procedures adopted by the executive director under Subchapter R, §232.810 of this title.

§241.40. Implementation Dates.

(a) September 1, 1999 -- §241.1 of this title (relating to General Provisions); §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate); and §241.35 of this title (relating to Assessment Process Definition and Approval of Individual Assessments).

(b) September 1, 2000 -- §241.5 of this title (relating to Minimum Requirements for Admission to a Principal Preparation Program); §241.10 of this title (relating to Preparation Requirements); and §241.15 of this title (relating to Standards for the Principal Certificate); §241.25(1) and (2) of this title (relating to Requirements for Issuance of the Standard Principal Certificate).

(c) September 1, 2001 -- §241.25(3) of this title [§241.20 of this title (relating to Requirements for Issuance of the Conditional Principal Certificate and the Induction Period)].

(d) September 1, 2002 -- §241.20 of this title (relating to Requirements for the Issuance of the Conditional Principal Certificate and the Induction Period).

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

Filed with the Office of the Secretary of State, on March 19, 2001.

TRD-200101563
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 80. MISCELLANEOUS

22 TAC §80.3

The Texas Board of Chiropractic Examiners proposes to amend §80.3(e), relating to the fee for records, to revise the Board's recently adopted maximum rates for copies of chiropractic records to conform to the rates established for heath care information in the Health and Safety Code §241.154.

Serge P. Francois, D.C., Chair of the Rules Committee, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering §80.3(e) as amended.

Dr. Francois also has determined that for each year of the first five years, the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the rule, as amended, will be the charging of a more consistent rate for copies of health care records. The board does not anticipate any added adverse economic effect on micro or small businesses versus that on larger businesses that are required to comply with the amended rule. Requestors of chiropractic records may incur an increased economic cost to the extent that they are charged the maximum rates specified; however, it is the board's opinion that the rates provided for in the Health and Safety Code more accurately reflect the costs of providing copies of records, and is a reasonable trade-off between making records available upon request and requiring chiropractors to provide such records.

Written comments may be submitted, no later than 30 days from the date of this publication, to Joyce Kershner, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under the Occupations Code, §201.152, which the board interprets as authorizing it to adopt

rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §210.405 which sets out statutory responsibilities and requirements for release of patient records, and which the board interprets as one of the provisions it is charged with enforcing.

The following are the statutes, articles, or codes affected by the proposed amendment: §80.3--Occupations Code, §201.152 and §201.405.

§80.3. Request for Information and Records from Licensees.

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

(e) Fee for records. The licensee may charge a reasonable fee for furnishing the information requested under subsection (a) of this section, in accordance with the following provisions:

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

(4) A reasonable fee for a paper copy shall be a charge not to exceed:

(A) $30 for retrieval of records and processing the request, including copies for the first 10 pages;

(B) $1.00 per page for pages 11-60;

(C) $0.50 per page for pages 61-400; and

(D) $0.25 per page for pages over 400;

(5) A reasonable fee for copies of films or other static diagnostic imaging studies shall be a charge not to exceed $45 for retrieval and processing, including copies for the first 10 pages, and $1.00 for each additional page over 10.

(6) Reasonable fees may also include actual costs for mailing, shipping or delivery.

~~[(4) A reasonable fee for a paper copy shall be a charge not to exceed $25 for the first 20 pages and $.15 per page for every copy thereafter. The charge for copies of films or other static diagnostic imaging studies shall be a charge not to exceed $8 per copy. Reasonable fees may also include actual costs for mailing, shipping or delivery.]~~

(f)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on March 19, 2001.

TRD-200101576
Gary K. Cain, Ed.D.
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 305-6709

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PART 25. STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.21

The Structural Pest Control Board proposes amendments of 22 TAC 593.21 concerning Commercial and Noncommercial Technician License. The proposal adds only that students who attended or graduated within the last 12 months from an accredited school or university may receive credit for those courses relevant to the pest control industry.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule. There will be no estimated additional cost, estimated reduction in cost, or estimated loss or increase in revenue to state or local government for the first five year period the rule will be in effect. There is no cost of compliance for small businesses. There will be no cost per employee, cost per hour of labor or cost per $100 of sales for small or larger businesses.

Benny M. Mathis, Executive Director has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be allowing those interested in pursuing a career in the pest control industry to apply their college credits to their classroom training hours, thus benefiting the public they serve.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, 1106 Clayton Lane #100LW, Austin, Texas 78723.

The amendment is proposed under Tex.Rev.Civ. Stat.Ann., Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposed amendment.

§593.21. Commercial and NonCommercial Technician License Requirements.

(a) Definition. An apprentice in any of the categories administered by the Texas Structural Pest Control Board is a beginning employee, who works under the supervision of trained and licensed personnel.

(b) Must be at least 16 years of age.

(c) Must be able to demonstrate proficiency in reading labels and warnings.

(d) Must submit an application for technician license within ten (10) days of beginning employment.

(e) The application shall include the following information:

(1) full name;

(2) home address;

(3) date employment began in licensed activity;

(4) social security number;

(5) driver's license number; and

(6) date of birth.

(f) A fee shall be charged for each application.

(g) An apprentice card will be issued by the Structural Pest Control Board for one (1) year from the date employment began when all of the above requirements are met and processed.

(h) Apprentices shall not perform any pest control work without the physical presence of a licensed technician or a certified applicator. Upon completion of the following study and on-the-job training,

the apprentice may work alone so long as a certified applicator is physically present for personal instruction three days a week. The studies and job training required are as follows:

(1) complete at least two hours of classroom training in each of the following subjects:

(A) federal and state laws that regulate the industry;

(B) recognition of pests and pest damage;

(C) pesticide labels and label comprehension;

(D) pesticide safety;

(E) environmental protection;

(F) application equipment and techniques;

(G) pesticide formulations and actions;

(H) emergency procedures, pesticide cleanup and procedures for immediate reporting of spills and misapplication;

(I) basic principles of mathematics, chemistry, toxicology and entomology; and

(J) non-chemical pest control techniques, including biological, mechanical and prevention techniques.

(2) complete forty (40) hours of verifiable on-the-job training and eight (8) hours of classroom training in each category in which the apprentice is to provide pest control services. The business license holder, certified commercial applicator or the certified noncommercial applicator must certify in the training records of each employee that the apprentice has completed the required training and has demonstrated competency in each category in which the apprentice is to provide service;

(3) a student currently enrolled in or who has attended or graduated within the past twelve months from an accredited school or university studying relevant materials may be credited with those courses for classroom training hours for apprenticeship, if those hours have been provided by the school or university.

(4) an apprentice shall maintain an apprentice card for a maximum of twelve (12) months. If apprentice has not passed the requirements to become a licensed technician, the individual may re-apply as an apprentice and complete all training requirements for an apprentice.

(i) Apprentice Records.

(1) The business licensee or certified noncommercial applicator shall maintain the verifiable training records and certification for each apprentice in the business files. These are to be kept at least two (2) years after termination of employment.

(2) The above records are to be kept on a form prescribed by the Board and shall include, but not limited to the following:

(A) date training records received;

(B) number of hours of training;

(C) subject of training;

(D) name of trainer and license number;

(E) designation of on-the-job training or classroom training; and

(F) competency evaluation by the certified applicator.

(j) When an apprentice changes employers, the employer who provided the verifiable training shall make the verifiable training records available to the apprentice or the new employer upon written request.

(k) It is a violation of this section for a business licensee or certified noncommercial applicator to allow an apprentice to perform work in a category in which the apprentice has not been properly trained. The certified applicator must be physically present to give personal instructions to an apprentice at least three days a week.

(l) An apprentice becomes a licensed technician by;

(1) completing a Board approved technician training course in the General Category at least one time prior to taking the examination.

(2) making a passing grade on the technician examination.

(A) The examination may be taken as many times as necessary in the twelve (12) month period the employee is holding an apprentice card.

(B) There shall be a fee charged per category.

(C) The Technician Training Manual may be obtained from the Texas Agricultural Extension Service.

(D) An individual must pass each category of the examination in which the apprentice has trained to become licensed. Re-examination is not necessary if the license is renewed annually.

(E) Examination dates and locations are at the discretion of the Board.

(3) Persons making a passing grade and who qualify for a technician license will be issued a license upon issuance of the grades.

(m) All testing procedures shall be governed by §593.5(c) (3)-(11), (13) and (14) of this title (relating to Examinations) except that an apprentice may retake the examination at any time and will not be tested in the general category.

(n) On or after September 1, 2000, the Board shall require as a condition of holding a commercial or non-commercial technician's license granted pursuant to the provisions of this section, the responsible certified applicator of record will certify on the verifiable training records form that the technician has completed eight (8) hours of verifiable training for the preceding twelve (12) months of the renewal date. This certification must be verified upon each annual renewal of the technician's license. Failure to do so will prevent the license from being issued.

(1) The eight (8) hours will be covered in the following subject areas:

(A) Federal and state laws regulating structural pest control and pesticide application

(B) Recognition of pest and pest damage

(C) Pesticide labels and label comprehension

(D) Pesticide safety

(E) Environmental protection

(F) Application equipment and techniques

(G) Pesticide formulations and actions

(H) Emergency procedures and pesticide cleanup, and procedures for the immediate reporting of spills and misapplications

(I) Basic principles of mathematics, chemistry, toxicology, and entomology

(J) Non-chemical pest control techniques including biological, mechanical and prevention techniques.

(2) Two (2) hours of the eight (8) hours of training may be on the job training or hands on training verified by the responsible certified applicator.

(3) Internet training or videotape training may be used if the certified applicator certifies that the training is the appropriate training.

(4) A technician will receive an hour for hour credit if a Board approved Continuing Education Unit course is completed.

(5) No courses may be repeated for credit per year.

(o) Upon written request, the Executive Director may grant a hardship extension to a technician due to extenuating circumstances.

(p) All verifiable training records forms will be made available to the Board upon request. These verifiable training records form shall be kept on a format prescribed by the Board in the business file for at least two (2) years after termination of employment.

(q) The verifiable training records forms will be made available to the technician upon written request.

This 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 March 16, 2001.

TRD-200101552
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 451-7200

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 405. CLIENT (PATIENT) CARE

SUBCHAPTER P. RESEARCH IN DEPARTMENT FACILITIES

25 TAC §§405.401 - 405.411, 405.414 - 405.417

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§405.401 - 405.411 and 405.414 - 405.417 of Chapter 405, Subchapter P, concerning Research in Department Facilities. New §§414.751 - 414.764 of new Chapter 414, Subchapter P, concerning research in TDMHMR facilities, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new and more current rules governing the same matters. The proposal would also fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to costs or revenues of the state or local governments.

Marcia Toprac, Ph.D., director, Research, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is the adoption of new and more current rules governing the same matters. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

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

It is not anticipated that the proposed repeals will have an adverse economic effect on small businesses or micro-businesses because the proposed repeals do not place requirements on small businesses or micro-businesses.

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

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board (board) with broad rulemaking authority, and §576.021, which states that a patient receiving mental health services under Subtitle C has the right to refuse to participate in a research program.

The proposal would affect the Texas Health and Safety Code, §532.015 and §576.021.

§405.401. Purpose.
§405.402. Application.
§405.403. Definitions.
§405.404. General Principles.
§405.405. Designated Institutional Review Board (IRB).
§405.406. General Provisions for Approval and Overview of Research.
§405.407. Additional Reviews Necessary Prior to Initiation of Research.
§405.408. Exempt Research.
§405.409. Requirements for Informed Consent.
§405.410. Human Subject Selection.
§405.411. Investigation of Allegations of Misconduct in Science.
§405.414. Responsibilities of the Office of Research Administration (ORA).
§405.415. References.
§405.416. Exhibits.
§405.417. Distribution.

This 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 March 16, 2001.

TRD-200101550

Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5216

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CHAPTER 406. ICF/MR PROGRAMS
SUBCHAPTER C. VENDOR PAYMENTS

25 TAC §§406.101, 406.103-406.107

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

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal of Chapter 406, Subchapter C, §406.101 and §§406.103-406.107, concerning vendor payments.

The subject matter of the subchapter being repealed is addressed in new sections of Chapter 419, Subchapter E, concerning ICF/MR Program, which are proposed for public review and comment elsewhere in this issue of the *Texas Register*.

The repeal is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature).

Bill Campbell, Deputy Commissioner, Finance and Administration, has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, Director, Medicaid Administration, has determined that for each year of the first five-year period the repeals are in effect, the public benefit expected is the existence of ICF/MR Program rules that are organized in a manner that maximizes their accessibility by program providers, department and survey agency staff, consumers, family members, advocates, and other stakeholders. It is not anticipated that the repeals will have an adverse economic effect on small businesses or micro-businesses because they do not impose any measurable cost to ICF/MR Program providers. It is not anticipated that there will be an economic cost to persons required to comply with the repeals. It is not anticipated that the repeals will affect a local economy.

Comments concerning the proposed repeals must be submitted in writing to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The repeals are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed repeals affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§406.101. Vendor Payments.

§406.103. Special Provisions Regarding Reduced, Denied, and Incorrect Vendor Payments.

§406.104. Full Payment and Contributions.

§406.105. Compliance Audits.

§406.106. Computing Interest on Unpaid Audit Charges.

§406.107. Audit Appeals Process.

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

Filed with the Office of the Secretary of State, on March 12, 2001.

TRD-200101473
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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SUBCHAPTER G. ADDITIONAL FACILITY RESPONSIBILITIES

25 TAC §§406.302-406.309, 406.311

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

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeals of §§406.302-406.309 and §406.311 of Chapter 406, Subchapter G, concerning additional facility responsibilities.

The subject matter of the following sections that being repealed is addressed in new sections of Chapter 419, Subchapter E, concerning ICF/MR Program, which are proposed for public review and comment elsewhere in this issue of the *Texas Register*: §406.303, concerning facility capacity; §406.304, concerning release from the facility; §406.308, record retention and other related record requirements; §406.309, concerning abuse and neglect reporting requirements; and §406.311, concerning living options. The subject matter of the following sections that are being repealed is not addressed in the new sections because those topics already are addressed in either federal regulations or Texas Department of Health rules: §406.302, concerning Day

Services; §406.305, concerning Health and Hygiene Services; §406.306, concerning Requirements for Self-administration of Medication; and §406.307, concerning Medical Transportation

The repeals are part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature).

Bill Campbell, Deputy Commissioner, Finance and Administration, has determined that for each year of the first five years the repeals are in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, Director, Medicaid Administration, has determined that for each year of the first five-year period the repeals are in effect, the public benefit expected is the existence of ICF/MR Program rules that are organized in a manner that maximizes their accessibility by program providers, department and survey agency staff, consumers, family members, advocates, and other stakeholders. It is not anticipated that the repeals will have an adverse economic effect on small businesses or micro-businesses because they do not impose any measurable cost to ICF/MR Program providers. It is not anticipated that there will be an economic cost to persons required to comply with the repeals. It is not anticipated that the repeals will affect a local economy.

Comments concerning the proposed repeals must be submitted in writing to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The repeals are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed repeals affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§406.302. Day Services.

§406.303. Facility Capacity.

§406.304. Release from the Facility.

§406.305. Health and Hygiene Services.

§406.306. Requirements for Self-administration of Medication.

§406.307. Medical Transportation.

§406.308. Record Retention and Other Related Record Requirements.

§406.309. Abuse and Neglect Reporting Requirements.

§406.311. Living Options.

This 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 March 12, 2001.

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Andrew Hardin
Chair, Texas MHMR Board
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CHAPTER 414. PROTECTION OF CONSUMERS AND CONSUMER RIGHTS
SUBCHAPTER P. RESEARCH IN TDMHMR FACILITIES

25 TAC §§414.751 - 414.764

The proposed new sections would establish uniform guidelines for the review, approval, conduct, and oversight of research in TDMHMR facilities. The sections describe TDMHMR's general principles for research in its facilities; describe four options under which a facility may choose an institutional review board (IRB) as its designated IRB; describe the functions and operations of a designated IRB, including the responsibilities and requirements for reviewing, approving, and monitoring research; and describe the requirements for procedures for obtaining informed consent from prospective human subjects. The proposed new sections would also adopt by reference Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), to ensure the protection of human subjects involved in research; adopt by reference "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979), to ensure ethical principles are maintained when research involving human subjects is conducted; and adopt by reference Title 42, Code of Federal Regulations, Part 50, Subpart A (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science).

The key difference between the proposed new sections and the sections proposed for repeal is that language in the proposed new sections expressly prohibits the exclusion of individuals from participating in research on the basis of personal characteristics, such as race, color, ethnicity, national origin, religion, sex, age, disability, sexual orientation, or political affiliation, unless scientifically justified; prohibits the participation of human subjects who are involuntarily committed in research involving medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition, or certain research studies involving an investigational medication or device; prohibits research from being conducted at a facility if it hinders the facility's ability to accomplish its primary purpose or if the protocol extends a human subject's use of placebos as the primary medication therapy after the subject is discharged from the facility; and, if a research protocol presents greater than minimal risk, requires procedures for obtaining informed consent to

provide for a qualified professional, who is independent of the research study, to assess prospective human subjects for capacity to consent. The new sections also describe the information to be included in a research proposal, including a description of how the protocol will be implemented as well as justification of the protocol and proposed analyses and the scientific rationale for targeting the proposed population(s) as human subjects.

The proposed new sections would also require a facility's designated IRB to have at least three members who are familiar with the mental disorders/conditions and concerns of the population(s) served by the facility, with at least one of the three members being a professional in the field of mental health or mental retardation (as appropriate to the facility), and at least two of the three members being a person who is or has been in the mental health priority population or mental retardation priority population (as appropriate to the facility) or a family member or advocate of such a person. In addition to approving certain research protocols involving placebos, the TDMHMR medical director would also be required to approve research involving medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition, and research involving an investigational medication or device. The facility CEO or designee would be responsible for ensuring that all key researchers are qualified to perform any clinical duties assigned to them and are knowledgeable of TDMHMR's rules governing the care and protection of individuals.

The proposed new sections would fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed sections are in effect, enforcing or administering the sections does not have foreseeable significant implications relating to costs or revenues of the state or local governments.

Marcia Toprac, Ph.D., director, Research, has determined that, for each year of the first five years the proposed sections are in effect, the public benefit expected is the promulgation of rules that provide for the protection of human subjects involved in research at TDMHMR facilities. It is anticipated that there would be no economic cost to persons required to comply with the proposed new sections.

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

It is not anticipated that the proposed new sections will have an adverse economic effect on small businesses or micro-businesses because the sections do not place additional requirements on small or micro-businesses than those in the sections proposed for repeal.

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

These new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board (board) with broad rulemaking authority, and §576.021, which states that a patient receiving mental health services under Subtitle C has the right to refuse to participate in a research program.

The proposal would affect the Texas Health and Safety Code, §532.015 and §576.021.

§414.751. Purpose.

The purpose of this subchapter is to establish uniform guidelines for the review, approval, conduct, and oversight of research in facilities that:

(1) ensure the protection of the rights and welfare of human subjects involved in research;

(2) provide for the creation and utilization of a designated Institutional Review Board (IRB) for each facility electing to be involved in the conduct of research;

(3) provide for the investigation of allegations of misconduct in science related to research conducted at a facility;

(4) conform with the requirements of Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), which is adopted by reference and referenced as Exhibit A in §414.762 of this title (relating to Exhibits).

§414.752. Application.

This subchapter applies to all research involving:

(1) individuals receiving services from a facility; or

(2) facility resources (e.g., employees, property, and non-public information).

§414.753. Definitions.

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

(1) Assent - Affirmative agreement of a prospective human subject to participate in research, which is obtained when the subject does not have capacity or legal authority to consent.

(2) Central Office - TDMHMR's administrative offices in Austin.

(3) Designated institutional review board (IRB) - The IRB, chosen by the facility and approved by the Office of Research Administration in accordance with this subchapter, that will review, approve, and monitor all research to be conducted at the facility.

(4) Facility - Any state hospital, state school, state center, or any other entity which is now or hereafter made a part of TDMHMR.

(5) Facility rights officer - An employee appointed by a facility CEO to protect and advocate for the rights of persons receiving services from the facility.

(6) Human subject - Consistent with §46.102(f) of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits), a living individual about whom a key researcher conducting research obtains:

(A) data through intervention or interaction with the individual; or

(B) identifiable private information.

(7) Individual - A person who has received or is receiving mental health or mental retardation services from a facility.

(8) Informed consent - The knowing approval of an individual or an individual's legally authorized representative (LAR) to participate in a research study, given under the individual's or LAR's ability to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(9) Institutional review board (IRB) - A board whose membership meets the requirements of §414.755(d) of this title (relating to Designated Institutional Review Board (IRB)), and whose purpose is

to review and approve proposed research as well as oversee the conduct of approved research.

(10) Investigation (of misconduct in science) - The formal examination and evaluation of all relevant facts to determine if misconduct in science has occurred.

(11) Investigational medication or device - Any drug, biological product, or medical device under investigation for human use that is not currently approved by the Food and Drug Administration for the indication being studied.

(12) Key researcher - A principal investigator, a co-investigator, or a person who has direct and ongoing contact with human subjects participating in a research study or with prospective human subjects.

(13) Legally authorized representative (LAR) - A person or judicial or other body authorized under applicable law to consent on behalf of a prospective human subject to the subject's participation in a research study.

(14) Mental health priority population - Persons with mental illness, including severe emotional disturbance, identified in TDMHMR's current strategic plan as being most in need of mental health services.

(15) Mental retardation priority population - Persons with mental retardation identified in TDMHMR's current strategic plan as being most in need of mental retardation services.

(16) Minimal risk - The probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine psychical or psychological examination or tests.

(17) Misconduct in science - The fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

(18) Office of Research Administration (ORA) - The Central Office department that is responsible for the duties described in §414.761 of this title (relating to Responsibilities of the Office of Research Administration (ORA)).

(19) Principal investigator - The person identified as responsible for conducting a research study.

(20) Research - A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this subchapter whether or not they are conducted or supported under a program which is considered research for other purposes. For example, certain demonstration and service programs may include research activities.

(21) TDMHMR - The Texas Department of Mental Health and Mental Retardation.

§414.754. General Principles.

(a) Participation in research that can advance scientific knowledge of mental disorders is integral to the mission of TDMHMR. TDMHMR recognizes and accepts its obligation to protect the rights of human subjects involved in research and supports, as a minimum standard, the preservation of those rights that are constitutionally and legally guaranteed and protected, and adopts the policy that the guiding principle for all research involving human subjects is the safety, well-being, and dignity of the subject.

(b) To ensure the protection of human subjects involved in research at its facilities, TDMHMR promulgates this subchapter and adopts by reference Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), referenced as Exhibit A in §414.762 of this title (relating to Exhibits).

(c) To ensure ethical principles are maintained when research involving human subjects is conducted at its facilities, TDMHMR adopts by reference "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979), referenced as Exhibit B in §414.762 of this title (relating to Exhibits).

(d) Unless scientifically justified, individuals may not be excluded from participating in research on the basis of personal characteristics, such as race, color, ethnicity, national origin, religion, sex, age, disability, sexual orientation, or political affiliation.

(e) TDMHMR recognizes and expresses a commitment to conducting research in a manner that is consistent with the best interests and protection of confidentiality and the personal rights of human subjects involved in the research. This includes conducting research in a manner that protects individuals from participating in research activities that conflict with their individual treatment goals.

(f) Individuals receiving mental health services under an order of protective custody pursuant to the Texas Health and Safety Code, Chapter 574, may not be approached about participation in a research study involving an investigational medication or device prior to the entry of an order for temporary or extended mental health services.

(g) No research involving human subjects may be conducted unless the risks to human subjects are minimized and are reasonable in relation to the anticipated benefits.

(h) No undue inducement or coercion may be used to encourage human subjects to participate in a research study.

(i) Research may not be conducted with human subjects who are involuntarily committed if the research involves:

(1) placebos as the primary medication therapy;

(2) medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition; or

(3) an investigational medication or device that is proposed to be undertaken when previous research on the medication or device with 100 human subjects or fewer has provided minimal or no documentation of the efficacy and safety of the medication or device for the population with the targeted disorder or condition.

(j) Research may not be conducted at a facility if the protocol:

(1) extends the use of a placebo or washout period unreasonably;

(2) deprives the human subject of reasonable relief; or

(3) extends a human subject's use of placebos as the primary medication therapy after the subject is discharged from the facility.

(k) Research conducted at a facility may not hinder the facility's ability to accomplish its primary purpose.

(l) Unless otherwise provided for in this subchapter, research involving human subjects may not be conducted at a facility unless:

(1) the research has been reviewed and approved by the facility's designated IRB in accordance with §414.757 of this title (relating to Review and Approval of Proposed Research);

(2) the facility CEO has agreed to have the research conducted at the facility; and

(3) if required, the necessary assurance and certification has been submitted to the appropriate federal agency, (e.g., Health and Human Services, Food and Drug Administration) and the agency has indicated its approval.

(m) A human subject involved in research or his/her LAR is entitled to file a complaint about alleged mistreatment or other concerns relating to the research with the facility's rights officer or with any other applicable complaint mechanism in place.

(n) All research undertaken at facilities must be conducted with a fundamental commitment to high ethical standards regarding the conduct of scientific research. Any evidence of allegations of misconduct in science shall be reviewed and investigated promptly and thoroughly in accordance with 42 CFR 50, Subpart A, (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science), which is adopted by reference and referenced as Exhibit C in §414.762 of this title (relating to Exhibits), and §414.760 of this title (relating to Investigation of Allegations of Misconduct in Science).

§414.755. Designated Institutional Review Board (IRB).

(a) Each facility electing to participate in research must have a designated IRB for the purpose of reviewing, approving, and monitoring all research conducted at that facility, with the exception of research involving multiple facilities as provided by subsection (c) of this section.

(b) A facility may choose one of the following options for its designated IRB, which must be approved by the ORA as outlined in subsection (f) of this section.

(1) Facility IRB. An IRB, established and operated by a facility, whose membership meets the requirements described in subsection (d) of this section.

(2) Another facility's IRB. A facility IRB as described in paragraph (1) of this subsection.

(3) University IRB. An IRB, established and operated by a university and whose membership meets the requirements described in subsection (d) of this section.

(4) Central Office IRB. An IRB, established and operated by Central Office, whose membership meets the requirements described in subsection (d) of this section.

(c) A facility's CEO or a facility's designated IRB may request that the Central Office IRB act as the facility's designated IRB for a research study that involves multiple facilities.

(d) The membership of the IRB must comply with the requirements in §46.107 of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits) and this subsection.

(1) Facility IRB. Membership of a facility IRB must include at least three members who are familiar with the mental disorders/conditions and concerns of the population(s) served by the facility or facilities.

(A) At least one of the three members described in paragraph (1) of this subsection must be a professional in the field of mental health or mental retardation, as appropriate to the facility or facilities.

(B) At least two of the three members described in paragraph (1) of this subsection must be:

(i) a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities;

(ii) a family member of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities; or

(iii) an advocate of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities.

(2) University IRB. Membership of a university IRB must include at least three members or ad hoc members who are familiar with the mental disorders/conditions and concerns of the population(s) served by the facility or facilities.

(A) At least one of the three members described in paragraph (2) of this subsection must be a professional in the field of mental health or mental retardation, as appropriate to the facility or facilities.

(B) At least two of the three members described in paragraph (2) of this subsection must be:

(i) a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities;

(ii) a family member of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities; or

(iii) an advocate of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities.

(3) Central Office IRB. Membership of the Central Office IRB must include local representation from various regions of the state and at least three members who are familiar with the mental disorders/conditions and concerns of the population(s) served by TDMHMR.

(A) At least one of the three members described in paragraph (3) of this subsection must be a professional in the field of mental health and mental retardation.

(B) At least two of the three members described in paragraph (3) of this subsection must be:

(i) a person who is or has been in the mental health priority population, a family member of a person who is or has been in the mental health priority population, or an advocate of a person who is or has been in the mental health priority population; and

(ii) a person who is or has been in the mental retardation priority population, a family member of a person who is or has been in the mental retardation priority population, or an advocate of a person who is or has been in the mental retardation priority population.

(e) Each IRB must have written policies and procedures that are consistent with this subchapter and TDMHMR's rules governing the care and protection of individuals as described in §414.763(4) of this title (relating to References) and that address:

(1) the functions and operations of the IRB as required by §46.103(b)(4) and (b)(5) of 45 CFR 46 (Exhibit A);

(2) the review or screening process to determine whether proposed research is exempt from the requirements of federal regulations made in accordance with §46.101(b) of 45 CFR 46 (Exhibit A), including required documentation, and any necessary approvals;

(3) the process for ensuring that each IRB member and key researcher involved in an approved research study receives documented training in applicable ethics, laws, and regulations governing research involving human subjects; and

(4) the process for disclosing and considering potential conflicts of interest, financial or otherwise, by IRB members and key researchers.

(f) ORA approval of a designated IRB.

(1) A facility seeking approval for its own facility IRB, another facility's IRB, or a university IRB as its designated IRB, as described in subsection (b)(1), (b)(2), or (b)(3) of this section, must submit the following to the ORA:

(A) IRB membership information in sufficient detail to determine compliance with subsection (d) of this section and which describes each member's chief anticipated contribution to IRB deliberations, and any employment or other relationship between each member and the facility, university, or Central Office, as appropriate;

(B) the written policies and procedures described in subsection (e) of this section;

(C) the written policy for the communication of IRB deliberations, recommendations, and decisions to the facility CEO and the ORA; and

(D) if approval is for a university IRB or another facility's IRB, a copy of the written agreement in which the university IRB or other facility IRB accepts responsibility for reviewing, approving, and monitoring all research to be conducted at the facility seeking approval.

(2) A facility seeking approval for the Central Office IRB as its designated IRB, as described in subsection (b)(4) of this section, must submit a written request from the facility CEO to the ORA.

(g) The ORA shall review the information submitted by the facility and will approve, disapprove, or enter into negotiations to attain approval for the IRB as the facility's designated IRB. The ORA will provide written notice of approval or disapproval to the requesting facility.

(h) Any change in a designated IRB's membership, policies, or procedures must be reported to and approved by the ORA.

(i) The ORA may require that a designated IRB comply with additional requirements related to documentation and approval if the ORA determines that such requirements are necessary to ensure the protection of human subjects.

(j) The ORA may revoke approval of a designated IRB at any time the ORA determines the IRB fails to maintain standards in accordance with federal regulations and this subchapter.

§414.756. IRB Functions and Operations.

(a) Each designated IRB shall:

(1) follow its written policies and procedures as described in §414.755(e) of this title (relating to Designated Institutional Review Board (IRB));

(2) function in accordance with §46.108 of 45 CFR 46 (Exhibit A);

(3) ensure proposed research is reviewed and approved in accordance with this subchapter;

(4) except when an expedited review is used as described in §46.108(b) of 45 CFR 46 (Exhibit A), ensure proposed research is reviewed and approved only at meetings in which at least one of each of the following members are present, participating, and voting:

(A) a member who satisfies the requirements of §414.755(d)(1)(A), (d)(2)(A), or (d)(3)(A) of this title (relating to Designated Institutional Review Board (IRB)), as appropriate to the IRB; and

(B) a member who satisfies the requirements of §414.755(d)(1)(B), (d)(2)(B), or (d)(3)(B) of this title (relating to Designated Institutional Review Board (IRB)), as appropriate to the IRB, and in the case of the Central Office IRB, as appropriate to the facility or facilities for which the research is proposed.

(5) exercise appropriate oversight to ensure that:

(A) its policies and procedures designed for protecting the rights and welfare of human subjects are being effectively applied; and

(B) research is being conducted at the facility or facilities in accordance with the approved protocol;

(6) maintain records of its operations in accordance with §46.115 of 45 CFR 46 (Exhibit A);

(7) submit to the ORA documentation of its continuing review of all approved and active research protocols; and

(8) immediately notify the ORA of any unanticipated serious problems or events involving risks to the human subjects or others.

(b) Each designated IRB has the authority to suspend or terminate research that is not being conducted in accordance with the IRB's requirements or that has been associated with significant unexpected harm to human subjects. Any suspension or termination of research shall be in writing and include a statement of the reasons for the IRB's actions and shall be reported promptly to the principal investigator, appropriate facility or facilities officials, and the ORA.

§414.757. Review and Approval of Proposed Research.

(a) All proposed research must be submitted to the facility's designated IRB and contain adequate written information for the IRB to determine whether the requirements described in §46.111 of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits), are satisfied, including:

(1) a complete description of how the research protocol will be implemented at the facility or facilities, including;

(A) the process for recruiting and screening human subjects;

(B) how many subjects are required at the facility or facilities; and

(C) the process for and level of clinical monitoring of human subjects throughout the research period; and

(2) a thorough justification of the research protocol and proposed analyses, including;

(A) a description of the procedures designed to minimize risks to subjects; and

(B) the scientific rationale for targeting the proposed population(s) as human subjects.

(b) Each designated IRB shall review all proposed research at the facility in accordance with §46.109 of 45 CFR 46 (Exhibit A) and §414.758 of this title (relating to Informed Consent).

(c) Each designated IRB has the authority to approve, require modifications to, or disapprove any proposed research. Approval of proposed research shall be based on:

(1) the requirements described in §46.111 of 45 CFR 46 (Exhibit A), concerning criteria for IRB approval of research;

(2) the requirements described in §414.758 of this title (relating to Informed Consent);

(3) the requirements described in §414.759 of this title (relating to Human Subject Selection); and

(4) consideration of the information described in subsection (a)(1)-(2) of this section.

(d) The designated IRB may take into consideration deliberations and reviews from another IRB that has approved the protocol for a specific research proposal, but the designated IRB is ultimately responsible for approval of the proposed research.

(e) Research review and documentation process.

(1) Facility IRB as the designated IRB. The research review and documentation process for a facility IRB, as described in §414.755(b)(1) and (2) of this title (relating to Designated Institutional Review Board (IRB)), is generally as follows.

(A) The research proposal is reviewed by the facility IRB and, if approved, forwarded to the CEO of the facility where the research is to be conducted.

(B) The facility CEO is informed of the facility IRB's approval or disapproval and recommendations, if any.

(C) If the research proposal is approved by the facility IRB, the facility CEO considers the facility IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(D) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(2) University IRB as the designated IRB. The research review and documentation process for a facility using a university IRB is generally as follows.

(A) the research proposal is screened by the facility CEO and, if determined appropriate for implementation at the facility, forwarded to the university IRB for review.

(B) The research proposal is reviewed by the university IRB.

(C) The facility CEO is informed of the university IRB's approval or disapproval and recommendations, if any.

(D) If the research proposal is approved by the university IRB, the facility CEO considers the university IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(E) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(3) Central Office IRB as the designated IRB. The research review and documentation process for a facility using the Central Office IRB is generally as follows.

(A) The research proposal is screened by the facility CEO and, if determined appropriate for implementation at the facility, forwarded to the Central Office IRB.

(B) The research proposal is reviewed by the Central Office IRB.

(C) The facility CEO is informed of the Central Office IRB's approval or disapproval and recommendations, if any.

(D) If the research proposal is approved by the Central Office IRB, the facility CEO considers the Central Office IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(E) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(4) Central Office IRB as a facility's designated IRB for research studies involving multiple facilities. When a facility's designated IRB or CEO requests that the Central Office IRB act as its designated IRB for a research study involving multiple facilities, pursuant to §414.755(c) of this title (relating to Designated Institutional Review Board (IRB)), then the research review and documentation process is generally as follows.

(A) The research proposal is reviewed and approved by:

(i) each facility CEO;

(ii) the Central Office IRB; and

(iii) the appropriate Central Office director(s), (i.e., director of state mental health facilities or director of state mental retardation facilities).

(B) If the research proposal is approved by the facility CEOs, the Central Office IRB, and the appropriate Central Office director(s), the ORA is notified in writing of the approval, including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and documentation of approval of the CEOs and the Central Office IRB.

(f) In addition to approval by the designated IRB and facility CEO, the TDMHMR medical director must review and approve any research proposal involving:

(1) a placebo as the primary medication therapy;

(2) medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition; or

(3) an investigational medication or device.

(g) The review process for proposed research may require additional steps as necessary, (e.g., in the event a proposal is initially rejected).

(h) The facility CEO or designee is responsible for ensuring that all key researchers are qualified to perform any clinical duties assigned to them and are knowledgeable of TDMHMR's rules governing the care and protection of individuals as described in §414.763(4) of this title (relating to References).

§414.758. Informed Consent.

(a) Designated IRB's review of proposed research.

(1) The designated IRB's review must verify that procedures for obtaining and documenting informed consent from prospective human subjects meet the requirements in §46.116 and §46.117 of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits). Additionally, informed consent must also address:

(A) any extension of the subject's length of stay at the facility as a result of participation in the research;

(B) if the research involves an investigational medication or device, the subject's ability to receive the medication or device after the research has concluded;

(C) whether the research involves the use of a placebo and the likelihood of assignment to the placebo condition;

(D) whether the research involves medication or doses of medication which are known to be ineffective for the targeted disorder or condition and the likelihood of assignment to such medication or doses of medication; and

(E) any risk of deterioration in the subject's condition and the potential consequences for such deterioration (e.g., an extension in the length of stay, the use of interventions such as restraint, seclusion, or emergency medications).

(2) For research protocols that present greater than minimal risk, the designated IRB's review must verify that the procedures for obtaining and documenting informed consent from prospective human subjects:

(A) provide for a qualified professional, who is independent of the research study, to assess prospective human subjects for capacity to consent;

(B) describe who will conduct the assessments; and

(C) describe the nature of the assessment and justification if less formal procedures to assess capacity will be used.

(3) If minors are the proposed human subjects, the designated IRB's review must verify that the requirements in §46.408 (concerning Requirements for Permission by Parents or Guardians and for Assent by Children) of 45 CFR 46 (Exhibit A) have been met.

(4) The designated IRB's review must determine that there are adequate procedures to ensure that each prospective human subject understands the information provided before obtaining consent and if the subject cannot understand the information that there are provisions for obtaining informed consent from the subject's LAR. If consent is obtained from the subject's LAR then procedures must be in place to attempt, to the extent possible given the prospective subject's capacity, to obtain the subject's assent to participation.

(5) The designated IRB's review must determine whether there are safeguards to minimize the possibility of coercion or undue influence. The research proposal may be approved only if the possible advantages of the subject's participation in the research do not impair the subject's ability to weigh the risks of the research against the value of those advantages. Possible advantages within the limited choice environment of a facility may include enhancement of general living conditions, medical care, quality of food, or amenities; opportunity for earnings; or change in commitment status.

(b) Obtaining informed consent.

(1) A prospective human subject's objection to enrollment in research or a human subject's objection to continued participation in a research protocol must be heeded in all circumstances, regardless of whether the subject or the subject's LAR has given consent. Objection may be conveyed verbally, in writing, behaviorally, or by other indications or means. This does not preclude a key researcher, who acts with a level of sensitivity that avoids the possibility or the appearance of coercion, from approaching individuals who previously objected to ascertain whether they have changed their minds or approaching individuals who have not given actual consent to ascertain whether they want to enroll in the research protocol.

(2) Because informed consent is an ongoing process, each human subject's comprehension and capacity must be assessed and enhanced throughout the course of the research protocol.

§414.759. Human Subject Selection.

The designated IRB's review of proposed research shall ensure that the human subject selection process is equitable and that measures are taken to ensure the research sample is adequately representative of the population of interest. Subject selection procedures must offer equitable opportunity for access to participation in research and access to potential benefits of participation.

§414.760. Investigation of Allegations of Misconduct in Science.

(a) All research undertaken at facilities shall be conducted with a fundamental commitment to high ethical standards regarding the conduct of scientific research.

(b) Reports of alleged misconduct in science are made to the ORA, who shall ensure that:

(1) each allegation is reviewed and investigated by an appropriate entity in accordance with 42 CFR 50, Subpart A, referenced as Exhibit C in §414.762 of this title (relating to Exhibits);

(2) the investigating entity submits to the ORA information documenting the disposition of each allegation; and

(3) the agency funding the research is notified of the allegation.

§414.761. Responsibilities of the Office of Research Administration (ORA).

The ORA is responsible for:

(1) approving the establishment or utilization of an IRB by a facility as the facility's designated IRB;

(2) providing staff support to the Central Office IRB;

(3) reviewing and developing TDMHMR rules and policies governing the conduct of research at facilities;

(4) maintaining all documentation regarding a designated IRB's review of research for a facility;

(5) receiving reports of misconduct in science, ensuring each allegation of misconduct in science is reviewed and investigated, and maintaining data regarding misconduct in science as required by the Office of Research Integrity in accordance with 42 CFR 50, Subpart A, referenced as Exhibit C in §414.762 of this title (relating to Exhibits); and

(6) providing technical assistance and interpretation of policies, procedures, TDMHMR rules, and regulations concerning the conduct of research involving human subjects at facilities.

§414.762. Exhibits.

The following exhibits are referenced in this subchapter, copies of which are available by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668:

(1) Exhibit A - Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects);

(2) Exhibit B - "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979); and

(3) Exhibit C - Title 42, Code of Federal Regulations, Part 50, Subpart A (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science).

§414.763. References.

The following statutes and TDMHMR rules are referenced in this subchapter:

(1) Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects);

(2) Title 42, Code of Federal Regulations, Part 50, Subpart A (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science);

(3) Texas Health and Safety Code, Chapter 574 and §533.035; and

(4) TDMHMR rules governing the care and protection of individuals, which address:

(A) rights and confidentiality of persons receiving services in TDMHMR facilities;

(B) consent to treatment with psychoactive or psychotropic medication;

(C) voluntary and involuntary interventions involving persons receiving services in TDMHMR facilities; and

(D) abuse, neglect, and exploitation of persons receiving services in TDMHMR facilities.

§414.764. Distribution.

This subchapter is distributed to:

(1) all members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff of Central Office;

(3) CEOs of all facilities;

(4) advocacy organizations; and

(5) upon request, to any interested person.

This 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 March 16, 2001.

TRD-200101551
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5216

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CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER E. ICF/MR PROGRAMS

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§419.211, 419.213-419.219, 419.223-419.227, 419.236-419.249, 419.269, and 419.299 and amendments to §§419.203, 419.255, 419.256, and 419.260 of Chapter 419, Subchapter E, concerning ICF/MR programs.

The new sections describe the following requirements for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program in Texas including, provider administrative requirements in new Division 3; provider service requirements in Division 4; eligibility, enrollments, and review in new Division 5; and administrative hearings in new Division 8. The amendments to §419.203 in Division 1 add the definitions of terms used in the proposed new sections. The amendments to §§419.255, 419.256, and 419.260 in Division 6 correct references and substitute terminology to be consistent with current department usage and with the terminology used in the proposed new sections. New §419.299 in Division 11 incorporates references from the proposed new sections and replaces the existing §419.299.

The following new requirements are described in the proposed new sections. A program provider must perform a capacity assessment if it believes a guardian for that individual may be appropriate and a referral to the appropriate court is anticipated, or if the program provider is ordered by a court to conduct a capacity assessment. In general, only local mental retardation authorities (MRAs) may request enrollment of an applicant into the ICF/MR program, except that a program provider may request enrollment if the applicant received ICF/MR services from a non-state operated facility during the six months prior to the request and the applicant is not moving from or seeking admission to a state-operated facility. If the department grants a reinstatement of a lapsed level of care (LOC), the reinstatement will be for a period of not more than 180 days prior to the date of electronic transmission of the MR/RC Assessment. Previously, the period had been one year.

The new sections incorporate existing policies and procedures described in the bulletins that have been distributed by the department's Office of Medicaid Administration to program providers during the past several years. These include a description of circumstances that require the ICAP to be re-administered and clarification of the documentation that must be submitted when the program provider requests an increase in an individual's LON.

The new sections replace existing Chapter 406, Subchapter C, concerning vendor payments; Chapter 406, Subchapter E, concerning eligibility and review; and §§406.302-406.309 and §406.311 of Chapter 406, Subchapter G, concerning additional facility responsibilities, which are proposed for repeal elsewhere in this issue of the *Texas Register*. Also in this issue of the *Texas Register*, the department proposes the repeal of §419.223, concerning discharge from a facility; §419.262, concerning auditing; and §419.299, concerning references. The provisions of repealed §419.223 are proposed with clarifying revisions in new §419.227, concerning discharge from a facility, to facilitate a more logical organization of the new sections within Division 4. The provisions of repealed §419.262 are incorporated along with other auditing provisions in new §419.269, concerning audits. The listing of references in repealed §419.299 are augmented by a much longer listing of references from the proposed sections in proposed §419.299, concerning references.

Some of the topics currently addressed in the sections of Chapter 406 that are to be repealed are not addressed in the proposed sections because those topics already are addressed in federal

regulations or Texas Department of Health rules. These topics include day services, health and hygiene services, requirements for the self-administration of medication, and medical transportation.

The new sections are part of a comprehensive review, revision, and reorganization of the department's ICF/MR Program rules in Chapter 406. As the sections in existing Chapter 406 are reviewed, the subject matter is incorporated into new sections in Chapter 419, Subchapter E. The first new sections concerning general requirements and personal funds were adopted in late 1999. In December 2000, the department adopted additional new sections concerning provider enrollment in Division 2, provider service requirements in Division 4, and provider agreement sanctions in Division 7. The comprehensive review, revision, and reorganization of the ICF/MR Program rules is being conducted in conjunction with the review of rules required by Texas Government Code, §2001.039.

Bill Campbell, Deputy Commissioner, Finance and Administration, has determined that for each year of the first five year period that the new sections and amendments are in effect, enforcing or administering the new sections and amendments does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, Director, Medicaid Administration, has determined that for each year of the first five-year period the new sections are in effect, the public benefit expected is that individuals seeking residential services will be able to access all ICF/MR providers through the local MRA. It is not anticipated that the new sections will have an adverse economic effect on small businesses or micro-businesses because these changes do not impose any measurable cost to the ICF/MR providers. It is not anticipated that there will be an economic cost to persons required to comply with the new sections. It is not anticipated that the new sections will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Tuesday, April 17, 2001, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Cardella, at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to (512) 206-4750, and by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

DIVISION 1. GENERAL REQUIREMENTS

25 TAC §419.203

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed amendments affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.203. Definitions.

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

(1) Active treatment--Continuous, aggressive, consistent implementation of a program of habilitation, specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program. The program must be directed toward:

(A) the acquisition or maintenance of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status.

(2) [~~(1)~~] Affiliate--An employee or independent contractor of a provider applicant or a person with a significant financial interest in a provider applicant including, but not limited, to the following:

(A) if the provider applicant is a corporation, then each officer, director, stockholder with an ownership of at least 5%, subsidiary, and parent company;

(B) if the provider applicant is a limited liability company, then each officer, member, subsidiary, and parent company;

(C) if the provider applicant is an individual, then the individual's spouse, each partnership and each partner thereof of which the individual is a partner and each corporation in which the individual is an officer, director, or stockholder with an ownership of at least 5%;

(D) if the provider applicant is a partnership, then each partner and parent company; or

(E) if the provider applicant is a group of co-owners under any other business arrangement, then each owner, officer, director, or the equivalent thereof under the specific business arrangement, and each parent company.

(3) Applicant--A person seeking enrollment in the ICF/MR Program or seeking admission to a facility.

(4) [~~(2)~~] Applied income--The portion of an individual's cost of care that the individual is responsible for paying. The amount of an individual's applied income is determined by the policies and procedures authorized by TDHS and depends on the individual's earned and unearned income.

(5) Behavior intervention plan--A written plan prescribing the systematic application of behavioral techniques regarding an individual that, at a minimum, contains:

(A) reliable and representative baseline data regarding the targeted behavior;

(B) a specific objective to decrease or eliminate the targeted behavior;

(C) a functional analysis of the events which contribute to or maintain the targeted behavior;

(D) detailed procedures for implementing the plan;

(E) ongoing, written quantitative data of the targeted behavior;

(F) written descriptions of incidents of the targeted behavior including the individual's actions and staff interventions;

(G) methods for evaluating plan effectiveness;

(H) procedures for making necessary plan revisions at least annually; and

(I) a fading process for one-to-one supervision, if the individual is assigned an LON 9.

(6) [~~(3)~~] Budgeted amount--The amount of cash that may be disbursed to an individual at regular intervals, e.g., weekly, monthly, for discretionary spending without obtaining a sales receipt for the expenditure.

(7) Certified capacity--The maximum number of individuals who may reside in a facility, as set forth in the facility's provider agreement.

(8) [~~(4)~~] CFR--Code of Federal Regulations.

(9) Community MHMR Center--A community mental health and mental retardation center established under the THSC, Chapter 534.

(10) [~~(5)~~] Day--Calendar day, unless otherwise specified.

(11) [~~(6)~~] Department--The Texas Department of Mental Health and Mental Retardation.

(12) Discharge--The absence, for a full day or more, of an individual from the facility in which the individual resides, if such absence is not during a therapeutic, extended, or special leave, as described in §419.226 of this title (relating to Leaves).

(13) [~~(7)~~] Excluded--Temporarily or permanently prohibited by a state or federal authority from participating as a provider in a federal health care program, as defined in 42 USC§1302a-7b(f).

(14) [~~(8)~~] Facility--An intermediate care facility for persons with mental retardation or a related condition.

(15) Full day--A 24-hour period extending from midnight to midnight.

(16) [~~(9)~~] Fundamental standards of participation HCFA--Designated standards of participation that reflect client outcomes with respect to basic rights, safety, health, and participation in active treatment services.

(17) [~~(10)~~] HCFA (Health Care Financing Administration)--The federal agency that administers Medicaid programs.

(18) ICAP--Inventory for Client and Agency Planning.

(19) [~~(11)~~] ICF/MR Program--The Intermediate Care Facilities for Persons with Mental Retardation Program, which provides Medicaid-funded residential services to individuals with mental retardation or a related condition.

(20) [~~(12)~~] IDT (interdisciplinary team)--A group of people assembled by the program provider who possess the knowledge, skills, and expertise to develop an individual's IPP, including the individual, [~~individual's~~] LAR, mental retardation professionals and paraprofessionals and, with approval from the individual or LAR, other concerned persons.

(21) [~~(13)~~] IPP (individual program plan)--A plan developed by an individual's IDT that identifies the individual's training, treatment, and habilitation needs and describes services to meet those needs.

(22) [~~(14)~~] Individual--A person enrolled in the ICF/MR Program.

(23) IQ--Intelligence quotient.

(24) [~~(15)~~] LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor individual, a guardian of an adult individual, a legal representative of a deceased individual, or surrogate decision maker, or surrogate consent committee.

(25) LOC--Level of care.

(26) LON--Level of need.

(27) [~~(16)~~]*Long Term Care Plan for People with Mental Retardation and Related Conditions*--The plan required by THSC, §533.062, which is developed by the department and specifies, in part, the capacity of the ICF/MR Program in Texas.

(28) NHIC--National Heritage Insurance Company.

(29) [~~(17)~~] MRA (mental retardation authority)--Consistent with THSC, §533.035, an entity designated by the commissioner to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility for planning, policy development, coordination, and resource allocation, and resource development for and oversight of services and supports in one or more local service areas.

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

(31) [~~(19)~~] Permanency planning--A philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(32) [~~(20)~~] Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(33) [~~(21)~~] Petty cash fund--Personal funds managed by a program provider that are maintained for individuals' cash expenditures.

(34) [~~(22)~~] Pooled account--A trust fund account containing the personal funds of more than one individual.

(35) Professional--A person who is licensed or certified by the State of Texas in a health or human services occupation or who meets department criteria to be a case manager, service coordinator, qualified mental retardation professional, or TDMHMR-certified psychologist as defined in §415.161 of this title (relating to TDMHMR-certified psychologist).

(36) [~~(23)~~] Program provider--An entity with whom the department has a provider agreement.

(37) [~~(24)~~] Provider agreement--A written agreement between the department and a program provider that obligates the program provider to deliver ICF/MR Program services.

(38) [~~(25)~~] Provider applicant--An entity seeking to participate as a program provider.

~~[(26) Related condition--A severe and chronic disability that:]~~

~~[(A) is attributed to:]~~

~~*[(i)* cerebral palsy or epilepsy; or]~~

~~*[(ii)* any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation, and requires treatment or services similar to those required for individuals with mental retardation;]~~

~~[(B) is manifested before the individual reaches age 22;]~~

~~[(C) is likely to continue indefinitely; and]~~

~~[(D) results in substantial functional limitation in at least three of the following areas of major life activity:]~~

~~*[(i)* self-care;]~~

~~*[(ii)* understanding and use of language;]~~

~~*[(iii)* learning;]~~

~~*[(iv)* mobility;]~~

~~*[(v)* self-direction; and]~~

~~*[(vi)* capacity for independent living.]~~

(39) [~~(27)~~] Sales receipt--A written statement issued by the seller that includes:

(A) the date it was created; and

(B) the cost of the item or service.

(40) [~~(28)~~] Sanction team--A group of professionals assembled and employed by the department, which is overseen by the Health and Human Services Commission to ensure consistency in its determinations.

(41) [~~(29)~~] Separate account--A trust fund account containing the personal funds of only one individual.

(42) [~~(30)~~] Specially constituted committee--The committee designated by the program provider in accordance with 42 CFR §483.440(f)(3) that consists of staff, LARs, individuals (as appropriate), qualified persons who have experience or training in contemporary practices to change individuals' inappropriate behavior, and persons with no ownership or controlling interest in the facility. The committee is responsible, in part, for reviewing, approving, and monitoring individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to individuals' safety and rights.

(43) State-operated facility--A facility for which the department is the program provider.

(44) TAC--Texas Administrative Code.

(45) TDHS--Texas Department of Human Services.

(46) [~~(31)~~] THSC--Texas Health and Safety Code.

(47) [~~(32)~~] Trust fund account--An account at a financial institution in the program provider's control that contains personal funds.

(48) [~~(33)~~] Unclaimed personal funds--Personal funds managed by the program provider that have not been transferred to the individual or LAR within 30 days after the individual's discharge.

(49) [~~(34)~~] Unidentified personal funds--Personal funds managed by the program provider for which the program provider cannot identify ownership.

(50) [~~(35)~~] USC--United States Code.

(51) [~~(36)~~] Vendor hold--Temporary suspension of ICF/MR payments from the department to a program provider.

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

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Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

25 TAC §§419.211, 419.213-419.219

The new sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed new sections affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.211. Compliance with State and Federal Laws.

A program provider must comply with:

(1) applicable state laws and rules, including but not limited to:

(A) this subchapter;

(B) Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs);

(C) Chapter 409, Subchapter B of this title (relating to Adverse Actions);

(D) Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Benefits);

(E) Chapter 419, Subchapter G of this title (relating to Medicaid Fair Hearings);

(F) 1 TAC Chapter 355, Subchapter D (relating to Reimbursement Methodology); and

(G) 1 TAC §§355.701-355.709; and

(2) applicable federal laws and regulations, including but not limited to:

(A) 42 CFR Parts 440, 441, 442, 455, 456, and 483; and

(B) 45 CFR Parts 46, 80, 84, 90, and 91.

§419.213. Records.

(a) A program provider must maintain a copy of the following records for each individual:

(1) the birth certificate;

(2) relevant legal documents including documents relating to guardianship, marital status, custody of a minor, or immigration status, if any;

(3) the Social Security card;

(4) a current photograph;

(5) immunization records;

(6) height and weight records;

(7) seizure records, if any;

(8) the most recent physician's orders, including treatment and diet orders;

(9) the most recent nursing care plan, if any;

(10) the most recent laboratory test results, if any;

(11) any significant medical reports, including reports regarding the most recent chest X-ray, electrocardiogram (EKG), and electroencephalogram (EEG), if any;

(12) the most recent medical examination results and a summary of the medical history, including all major surgeries, significant acute illnesses, and injuries requiring hospitalization or a long recovery period;

(13) a summary of the medication history, including start and stop dates, dose ranges, effectiveness and reactions of all long-term medications and antibiotics;

(14) the most recent dental examination results and a summary of the dental history, including all oral surgeries, extractions, restorations, appliances, and types of anesthesia required for dental work;

(15) the social history and the most recent psychological examination results;

(16) Medicaid and, if applicable, Medicare or third-party insurance cards;

(17) records necessary to disclose the nature and extent of services provided to the individual; and

(18) any other records required by this subchapter or the provider agreement.

(b) A program provider must retain the records described in subsection (a) of this section until the latest of the following occurs:

(1) five years elapse from the date the records were created;

(2) any audit exception or litigation involving the records is resolved; or

(3) the individual becomes 21 years of age.

(c) A program provider must, upon request, make available to the department or its designee the records described in subsection (a) of this section.

§419.214. Certified Capacity of a Facility.

(a) The certified capacity of a facility will be established by the department.

(b) A program provider may request that the department decrease the certified capacity of its facility.

(1) The class of a non-state operated facility that has its certified capacity decreased will be determined according to 1 TAC §355.456(b) (relating to Rate Setting Methodology) for reimbursement purposes.

(2) The department will amend the *Long Term Care Plan for People with Mental Retardation and Related Conditions* to reflect the decrease in certified capacity of a facility or will determine that beds authorized by the *Long Term Care Plan for People with Mental Retardation and Related Conditions* are available for allocation.

(c) To ensure appropriate utilization of state-operated facilities, the department may increase the certified capacity of a state-operated facility, if the total capacity of all state-operated facilities does not exceed the authorized bed capacity for "campus facilities" in the *Long Term Care Plan for People with Mental Retardation and Related Conditions*.

(d) If the department determines that redistributing the certified capacity of one or more existing facilities into two or more new, smaller facilities may improve utilization of ICF/MR resources, the department may publish notice in the *Texas Register* that it is accepting requests from program providers to redistribute the certified capacity of their facilities. A program provider may submit a request to redistribute capacity. Such a request must be submitted according to the published notice and the department's instructions. After reviewing the submitted requests, the department may negotiate a plan and enter into an agreement with a program provider to redistribute the program provider's certified capacity.

§419.215. Relocation of Facility.

(a) Prior to relocating its facility, a program provider must receive department approval of a facility relocation application obtained from the department, if certification of the facility at a new physical address will be sought.

(b) To request the approval required by subsection (a) of this section, a program provider must, prior to the facility relocation, complete and submit to the department's Office of Medicaid Administration, a facility relocation application.

(c) After reviewing an application, the department will provide written notice to the program provider of its approval or denial. An incomplete application will not be approved.

(d) If the department approves the application for facility relocation, the department will notify the state survey agency of the facility relocation and request that the state survey agency initiate licensure and certification action of the relocated facility.

(e) Prior to the relocation, the program provider must notify each individual residing in the facility and LAR in writing of the date of facility relocation and the address of the relocated facility or explain to the individual or LAR why shorter notification was necessary.

(f) At the time of relocation, the program provider must notify the MRA in whose local service area the facility has relocated of the name and address of the relocated facility in writing.

(g) If the relocated facility is licensed in accordance with state law and determined by the state survey agency to meet certification requirements, the department will initiate an amendment to the provider agreement to reflect the address of the relocated facility. The program provider must execute and submit the amendment to the department.

§419.216. Renewal of Provider Agreement.

(a) If the state survey agency determines that a program provider meets all requirements for participation in the ICF/MR program prior to the expiration of the provider agreement, the department will renew the provider agreement. The duration of the renewed provider agreement will be the certification period, not to exceed 12 months, and the effective date will be the day after the expiration of the previous provider agreement.

(b) Notwithstanding subsection (a) of this section, the department may, for good cause, renew a provider agreement for less than the certification period.

(c) A provider agreement will be renewed by the department by written notice, setting forth the terms and conditions of the renewal, from the department to the program provider. Failure of the program provider to notify the department of the program provider's objection to such terms and conditions within 20 days of the date of the notice constitutes the program provider's acceptance of the renewal.

§419.217. Assignment of Provider Agreement.

(a) A program provider must notify the department's Office of Medicaid Administration in writing at least 30 days prior to the date of a proposed assignment. The notice must include:

(1) the legal name and federal tax identification number of the proposed assignee;

(2) the proposed date of the assignment, which must be on the first day of a month;

(3) the provider vendor number of the assignor;

(4) an application for enrollment obtained from the department and completed by the assignee as required for provider applicants by §419.206(d) of this title (relating to Application Process); and

(5) a copy of the assignment agreement, which must include a statement that the assignee:

(A) must keep, perform, and fulfill all of the terms, conditions, and obligations that must be performed by the assignor under the provider agreement;

(B) is subject to all pending conditions that exist against the assignor including, but not limited to, any plan of correction, audit exception, vendor hold, or proposed contract termination; and

(C) is liable to the department for any liabilities or obligations that arise from any act, event, or condition that occurred or existed prior to the effective date of the assignment and that is identified in any survey, review, or audit conducted by the department.

(b) The department may establish the date of assignment if:

(1) notice of a proposed assignment is not provided to the department at least 30 days prior to the proposed date of assignment; or

(2) the proposed date of assignment is not on the first day of a month.

(c) Upon receipt of notice provided in accordance with subsection (a) of this section, the department will:

(1) impose a vendor hold on payments due to the assignor under the provider agreement until an audit conducted in accordance with §419.269 of this title (relating to Audits) is complete; and

(2) review the application for enrollment.

(d) After the department reviews the application for enrollment, the department will provide written notice to the assignee and assignor stating whether the application is approved or rejected.

(e) The department may reject an application for enrollment for the same reasons a provider applicant's application for enrollment may be rejected as set forth in §419.206(e) of this title (relating to Application Process). If the department rejects the application for enrollment, the assignor may withdraw the proposed assignment. If the assignment is not withdrawn, the department may terminate the assigned provider agreement.

(f) If the department approves the proposed assignee's application for enrollment, the department will notify the state survey agency of the assignment and request that the state survey agency initiate licensure and certification action.

(g) The assignor must, prior to the effective date of the assignment, give written notice to each individual residing in the facility or LAR of the proposed assignment and the proposed effective date of the assignment.

(h) If the facility is licensed in accordance with state law and determined by the state survey agency to meet certification requirements on or before the 90th day after the effective date of the assignment, the department will pay the assignee for services provided on and after the effective date of the assignment, except the department will not pay the assignee for any period of time during the 90-day period that the facility was determined by the state survey agency to not meet certification requirements.

(i) If the facility is not licensed in accordance with state law and determined by the state survey agency to meet certification requirements on or before the 90th day after the effective date of the assignment, the department will terminate the provider agreement effective on the 91st day. A survey completed more than 90 days after the effective date of the assignment will not be used to determine if the facility met the licensure and certification requirements within the 90-day period.

(j) During the 90-day period after the effective date of the assignment, the provider agreement is subject to sanctions, including termination, in accordance with Division 7 of this subchapter (relating to Provider Agreement Sanctions).

(k) Upon the effective date of the assignment, the assignee:

(1) must keep, perform, and fulfill all of the terms, conditions and obligations that must be performed by the assignor under the provider agreement;

(2) is subject to all pending conditions which exist against the assignor, including but not limited to, any plan of correction, audit exception, vendor hold, or proposed contract termination; and

(3) is liable to the department for any liabilities or obligations that arise from any act, event, or condition that occurred or existed prior to the effective date of the assignment and that is identified in any survey, review, or audit conducted by the department.

(l) The assignor must complete and submit billing claims to the department in accordance with §419.219 of this title (relating to Provider Reimbursement) for services that were provided prior to the effective date of the assignment.

§419.218. Licensure Action and Facility Closure.

(a) A program provider must immediately notify the department's Office of Medicaid Administration, in writing, if the program provider receives:

(1) a notice of licensure denial, suspension or revocation, in accordance with THSC, §252.035;

(2) a notice of an emergency licensure suspension or closing order, in accordance with THSC, §252.061; or

(3) an order for the involuntary appointment of a trustee to operate a facility, in accordance with THSC, §252.093.

(b) If a program provider is voluntarily closing a facility, the program provider must submit to the department, at least 60 days prior to the effective date of the closure:

(1) written notice of its intent to close the facility; and

(2) a written plan to discharge and relocate individuals who reside in the closing facility.

(c) At least 30 days before a facility closes, the program provider must notify each individual residing in the facility and LAR in writing of the proposed closure and the date the facility will close or explain to the individual and LAR why shorter notification was necessary.

(d) If a facility is closing, the department will impose a vendor hold on payments due to the program provider under the provider agreement until an audit conducted in accordance with §419.269 of this title (relating to Audits) is complete.

(e) An MRA must assist in relocating individuals who reside in a closing facility, as requested by the department.

§419.219. Provider Reimbursement.

(a) The department will pay a program provider for ICF/MR Program services provided to individuals enrolled in the ICF/MR Program. Such services include:

(1) room and board;

(2) active treatment; and

(3) medical services.

(b) The department will reimburse a program provider for durable medical equipment if the cost of an item of durable medical equipment or the renovation of or addition of special equipment to a wheelchair is more than $1,000, and reimbursement is authorized by the department in accordance with the department's procedures. Reimbursement for durable medical equipment is limited to $5,000 per individual per year. For each individual, such years begin on the date the first durable medical equipment was received by the individual and each anniversary of that date.

(c) A program provider must accept the current reimbursement rate or the rate as it may hereafter be amended, as payment in full for ICF/MR Program services provided to an individual enrolled in the ICF/MR Program, and make no additional charge to the individual, any member of the individual's family, or any other source for any item or service including a third party payor, except as allowed by federal or state laws, rules or regulations or the Medicaid State Plan.

(d) To receive payment for ICF/MR Program services, a program provider must:

(1) prepare and submit claims for such services in accordance with this subchapter and the NHIC Claims Management System User Guide; and

(2) submit such claims within 180 days after the end of the month during which services were provided or the date the individual's eligibility is established, whichever is later.

(e) If a claim for ICF/MR Program services is rejected or denied, the program provider must submit a proper claim within the 180-day period described in subsection (d) of this section to receive payment for such services.

(f) To receive reimbursement for durable medical equipment, a program provider must request authorization for reimbursement in accordance with the department's procedures within 180 days after the end of the month in which the equipment was purchased by the program provider.

(g) If the department denies authorization for reimbursement for durable medical equipment, the program provider must submit a proper request within the 180-day period described in subsection (f) of this section to receive reimbursement for durable medical equipment.

(h) The department will not pay a program provider or will recoup payments made for services provided to an individual:

(1) if the individual does not meet the eligibility criteria described in §419.236 of this title (relating to Eligibility Criteria);

(2) if enrollment of the individual is not complete, as described in §419.241(h) of this title (relating to Applicant Enrollment);

(3) if the individual does not have a valid LOC determination;

(4) if the program provider does not have a signed and dated MR/RC Assessment for the individual;

(5) if the MR/RC Assessment electronically transmitted to the department for the individual does not contain information identical to information on the signed MR/RC Assessment;

(6) if the individual is an inpatient of a hospital, nursing facility or enrolled in a waiver program established under §1915(c) of the Social Security Act;

(7) during a discharge of an individual, including the effective date of discharge as described in §419.227(b) of this title (relating to Discharge From a Facility); or

(8) except as provided in subsection (i) of this section, if the program provider does not have a provider agreement with the department.

(i) The department may pay a program provider for ICF/MR services up to 30 days after its provider agreement has expired or been terminated if the services were provided to individuals admitted to the facility before the effective date of the expiration or termination and reasonable efforts are being made to move the individuals from the facility.

(j) The department will not reimburse a program provider or will recoup reimbursements made for durable medical equipment if the department determines that the durable medical equipment claimed by the program provider would have been paid for by a source other than

the ICF/MR Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for such equipment.

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

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DIVISION 4. PROVIDER SERVICE REQUIREMENTS

25 TAC §§419.223-419.227

The new sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed new sections affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.223. Review of Living Options.

(a) At least annually or upon the request of an individual residing in a facility, other than a state school or state center, or LAR, the IDT must discuss living options with the individual or LAR using the Community ICF/MR Living Options instrument, copies of which are available on the department's website at www.mhmr.state.tx.us/CentralOffice/Medicaid/i.html or by contacting Office of Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) During the discussion, the IDT must use information obtained from the MRA in whose local service area the facility is located to inform the individual or LAR of the different types of alternative living arrangements.

(2) The IDT must document the discussion in the IDT summary and file the summary in the individual's record.

(3) If the individual or LAR expresses interest in an alternative living arrangement, the program provider must send a copy of the IDT summary to the MRA in whose local service area the facility is located.

(b) If an MRA receives an IDT summary, the MRA must, within 30 days after receiving the IDT summary:

(1) contact the individual or LAR to discuss the alternative living arrangements in which the individual or LAR has expressed an interest; and

(2) determine if the individual or LAR is interested in seeking an alternative living arrangement in another MRA's local service area and, if so, notify the MRA for that local service area.

(c) The MRA for the local service area in which the individual or LAR is interested in seeking an alternative living arrangement must:

(1) enter on the Client Assignment and Registration (CARE) system the individual's name and the specific type of service requested, if that service will not be available within 30 days of the date of request; and

(2) assist the individual in accessing the service requested when it becomes available.

§419.224. Capacity Assessment.

(a) As described in §411.61 of this title, (relating to Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management) a program provider must perform a capacity assessment for an individual receiving services from that program provider if the program provider:

(1) believes a guardian of the person or the estate for that individual may be appropriate and a referral to the appropriate court for guardianship is anticipated; or

(2) is directed to do so by a court.

(b) In conducting the capacity assessment, the program provider must use the Capacity Assessment for Self Care and Financial Management. Copies of this assessment may be obtained by contacting the Office of Policy Development, Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas, 78756, 512/206-4516, or from the Texas Department of Human Services Long Term Care Policy web site at www.dhs.state.tx.us.

(c) The capacity assessment must be performed by the professional designated by the IDT with assistance from other staff or consultants as requested by the professional or directed by the IDT.

§419.225. Reporting Abuse, Neglect, and Injuries of Unknown Source.

In accordance with 42 CFR §483.420(d)(2), a program provider must immediately report all allegations of mistreatment, neglect, or abuse, as well as injuries of unknown source, in accordance with state law through established procedures. The procedures are as follows:

(1) facilities licensed by TDHS must report allegations and injuries to TDHS in accordance with 40 TAC Chapter 90, Subchapter G, (relating to Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations);

(2) state-operated facilities must report allegations and injuries in accordance with:

(A) Chapter 417, Subchapter K of this title (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities); and

(B) the *Memorandum of Understanding Between Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Department of Human Services (TDHS) and Texas Department of Protective and Regulatory Services (TDPRS) concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and*

Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICFMR) effective March 25, 1996; and

(3) facilities operated by community MHMR centers must report allegations and injuries in accordance with:

(A) Chapter 404, Subchapter B of this title (relating to Abuse, Neglect, and Exploitation of People Served by Providers of Local Authorities); and

(B) the *Memorandum of Understanding Between Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Department of Human Services (TDHS) and Texas Department of Protective and Regulatory Services (TDPRS) concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community Mental Health and Mental Retardation Centers with Intermediate Care Facilities for the Mentally Retarded (ICFMR)* effective March 25, 1996.

§419.226. Leaves.

(a) An individual's absence from a facility must meet the requirements of this section to be considered a therapeutic leave, an extended therapeutic leave, or a special leave.

(b) An individual is on a therapeutic leave if:

(1) the individual is absent from the facility one full day or more but less than four consecutive full days;

(2) the individual's IPP provides for therapeutic leave; and

(3) except as provided in subsection (e) of this section, the individual has stayed in the facility overnight since being on a prior therapeutic leave or extended therapeutic leave.

(c) An individual is on an extended therapeutic leave if:

(1) the individual is absent from the facility four consecutive full days or more;

(2) the number of days used by the individual for extended therapeutic leave does not exceed ten during the calendar year in which the leave is being taken;

(3) the individual's IPP provides for the extended therapeutic leave; and

(4) except as provided in subsection (e) of this section, the individual has stayed overnight in the facility since being on a prior extended therapeutic leave or therapeutic leave.

(d) An individual is on a special leave if:

(1) the individual is absent from the facility one full day or more;

(2) the individual's IPP provides for and describes the expected benefits of the special leave;

(3) during the absence, sufficient direct care staff of the program provider are with the individual to meet the requirements set forth in 42 CFR §483.430(d);

(4) during the absence, the program provider incurs the usual costs associated with providing services to the individual, including but not limited to costs necessary to provide meals, lodging, and staff; and

(5) during the absence, the program provider provides the active treatment specified in the individual's IPP.

(e) Once per calendar year, an individual may take a therapeutic leave immediately before or after an extended therapeutic leave without staying overnight in the facility between the two leaves.

(f) There is no limit on the number of therapeutic leaves or special leaves an individual may take.

(g) A program provider must maintain the following written documentation for each leave taken by an individual:

(1) the name of the individual;

(2) the type of leave taken (i.e., therapeutic, extended therapeutic, or special); and

(3) the dates and times of the individual's departure from and return to the facility.

(h) Within 3 days after an individual's return from leave, a program provider must electronically submit a completed Client Movement form to the department.

§419.227. Discharge From a Facility.

(a) When a discharge occurs, a program provider must comply with 42 CFR §483.440(b)(4) and (5) and this section.

(b) The effective date of a discharge is the first full day the individual is absent from the facility.

(c) Prior to the effective date of a discharge, a program provider must take the following action or document why such action is not feasible:

(1) notify the individual, LAR, and the individual's MRA of the proposed discharge in writing at least 30 days before the effective date of the proposed discharge;

(2) document the reason for the proposed discharge and, if the reason is that the facility can no longer meet the individual's needs, explain why;

(3) counsel the individual or LAR about the proposed discharge, including the potential outcomes of the proposed discharge; and

(4) develop a final summary and post-discharge plan in accordance with 42 CFR §483.440(b)(5) and provide a copy of both documents to the individual, LAR, and the individual's MRA.

(d) If any actions required by subsection (c) of this section are not feasible prior to the effective date of a discharge, a program provider must, within 7 days after the effective date of the discharge, complete the required actions.

(e) Within 3 days after the effective date of a discharge, a program provider must:

(1) electronically submit a completed Client Movement Form to the department; and

(2) submit a paper copy of the completed Client Movement Form to the appropriate TDHS Medicaid eligibility worker.

(f) Except as provided in subsection (i) of this section, if a program provider proposes a discharge due to the individual's maladaptive behavior, the discharge must be approved in writing by the department prior to the effective date of the discharge. To request approval, the program provider must submit the following documentation to the department's Office of Medicaid Administration:

(1) a description of the maladaptive behavior(s);

(2) a summary of all behavioral interventions attempted, ranging from the most positive to the most restrictive, with the individual's response to these interventions, and reasons the interventions were ineffective in decreasing or eliminating the behavior(s);

(3) chronological psychoactive medication history, including start and stop dates of medications, dose changes to medications,

and reasons for discontinuance or changes to dosages (e.g., adverse reactions, allergies, or increase in target symptoms);

(4) evidence of participation by a psychologist in the IDT meeting discussing the proposed discharge;

(5) evidence of approval of the proposed discharge by the facility's specially constituted committee;

(6) a description of the proposed living arrangement for the individual after the effective date of the discharge; and

(7) a written agreement from a representative of the proposed living arrangement to accept the individual on or after the effective date of the discharge.

(g) The department will review the documentation submitted in accordance with subsection (f) of this section and, within 14 days after receiving the documentation, provide written notice to the program provider of its approval or denial of the discharge.

(h) If a proposed discharge is approved by the department in accordance with subsection (g) of this section, a psychologist must participate in the development of the post-discharge plan described in subsection (c)(4) of this section.

(i) If the reason for the discharge is that the individual requires immediate admission to a psychiatric facility for inpatient services, the program provider must, within 3 days after the effective date of the discharge, notify the Office of Medicaid Administration and the individual's MRA of:

(1) the individual's admission to the psychiatric facility; and

(2) whether the program provider intends to re-admit the individual to the facility and, if not, why the individual will not be re-admitted.

(j) During a discharge, a program provider may accept payment from the individual or other person to hold the individual's residential placement in the facility if a written contract, signed and dated by the program provider and the individual or the other person, is executed prior to each discharge that specifies:

(1) the amount, not to exceed the department's rate of reimbursement for the individual's LON on the effective date of discharge, that the individual or other person agrees to pay the program provider to hold the individual's residential placement;

(2) the period of time for which the individual's residential placement in the facility will be held by the program provider;

(3) that the program provider is not obligated to hold the individual's residential placement after the period of time described in paragraph (2) of this subsection; and

(4) agreement by the program provider that the individual or other person may terminate the contract immediately upon written notice to the program provider.

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

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Texas Department of Mental Health and Mental Retardation
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DIVISION 5. ELIGIBILITY, ENROLLMENTS AND REVIEW

25 TAC §419.236 - 419.249

The new sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed new sections affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.236. Eligibility Criteria.

(a) To be eligible for the ICF/MR Program, a person must:

(1) meet the LOC I or LOC VIII criteria described in §419.238 of this title (relating to Level of Care I Criteria) and §419.239 of this title (relating to Level of Care VIII Criteria);

(2) be in need of and able to benefit from the active treatment provided in the 24-hour supervised residential setting of an ICF/MR; and

(3) be eligible for Supplemental Security Income (SSI) or be determined by TDHS to be financially eligible for Medicaid.

(b) Circumstances under which a person is not in need of and able to benefit from active treatment include when the person:

(1) has been diagnosed by a licensed physician as having "brain death;

(2) does not respond in any way to the living environment; or

(3) has a health condition that prevents participation in active treatment.

§419.237. Level of Care.

(a) An LOC for a person must be requested from the department by electronically transmitting a completed MR/RC Assessment, indicating the recommended LOC, to the department. The electronically transmitted MR/RC Assessment must contain information identical to the information on the signed MR/RC Assessment described in subsection (b) of this section.

(b) Information on the MR/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors. A paper copy of the person's signed MR/RC Assessment and documentation supporting the recommended LOC must be maintained in the person's record.

(c) The department will make an LOC determination in accordance with §419.238 of this title (relating to ICF/MR LOC I Criteria) and §419.239 of this title (relating to ICF/MR LOC VIII) based on the department's review of information reported on the person's MR/RC Assessment.

(d) The department will notify the requestor electronically if the LOC is authorized. The department will send written notification to the requestor and the person or LAR if the LOC is denied.

(e) An initial LOC is valid for 180 days after its effective date.

(f) The effective date of a person's initial LOC is the date the person's MR/RC Assessment is electronically transmitted to the department.

§419.238. Level of Care I Criteria.

(a) To meet the LOC I criteria, a person must:

(1) meet the following criteria:

(A) have a full scale intelligence quotient (IQ) score of 69 or below, obtained by administering a standardized individual intelligence test; or

(B) have a full scale IQ score of 75 or below, obtained by administering a standardized individual intelligence test, and have a primary diagnosis by a licensed physician of a related condition that :

(i) is included on the TDMHMR Approved Diagnostic Codes for Persons with Related Conditions (posted on the department's website at www.mhmr.state.tx.us or obtained by contacting Office of Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711);

(ii) is manifested before the person reaches age 22;

(iii) is likely to continue indefinitely; and

(iv) results in substantial functional limitation in at least three of the following areas of major life activity:

(I) self-care;

(II) understanding and use of language;

(III) learning;

(IV) mobility;

(V) self-direction; and

(VI) capacity for independent living; and

(2) have an adaptive behavior level of I, II, III, or IV (i.e., mild to extreme deficits in adaptive behavior) obtained by administering a standardized assessment of adaptive behavior.

(b) If a person has a sensory or motor deficit for which a specially standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, the appropriate score should be used.

(c) If a full scale IQ score cannot be obtained from a standardized intelligence test due to age, functioning level, or other severe limitations, an estimate of a person's intellectual functioning should be documented with clinical justification.

§419.239. ICF/MR Level of Care VIII Criteria.

To meet the LOC VIII criteria, a person must:

(1) have a primary diagnosis by a licensed physician of a related condition that:

(A) is included on the TDMHMR Approved Diagnostic Codes for Persons with Related Conditions (posted on the department's website at www.mhmr.state.tx.us or obtained by contacting Office of Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711);

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living; and

(2) have an adaptive behavior level of II, III, or IV (i.e., moderate to extreme deficits in adaptive behavior) obtained by administering a standardized assessment of adaptive behavior.

§419.240. Level of Need.

(a) An LON for a person must be requested from the department by electronically transmitting a completed MR/RC Assessment, indicating the recommended LON, and submitting any supporting documentation required by §419.242 of this title (relating to Supporting Documentation for Level of Need). The electronically transmitted MR/RC Assessment must contain information identical to the information on the signed MR/RC Assessment described in subsection (c) of this section.

(b) Supporting documentation must be received by the department within seven days after the completed MR/RC Assessment is electronically transmitted to the department.

(c) A paper copy of the person's signed MR/MC Assessment and the supporting documentation must be maintained in the person's record.

(d) The department will assign an LON 1, LON 5, LON 6, LON 8, or LON 9, to a person in accordance with the criteria described in §419.241 of this title (relating to Level of Need Criteria).

(e) The department will assign an LON to a person based on the department's review of information reported on the person's MR/RC Assessment, including the ICAP service level score, and any supporting documentation required by §419.242 of this title (relating to Supporting Documentation for Level of Need).

(f) Within 21 days after receiving an MR/RC Assessment and any supporting documentation, the department will request additional documentation, electronically approve the recommended LON, or send written notification to the requestor that the recommended LON has been denied.

(g) If additional documentation is requested, the department will review any additional documentation submitted in accordance with its request and electronically approve the recommended LON or send written notification to the requestor that the recommended LON has been denied.

(h) The department may review a recommended or assigned LON at any time to determine if it is appropriate. If the department reviews a recommended or assigned LON, documentation supporting the LON must be submitted to the department in accordance with the department's request. The department may modify an LON and recoup or deny payment based on its review.

§419.241. Level of Need Criteria.

(a) The department will assign one of five LONs as follows:

(1) An intermittent LON (LON 1) will be assigned if the person's ICAP service level score equals 7, 8, or 9;

(2) A limited LON (LON 5) will be assigned if the person's ICAP service level score equals 4, 5, or 6, or an LON 1 is increased in accordance with subsection (b) or (d) of this section;

(3) An extensive LON (LON 8) will be assigned if the person's ICAP service level score equals 2 or 3, or an LON 5 is increased in accordance with subsection (b) or (d) of this section;

(4) A pervasive LON (LON 6) will be assigned if the person's ICAP service level score equals 1, or an LON 8 is increased in accordance with subsection (b) or (d) of this section; and

(5) Regardless of a person's ICAP service level score, a pervasive plus LON (LON 9) will be assigned if the person meets the criteria set forth in subsection (c) of this section.

(b) An LON 1, LON 5, or LON 8 will be increased to the next LON by the department, due to a person's dangerous behavior, if the supporting documentation described in §419.242 (1) (relating to Supporting Documentation for Level of Need) is submitted to the department proving that:

(1) the person exhibits dangerous behavior that could cause serious physical injury to the person or others;

(2) a written behavior intervention plan has been implemented for the person;

(3) more staff members are needed and available than would be needed if the person did not exhibit dangerous behavior;

(4) management of the individual's behavior requires that staff members are constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs; and

(5) the person's MR/RC Assessment is correctly scored with a "1" in the "Behavior" section.

(c) An LON 9 will be assigned by the department, due to the person's extremely dangerous behavior, if the supporting documentation described in §419.242(2) (relating to Supporting Documentation for Level of Need) is submitted to the department proving that:

(1) the person exhibits extremely dangerous behavior that is life threatening to the person or to others such that specified staff must be at arm's length during waking hours;

(2) a written behavior intervention plan has been implemented for the person;

(3) management of the person's behavior requires a staff member to exclusively and constantly supervise the person during the person's waking hours, which must be at least 16 hours per day;

(4) the staff member assigned to supervise the person has no other duties during such assignment; and

(5) the person's MR/RC Assessment is correctly scored with a "2" in the "Behavior" section.

(d) An LON 1, LON 5, or LON 8 will be increased to the next LON by the department, due to a person's extraordinary medical needs, if the supporting documentation described in §419.242(3) (relating to Supporting Documentation for Level of Need) is submitted to the department proving that:

(1) the person's extraordinary medical needs require direct nursing treatment in excess of 180 minutes per week;

(2) the provision of nursing treatment is documented by a nurse in the person's medical record to include the amount of time spent for treatment; and

(3) the person's MR/RC Assessment is correctly scored with a "6" in the "Nursing" section.

§419.242. Supporting Documentation for Level of Need.

The following supporting documentation, at a minimum, must be submitted to the department when requesting an LON:

(1) if a request is made to increase an LON 1, LON 5, or LON 8 in accordance with §419.241(b) of this title (relating to Level of Need Criteria), due to a person's dangerous behavior:

(A) the person's IPP;

(B) the person's ICAP assessment booklet;

(C) the person's PDP, if available;

(D) the person's behavior intervention plan; and

(E) written descriptions (e.g. incident reports or progress notes) of specific incidents of the dangerous behavior and the staff interventions;

(2) if a request is made for an LON 9 in accordance with §419.241(c) of this title (relating to Level of Need Criteria), due to the person's extremely dangerous behavior:

(A) the person's IPP;

(B) the person's ICAP assessment booklet;

(C) the person's PDP, if available;

(D) the person's behavior intervention plan;

(E) written descriptions (e.g. incident reports or progress notes) of specific incidents of the extremely dangerous behavior and the staff interventions; and

(F) time sheets that verify the assignment of a staff member to exclusively and constantly supervise the person during the person's waking hours, which must be at least 16 hours per day;

(3) if a request is made to increase an LON 1, LON 5, or LON 8 in accordance with §419.241(d) of this title (relating to Level of Need Criteria), due to a person's extraordinary medical needs:

(A) the person's IPP;

(B) the person's ICAP assessment booklet;

(C) the person's PDP, if available; and

(D) description, frequency, and duration of each type of nursing treatment; and

(4) if a request is made to increase an individual's existing LON based on the results of an ICAP assessment:

(A) the individual's previous ICAP assessment booklet;

(B) the individual's latest ICAP reassessment;

(C) the individual's IPP; and

(D) program progress notes.

§419.243. Reconsideration of Level of Need.

(a) If a program provider who has requested an LON for a person disagrees with the LON assigned by the department, the program provider may request that the department reconsider the LON.

(b) A program provider may receive reconsideration only if the program provider submitted the supporting documentation as required by §419.240(b) of this title (relating to Level of Need).

(c) To request reconsideration of an LON assigned by the department, a program provider must submit a written request for reconsideration to the department within 10 days after receiving notice that the recommended LON was denied. The program provider must include additional clinical and supporting documentation with the request.

(d) Within 21 days after receiving a request for reconsideration from a program provider, the department will electronically approve the recommended LON or send written notification to the program provider that the recommended LON has been denied.

§419.244. Applicant Enrollment.

(a) Except as provided in subsection (b) of this section, only an MRA may request enrollment of an applicant by the department.

(b) A program provider may request enrollment of an applicant by the department if the applicant;

(1) has received ICF-MR services from a non-state operated facility during the 180 days prior to the enrollment request; and

(2) is not moving from or seeking admission to a state-operated facility.

(c) An MRA must request an applicant's enrollment if:

(1) the program provider selected by the applicant or the applicant's LAR notifies the MRA that admission to the program provider's facility has been offered to the applicant; and

(2) the applicant or LAR notifies the MRA that the applicant or LAR chooses to accept the admission offered by the provider.

(d) If an MRA receives the notifications described in subsection (c) of this section, the MRA must comply with §415.159 (c) of this title (relating to Assessment of Individual's Need for Services and Supports) including providing an explanation to the applicant or LAR of the services supports for which the applicant may be eligible.

(e) To request an applicant's enrollment, an MRA must, within 30 days after the MRA receives the notifications described in subsection (c) of this section:

(1) initiate, monitor, and support the processes necessary to obtain a financial eligibility determination for the applicant if Medicaid financial eligibility has not been established;

(2) obtain an ICAP score for the applicant by:

(A) reviewing and endorsing an existing ICAP for the applicant; or

(B) administering the ICAP if an ICAP score for the applicant does not exist, is not available, or is not endorsed by the MRA;

(3) request an LOC determination and LON for the applicant by:

(A) completing and electronically submitting an MR/RC Assessment, if the applicant does not have a current LOC determination;

(B) reviewing the existing MR/RC Assessment for the applicant if the applicant has a current LOC determination, and endorsing the existing MR/RC Assessment; or

(C) reviewing the existing MR/RC Assessment for the applicant if the applicant has a current LOC determination and completing and electronically submitting a new MR/RC Assessment recommending a revised LOC or LON if the existing MR/RC Assessment is not endorsed by the MRA.

(f) If the department notifies an MRA that it has authorized an applicant's LOC, the MRA must immediately notify the applicant or LAR of such authorization and provide the selected program provider with copies of all enrollment documentation and associated supporting documentation including relevant assessment results and recommendations and the applicant's ICAP booklet and, if available, the applicant's service plan.

(g) To request an applicant's enrollment, a program provider must ensure that the applicant has a current LOC determination.

(1) If an applicant does not have a current LOC determination, the program provider must complete and electronically submit an MR/RC Assessment to the department.

(2) If the program provider submits an MR/RC Assessment, the department will notify the program provider electronically if the LOC is authorized or send written notification to the program provider and the applicant or LAR if the LOC is denied.

(h) An applicant's enrollment is complete if:

(1) the department has authorized an LOC for the applicant;

(2) the Social Security Administration has determined that the applicant is eligible for SSI or TDHS determines the applicant is financially eligible for Medicaid; and

(3) the program provider has electronically submitted a completed Client Movement Form to the department.

(i) A program provider must maintain a paper copy of the completed MR/RC Assessment with all the necessary signatures and documentation supporting the recommended LOC and LON in the applicant's record.

§419.245. Renewal of Level of Care.

(a) To avoid interruption in payment from the department, a program provider must request to renew an individual's existing LOC prior to its expiration date.

(b) To request to renew an individual's existing LOC, a program provider must follow the procedures for requesting an LOC described in §419.237 of this title (relating to Level of Care).

(c) The department will make an LOC determination and notify the program provider of its determination in accordance with §419.237 of this title (relating to Level of Care).

(d) The effective date of a renewed LOC is:

(1) the date the MR/RC was electronically transmitted to the department, if a different date is not requested; or

(2) a requested effective date within 45 days after the MR/RC was electronically transmitted to the department.

(e) A renewed LOC is valid for 364 days after its effective date.

§419.246. Renewal and Revision of Level of Need.

(a) A program provider must request to renew an individual's existing LON when renewing an existing LOC in accordance with §419.245(b) of this title (relating to Renewal of Level of Care).

(b) A program provider must request to revise an individual's existing LON if:

(1) the individual's adaptive functioning or behavioral or medical condition changes such that the individual's current LON is no longer accurate;

(2) the results of an ICAP assessment indicate that the individual's current LON is no longer accurate; or

(3) the information submitted for the individual's current LON resulted in an inaccurate LON.

(c) To request to renew or revise an individual's existing LON, a program provider must follow the procedures for requesting an LON described in §419.240 of this title (relating to Level of Need).

(d) The department will assign an LON and notify the program provider of the assignment in accordance with §419.240 of this title (relating to Level of Need).

§419.247. Re-administration of the ICAP.

(a) A program provider must re-administer the ICAP to an individual if:

(1) three years have elapsed since the ICAP was last administered to the individual;

(2) changes in the individual's functional skills or behavior occur that are not expected to be of a short duration or cyclical in nature; or

(3) the individual's skills and behavior are inconsistent with the individual's LON.

(b) If the results from the ICAP indicate that the individual's LON is no longer accurate, a program provider must request a revision to the LON in accordance with §419.246(b) of this title (relating to Renewal and Revision of Level of Need).

§419.248. Lapsed Level of Care.

(a) The department will not pay a program provider for ICF/MR Program services provided during a period of time in which the individual's LOC lapsed unless the program provider requests and is granted a reinstatement of the LOC in accordance with this section.

(b) To request reinstatement of an LOC, a program provider must electronically transmit to the department an MR/RC Assessment indicating:

(1) a code "E" in the "Purpose" section; and

(2) the beginning and ending dates of the period of time for which the individual's LOC lapsed.

(c) The department will not grant a request for reinstatement of an LOC:

(1) if the individual does not have a current LOC;

(2) to establish program eligibility;

(3) to renew an LOC;

(4) to obtain an LOC for a period of time for which an LOC has been denied;

(5) to revise an LON; or

(6) for a period of time during which the individual is not eligible for Medicaid.

(d) If the department grants a reinstatement, the reinstatement will be for a period of not more than 180 days prior to the date of electronic transmission of the MR/RC Assessment described in subsection (b) of this section.

(e) A program provider must maintain a paper copy of the completed MR/RC Assessment with all necessary signatures in the individual's record. The signed MR/RC Assessment must contain information identical to the information on the electronically transmitted MR/RC Assessment.

§419.249. Fair Hearing.

Any individual whose request for eligibility for the ICF/MR Program is denied or is not acted upon with reasonable promptness, or whose ICF/MR Program services have been terminated, suspended or reduced by the department is entitled to a fair hearing in accordance with Chapter 419, Subchapter G of this title (relating to Medicaid Fair Hearings).

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

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Andrew Hardin
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Texas Department of Mental Health and Mental Retardation
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DIVISION 6. PERSONAL FUNDS

25 TAC §§419.255, 419.256, 419.260

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed amendments affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.255. Items and Services Purchased with Personal Funds.

(a) A program provider may charge an individual or allow an individual to expend personal funds for the following items and services:

(1)-(13) (No change.)

(14) [~~bed~~ ~~hold~~] charges to hold the individual's residential placement in the facility as described in §419.227(j) of this title (relating to Discharge From a Facility) [~~§406.211(d) of this title (relating to Payment for Absences From the Facility)~~].

(15)-(17) (No change.)

(b) (No change.)

§419.256. Program Provider-Managed Personal Funds.

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

(h) Personal funds record.

(1) A program provider must maintain a personal funds record for each individual that includes:

(A)-(F) (No change.)

(G) any contribution acknowledgment as described in §419.261 [~~§419.271~~] of this title (relating to Contributions).

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

(i) (No change.)

§419.260. Applied Income.

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

(c) A program provider must maintain an applied income ledger for each individual that includes the amount of:

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

(4) [~~bed hold~~] charges paid by the individual to hold the individual's residential placement in the facility as described in §419.227(j) of this title (relating to Discharge From a Facility) [~~§406.211(d) of this title (relating to Payment for Absences From the Facility)~~].

(d) (No change.)

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

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DIVISION 7. PROVIDER AGREEMENT SANCTIONS

25 TAC §419.269

The new section is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed new section affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.269. Audits.

(a) The department will periodically audit a program provider to monitor compliance with §419.219 of this subchapter (relating to Provider Reimbursement) and Division Six (relating to Personal Funds). The department will notify the program provider of the audit date.

(b) A program provider must maintain the following records;

(1) personal funds records, as described in §419.256(h) of this title (relating to Program Provider-Managed Personal Funds);

(2) trust fund account ledgers, as described in §419.256(c)(1)(A) and (c)(2)(A) of this title (relating to Program Provider-managed Personal Funds);

(3) statements from financial institutions regarding trust fund accounts;

(4) petty cash fund ledgers as described in §419.256(d)(3) of this title (relating to Program Provider-Managed Personal Funds);

(5) written requests for personal funds from trust fund accounts, as described in §419.257 of this title (relating to Requests for Personal Funds from Trust Fund Accounts);

(6) documentation of expenditures and deposits of personal funds, as described in §419. 256(i) of this title (relating to Program Provider-Managed Personal Funds);

(7) documentation of an individual's ability to manage personal funds and decisions regarding management of personal funds, as described in §419.253 of this title (relating to Determining Management of Personal Funds);

(8) documentation regarding requests for specific types or brands of items and services, as described in §419. 255(a) of this title (relating to Items and Services Purchased With Personal Funds);

(9) applied income ledgers, as described in §419.260(c) of this title (relating to Applied Income);

(10) applied income payment plans from TDHS;

(11) agreements to hold the individual's residential placement in the facility as described in §419.227(j) of this title (relating to Discharge From a Facility);

(12) statements from financial institutions regarding operating accounts;

(13) facility census and admission/discharge records;

(14) leave records as described in §419.226 of this title (relating to Leaves); and

(15) IPP's and supporting documentation.

(c) If the records required by subsection (b) of this section, or any other records required to be maintained by this subchapter, are not made available by the program provider when requested by the department, or the department determines that the records are not auditable, the department may impose a vendor hold on payments due to the program provider under the provider agreement until the records are available and auditable. If the program provider does not provide such records in accordance with instructions from the department, the department may terminate the provider agreement.

(d) The department will provide the program provider with a report of the audit findings, which may include corrective actions that must be taken by the program provider and internal control recommendations that may be followed by the program provider. Corrective actions include making refunds to individuals or the department, entering ledger adjustments, submitting unidentified funds to the department, and establishing and maintaining records and systems. The program provider may request an administrative hearing in accordance with Division Eight of this subchapter (relating to Administrative Hearings) to contest corrective actions required by the department pursuant to this subsection.

(e) If the report of audit findings requires corrective actions and the program provider does not make a request for an administrative hearing in accordance with Division 8 of this subchapter (relating to Administrative Hearings), the program provider must complete corrective actions within 60 days after receiving the report of audit findings.

(f) If the program provider does not complete corrective actions required by the department within 60 days after receiving the report of audit findings, the department may:

(1) impose a vendor hold on payments due to the program provider under the provider agreement until the program provider completes corrective actions;

(2) recoup payments due to the program provider under the provider agreement to make refunds to individuals or the department; and

(3) terminate the provider agreement.

(g) Notwithstanding the other provisions set forth in this section, the department may terminate the provider agreement for repeated failure to comply with §419.219 of this subchapter (relating to Provider Reimbursement) and Division Six (relating to Personal Funds), as determined by audits conducted in accordance with this section.

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

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DIVISION 11. REFERENCES AND DISTRIBUTION

25 TAC §419.299

The new section is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed new section affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.299. References.

Regulations and statutes referenced in this subchapter include:

(1) Social Security Act §1915(c);

(2) 42 USC, §1302a-7b(f);

(3) 20 CFR Part 416, Subpart F;

(4) 42 CFR Parts 440, 441, 442, 455, 456, and 483;

(5) 42 CFR §483.420(d)(2);

(6) 42 CFR §483.440(b)(4) and (5), and (f)(3);

(7) 45 CFR Parts 46, 80, 84, 90, and 91.

(8) Texas Government Code, §531.153;

(9) THSC, Chapter 252;

(10) THSC, §§252.003, 252.031, 252.035, 252.061, and 252.093;

(11) THSC, §§533.035 and 533.062;

(12) Texas Human Resources Code, §32.024;

(13) Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs);

(14) Chapter 409, Subchapter B of this title (relating to Adverse Actions);

(15) Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Benefits);

(16) Chapter 404, Subchapter B of this title (relating to Abuse, Neglect, and Exploitation of People Served by Providers of Local Authorities);

(17) Chapter 411, Subchapter B of this title, (relating to Interagency Agreements);

(18) Chapter 417, Subchapter K of this title (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities)

(19) Chapter 419, Subchapter G of this title (relating to Medicaid Fair Hearings);

(20) §415.159 (c) of this title (relating to Assessment of Individual's Need for Services and Supports);

(21) 1 TAC Chapter 355;

(22) 1 TAC Chapter 355, Subchapter D (relating to Reimbursement Methodology);

(23) 1 TAC Chapter §355.456(b);

(24) 1 TAC §§355.701-355.709;

(25) 40 TAC Chapter 90 (relating to Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions);

(26) 40 TAC, Chapter 90, Subchapter C (relating to Standards for Licensure);

(27) 40 TAC, Chapter 90, Subchapter D (relating to General Requirements for Facility Construction); and

(28) 40 TAC, Chapter 90, Subchapter F (relating to Inspections, Surveys, and Visits).

This 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 March 12, 2001.

TRD-200101469
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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SUBCHAPTER E. ICF/MR PROGRAMS

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§419.212, concerning non-licensed providers meeting licensure standards, and 419.273, concerning administrative hearings, of Chapter 419, Subchapter E, concerning ICF/MR programs.

New §419.212 requires those program providers that are exempt from being licensed by the Texas Department of Human Services (TDHS) to comply with certain TDHS rules. New §419.273 describes the circumstances under which a program provider may request an administrative hearing. Program providers may request a reconsideration of a disputed level of need (LON) assignment, but may no longer request an administrative hearing, if such dispute does not involve a recoupment of payments.

The new sections are part of a comprehensive review, revision, and reorganization of the department's ICF/MR Program rules in Chapter 406. As the sections in existing Chapter 406 are reviewed, the subject matter is incorporated into new sections in Chapter 419, Subchapter E. The first new sections concerning general requirements and personal funds were adopted in late 1999. In December 2000, the department adopted additional new sections concerning provider enrollment in Division 2, provider service requirements in Division 4, and provider agreement sanctions in Division 7. The comprehensive review, revision, and reorganization of the ICF/MR Program rules is being conducted in conjunction with the review of rules required by Texas Government Code, §2001.039.

Bill Campbell, deputy commissioner, Finance and Administration, has determined that for each year of the first five year period that the new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five-year period the new sections are in effect, the public benefit expected is program providers and services recipients will have a clear description of program requirements. It is not anticipated that the new sections will have an adverse economic effect on small businesses or micro-businesses because these changes do not impose any measurable cost to the ICF/MR providers. It is not anticipated that there will be an economic cost to persons required to comply with the new sections. It is not anticipated that the new sections will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Tuesday, April 17, 2001, in the department's Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Cardella, at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4750, and by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

DIVISION 3. PROVIDER ADMINISTRATIVE REQUIREMENTS

25 TAC §419.212

The new section is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed new section affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.212. Non-licensed Providers Meeting Licensure Standards.

Program providers that, in accordance with the THSC, §252.003, are exempt from the license required by THSC, §252.031, must comply with the following subchapters of 40 TAC Chapter 90 (relating to Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions):

(1) Subchapter C (relating to Standards for Licensure);

(2) Subchapter D (relating to General Requirements for Facility Construction); and

(3) Subchapter F (relating to Inspections, Surveys, and Visits).

This 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 March 12, 2001.

TRD-200101480

Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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DIVISION 8. ADMINISTRATIVE HEARINGS

25 TAC §419.273

The new section is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed new section affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.273. Administrative Hearings.

(a) A program provider may request an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions) if the department takes or proposes to take the following action:

(1) vendor hold;

(2) termination of a provider agreement;

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's request for payment.

(b) A program provider may not receive an administrative hearing for a dispute regarding an LON assignment that does not involve recoupment of payments made to the program provider.

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

Filed with the Office of the Secretary of State, on March 12, 2001.

TRD-200101478
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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SUBCHAPTER E. ICF/MR PROGRAMS

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeals of §419.223, concerning discharge from a facility; §419.262, concerning auditing; and §419.299, concerning references.

The provisions of repealed §419.223 are proposed with clarifying revisions in new §419.227, concerning discharge from a facility, elsewhere in this issue of the *Texas Register*. The repeal permits the department to organize the new sections within Division 4 of proposed Chapter 419, Subchapter E, concerning ICF/MR programs, in a more logical fashion. The provisions of repealed §419.262 are incorporated along with other auditing provisions in new §419.269, concerning audits, which is proposed elsewhere in this issue of the *Texas Register*. The listing of references in repealed §419.299 are augmented by a much longer listing of references from the proposed sections in proposed §419.299, concerning references, which is proposed elsewhere in this issue of the *Texas Register*.

Bill Campbell, deputy commissioner, Finance and Administration, has determined that for each year of the first five years the repeals are in effect, enforcing or administering the repeals does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five-year period the repeals are in effect, the public benefit expected is the existence of ICF/MR Program rules that are organized in a manner that maximizes their accessibility by program providers, department and survey agency staff, consumers, family members, advocates, and other stakeholders. It is not anticipated that the repeals will have an adverse economic effect on small businesses or micro-businesses because they do not impose any measurable cost to ICF/MR Program providers. It is not anticipated that there will be an economic cost to persons required to comply with the repeals. It is not anticipated that the repeals will affect a local economy.

Comments concerning the proposed repeals must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

DIVISION 4. PROVIDER SERVICE REQUIREMENTS

25 TAC §419.223

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

The repeal is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency

operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed repeal affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.223. Discharge From a Facility.

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

Filed with the Office of the Secretary of State, on March 12, 2001.

TRD-200101471
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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DIVISION 6. PERSONAL FUNDS

25 TAC §419.262

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

The repeal is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed repeal affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.262. Auditing.

This 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 March 12, 2001.

TRD-200101470
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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DIVISION 11. REFERENCES AND DISTRIBUTION

25 TAC §419.299

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

The repeal is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed repeal affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.299. References.

This 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 March 12, 2001.

TRD-200101479
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 206-5232

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 17. PAYMENT OF FEES, TAXES, AND OTHER CHARGES TO STATE AGENCIES BY CREDIT, CHARGE, AND DEBIT CARDS

34 TAC §17.2

The Comptroller of Public Accounts proposes a new §17.2, concerning agency contracts with vendors or the comptroller. The purpose of this rule is to provide a uniform procedure through which the comptroller may authorize a state agency to accept credit, charge, and debit cards if the comptroller determines that the best interest of the state will be promoted.

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

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in broadening the payment options available to taxpayers in transactions with state agencies. The new rule would have no fiscal implications to small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Robert Coalter, Assistant Director, Treasury Operations, P.O. Box 12608, Austin, Texas 78711.

This new section is proposed under Government Code, §403.023, which provides that the comptroller may adopt rules relating to the acceptance of credit, charge, and debit cards for the payment of fees, taxes and other charges assessed by a state agency.

The new section implements Government Code, §403.023.

§17.2. Agency Contracts with Vendors or the Comptroller.

(a) Administration by comptroller. A state agency interested in accepting credit, charge, and debit cards will contact the comptroller's office. The comptroller's office will determine whether it is in the best interest of the state for the state agency to accept credit, charge, and debit cards and whether the state agency should contract with the comptroller or with a selected vendor. The comptroller will contract with selected vendors to provide credit, charge, and debit card services to state agencies that contract with the comptroller.

(b) State agency contracts with comptroller. A state agency will enter into an interagency contract with the comptroller to obtain access to the services provided by selected vendors pursuant to terms established by the comptroller in the interagency contract.

(c) State agency contracts with vendors. In lieu of contracting with the comptroller, a state agency, with the comptroller's approval, may directly contract with vendors, provided the criteria in paragraphs (1)-(8) of this subsection are met.

(1) The state agency shall provide the comptroller's office with a draft copy of its Request for Proposal prior to issuance and a draft copy of its vendor contract prior to execution. The comptroller shall review the drafts for compliance with these rules, state law, and other comptroller processes relevant to the deposit of funds into the state treasury. The comptroller will notify the state agency whether the drafts are accepted or rejected.

(2) The state agency will provide the comptroller's office with the merchant numbers assigned and the USAS coding block information at least two weeks prior to the acceptance of the first credit, charge, or debit card transaction.

(3) The state agency must provide in its contract with the vendor that the vendor will credit the comptroller's designated bank account for the total amount of credit, charge, and debit card sales, less any credits issued. The comptroller will enter the deposit into USAS, crediting the appropriate coding block on the same day the vendor credits the comptroller's designated bank account.

(4) In order to insure the accuracy of information and credit, charge, and debit card payments transmitted to the comptroller by state agencies, the comptroller shall determine the method by which the information and credit, charge, and debit card payments will be transmitted by state agencies.

(5) The state agency's contract with the vendor must further provide that:

(A) the vendor shall debit the comptroller's designated account for chargebacks;

(B) the state agency will have sole responsibility for resolving chargebacks; and

(C) the vendor may debit the comptroller's designated account for the fees or the vendor may invoice the state agency directly for the fees.

(6) The state agency shall be responsible for reviewing the fees for validity. The comptroller will enter the fee charges into USAS.

(7) The state agency will have sole responsibility for the security of the information captured in each transaction.

(8) The state agency will ensure that the vendor:

(A) makes funds available on a timeframe that is equal to or better than what is provided in the comptroller's contract with selected vendors; and

(B) complies with state law and all comptroller policies with respect to deposits into the state treasury.

(d) Subject to any contracts between the state agency and any vendors or subject to any interagency contracts between the state agency and the comptroller, a state agency that accepts a credit, charge, or debit card for the payment of fees, taxes, or other charges may assess a processing fee for the payment of such fees, taxes, or other charges.

This 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 March 16, 2001.

TRD-200101560
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 463-3699

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 4. MEDICAID PROGRAMS--CHILDREN AND PREGNANT WOMEN

SUBCHAPTER A. ELIGIBILITY REQUIREMENTS

40 TAC §4.1006

The Texas Department of Human Services (DHS) proposes to amend §4.1006, concerning requirements for application, in its Medicaid Programs--Children and Pregnant Women chapter. The purpose of the amendment is to make the CPW Medicaid resource policy consistent with Temporary Assistance for Needy Families (TANF) policy so that it is less restrictive than current resource policy for these programs. Changes in this amendment include: removal of the school attendance requirement for 18-year-olds that eliminates the barrier to Medicaid eligibility for early graduates, allowance of a resource limit of $3,000 for households that have an aged or disabled member, and the addition of an exception that would consider a jointly owned vehicle that is owned with an individual who is not applying for or receiving benefits as inaccessible if the individual is not willing to sell the vehicle.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of adoption of the proposed rule will be that people who were previously excluded by these rules may be potentially eligible for Medicaid. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because it applies only to the client's eligibility for Medicaid benefits, not to the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Melissa Saenz at (512) 438-4930 in DHS's Programs and Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-86, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22, and 32, which authorize the department to administer public, and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.030, §§31.001-31.0325, and §§32.001-32.042.

§4.1006. Requirements for Application.

To be eligible for the Medicaid Programs for Children and Pregnant Women (CPW) Program, clients must meet the following requirements.

(1) Citizenship. Citizenship requirements for CPW applicants are the same as requirements for Temporary Assistance for Needy Families (TANF) applicants outlined in the Texas Department of Human Services' (DHS's) TANF rules in Chapter 3 of this title (relating to Texas Works).

(2) Resources. Resource limits and types of countable and exempt resources for CPW are the same as those outlined in DHS's TANF rules, with the following exceptions:

(A) The policy of receiving benefits up to six months pending a good faith effort to sell real property does not apply to the CPW Program.

~~[(B) The food stamp resource policy for households with no members 60 or over is applied when determining eligibility for children under six and children six or older born on or after October 1, 1983. Exception: DHS follows the TANF resource policy for loans and Texas Tomorrow Funds.]~~

(B) [~~(C)~~] When determining eligibility for children described in §4.1004(1)-(3) of this title (relating to Eligible Groups), the family's primary vehicle is exempt. All other vehicles are considered in accordance with food stamp resource requirements. Exception: Follow TANF policy for jointly owned vehicles.

(C) [~~(D)~~] Pregnant women described in §4.1004(1) of this title (relating to Eligible Groups) are exempt from a resource eligibility requirement.

(D) [~~(E)~~] The TANF and Food Stamp policy for transferring resources to qualify for assistance does not apply to the CPW program.

(E) [~~(F)~~] An alien sponsor's (and spouse's) resources are only counted for applicants admitted into the United States on or after December 19, 1997.

(3) Age and relationship. Eligible children must meet the age and relationship requirements outlined in the TANF rules with the following exceptions:

(A) Medicaid coverage under the newborn children provision continues until the end of the month of the child's first birthday if:

(i) the child's mother continues to receive Medicaid, or the child's mother would continue to receive Medicaid if she were pregnant; and

(ii) the child continues to live with his mother.

(B) Medicaid coverage under the newborn children provision for children whose mothers are considering adoption, continues through the month the mother relinquishes her parental rights.

(C) Children in two-parent families must meet the TANF relationship requirements to be eligible.

(D) Relationship must be established between a parent and a child in order to include the child's needs in an application for a pregnant woman in a two-parent family.

(E) Children listed in §4.1004(2) and (3) of this title (relating to Eligible Groups) do not need to meet the relationship/domicile requirements.

(4) Child support requirements. The responsible relative of deprived Medicaid children must cooperate with the establishment of medical support from the absent parent(s). Exception: Pregnant women are not sanctioned for noncooperation with child support requirements.

~~[(5) School attendance. Eligible children must meet the school attendance requirements outlined in the TANF rules.]~~

(5) [~~(6)~~] Social security number. Eligible members of the budget group must meet the social security number requirement outlined in the TANF rules. Ineligible members are requested to provide social security numbers, but they are not required to provide their numbers.

(6) [~~(7)~~] Newborn children. Only the requirement in paragraphs (3)(A) and (3)(B) of this section applies to children who are covered by the newborn children provision.

(7) [~~(8)~~] Third-party resources. Eligible members of the budget group must cooperate in third-party resources activities outlined in the TANF rules.

(8) [~~(9)~~] Strikers. The TANF striker policy applies to children described in §4.1004(5) of this title (relating to Eligible Groups). The policy does not apply to persons described in §4.1004(1)-(4).

This 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 March 14, 2001.

TRD-200101536
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 438-3108

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CHAPTER 95. MEDICATION AIDES--PROGRAM REQUIREMENTS

40 TAC §95.128

The Texas Department of Human Services (DHS) proposes new §95.128, concerning home health medication aides, in its Medication Aides--Program Requirements chapter. The purpose of the new section is to move policy relating to medication aides from DHS's Chapter 97, Licensing Standards for Home and Community Support Services Agencies, to the more appropriate medication aides chapter.

Eric M. Bost, commissioner, has determined that for the first five-year period the section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section are in effect the public benefit anticipated as a result of adoption of the proposed rule will be to allow access to the medication aides rules in one chapter. There will be no adverse economic effect on small or micro businesses, because only the location of the rules is changing. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Lynette Sanders at (512) 231-5800 in DHS's Credentialing Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-083, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The new section is proposed under the Health and Safety Code, Chapter 142, which provides the department with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The new section implements the Health and Safety Code, Chapter 142.001-142.030, Subchapter F.

§95.128. Home Health Medication Aides.

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law which authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of a registered nurse (RN) licensed by the Board of Nurse Examiners which authorizes the licensee to administer medication;

(C) administers a medication to a client of an agency in accordance with rules of the Board of Nurse Examiners that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the Board of Nurse Examiners and the Texas Department of Human Services (DHS).

(2) An agency providing licensed and certified home health services, licensed home health services, hospice services, or personal assistance services. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified home health services agency may use a home health medication aide.

(3) Other exemptions are as follows.

(A) A person may administer medication to a client of an agency without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(ii) a student enrolled in an accredited school of nursing or program for the education of Rns who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the Board of Vocational Nurse Examiners;

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by DHS under this chapter who is administering medications as part of the trainee's clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If home health medication aide services are provided, an agency employs a home health medication aide to provide home health medication aide services, and an RN shall be employed by or under contract with the agency to perform the initial assessment; prepare the client care plan; establish the medication list, medication administration record, and medication aide assignment sheet; and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when services are provided.

(2) The clinical records of a patient using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable regarding the rules of DHS governing home health medication aides and must assure that the home health medication aide is in compliance with the statute.

(4) A permit holder must:

(A) function under the supervision of an RN;

(B) function in accordance with applicable law and this chapter relating to administration of medication and operation of the agency;

(C) comply with DHS rules applicable to personnel used in an agency; and

(D) comply with this section and §97.61 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §97.21(b)(6) of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health or Hospice Services).

(c) Permitted actions. A permit holder is permitted to:

(1) observe and report to the agency's RN and document in the clinical note reactions and side effects to medication shown by a client;

(2) take and record vital signs prior to the administration of medication which could affect or change the vital signs;

(3) administer regularly prescribed medication which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the client's clinical note;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in emergency. Immediately after the emergency, the permit holder must verbally notify the supervising RN and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section; and

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy.

(d) Prohibited actions. Permit holders must not:

(1) administer a medication by any injectable route;

(2) administer medication used for intermittent positive pressure breathing (IPPB) treatment or any form of medication inhalation treatments;

(3) administer previously ordered pro re nata (PRN) medication unless authorization is obtained from the agency's RN. If authorization is obtained, the permit holder must:

(A) document in the client's clinical notes symptoms indicating the need for medication and the time the symptoms occurred;

(B) document in the client's clinical notes that the agency's RN was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;

(C) obtain permission to administer the medication each time the symptoms occur in the client; and

(D) insure that the client's clinical record is co-signed by the RN who gave permission within seven calendar days of incorporation of the notes into the clinical record;

(4) administer the initial dose of a medication that has not been previously administered to a client. Whether a medication has been previously administered must be determined by the client's current clinical records;

(5) calculate a client's medication doses for administration except that the permit holder may measure a prescribed amount of a liquid medication to be administered or break a scored tablet for administration to a client provided the RN has calculated the dosage. The client's medication administration record must accurately document how the tablet must be altered prior to administration;

(6) crush medication unless authorization has been given in the original physician's order or obtained from the agency's RN. The authorization to crush the specific medication must be documented on the client's medication administration record;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified in §97.21(b)(6) of this title;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications;

(13) violate any provision of the statute or of this chapter;

(14) fraudulently procure or attempt to procure a permit;

(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under the statute must complete a training program. Prior to enrollment in a training program and prior to application for a permit under this section, all persons:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of a high school or have an equivalent diploma or higher degree; and

(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under Chapter §97.61 (relating Home Health Aides).

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section; if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) The applicant must submit an official application form to DHS. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application must be accompanied by the permit application fee.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) DHS acknowledges receipt of the application by forwarding to the applicant a copy of this chapter and DHS's open book examination.

(5) The applicant must complete the open book examination and return it within 45 calendar days to DHS.

(6) The applicant must complete DHS's written examination. DHS determines the site of the examination. Any applicant failing to schedule and take the examination within 45 calendar days of the examination notice may have his or her application voided.

(7) An open book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DHS evaluates all application documents submitted by the applicant.

(9) DHS notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school that cover DHS's curriculum for a home health medication aide training program;

(3) submits a statement that is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified under paragraph (2) of this subsection. The administrator is responsible for determining that the courses to which he or she certifies cover DHS's curriculum. The statement must be submitted with the person's application for a permit under this section; and

(4) complies with subsection (f)(1)-(2) and (4)-(9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement.

(1) The graduate must submit an official application form to DHS. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application must be accompanied by the permit application fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority (law, act, code, section, or otherwise) for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) DHS acknowledges receipt of the application by forwarding to the applicant a copy of this chapter and of DHS's open book examination.

(5) DHS may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DHS's open book examination and return it within 45 calendar days to DHS.

(7) The applicant must complete DHS's written examination. The site of the examination shall be determined by DHS. Any applicant failing to schedule and take the examination within 45 calendar days of the examination notice may have his or her application voided.

(8) An open book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DHS evaluates all application documents submitted by the applicant.

(10) DHS notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to DHS, no later than 30 calendar days after enrollment in a training program, all required information and documentation on official DHS forms.

(1) DHS does not consider an application as officially submitted until the applicant submits the nonrefundable combined permit application and examination fee payable to the Texas Department of Human Services. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met prior to the start of the program;

(C) a statement that the applicant understands that application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DHS; and

(F) the applicant's signature that has been dated and notarized.

(3) The applicant must submit a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript or an equivalent GED diploma or higher degree unless the applicant is applying under subsection (f) of this section.

(4) DHS sends a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 calendar days after the date of the notice will be void.

(5) Notice of application acceptance, disapproval, or deficiency must be in accordance with subsection (q) of this section.

(j) Examination. DHS gives a written examination to each applicant at a site determined DHS.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to an agency's clients.

(3) A training program must notify DHS at least four weeks prior to its requested examination date.

(4) DHS determines the passing grade on the examination.

(5) DHS notifies in writing an applicant who fails the examination.

(A) An applicant under subsection (e) of this section may be given a subsequent examination, without additional payment of a fee, upon the applicant's written request to DHS.

(B) A subsequent examination must be completed within 45 calendar days from the date of the failure notification. DHS determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(6) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DHS. The examination must be completed within 45 calendar days from the date of the originally scheduled examination. DHS determines the site for the rescheduled examination.

(7) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. DHS receives and approves or disapproves all applications. Notices of application approval, disapproval, or deficiency must be in accordance with subsection (q) of this section.

(1) An application for a permit is disapproved if the person has:

(A) not met the requirements of subsections (e)-(i) of this section, if applicable;

(B) failed to pass the examination prescribed by DHS as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by DHS;

(D) violated or conspired to violate the statute or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a permit holder as set out in subsection (r) of this section.

(2) If, after review, DHS determines that the application should not be approved, the director gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Permit renewal. Home health medication aides must comply with the following permit renewal requirements.

(1) When issued, a permit is valid for one year.

(2) A permit holder must renew the permit annually.

(3) The renewal date of a permit is the last day of the current permit.

(4) Each permit holder is responsible for renewing the permit before the expiration date. Failure to receive notification from DHS before the expiration date of the permit does not excuse failure to file for timely renewal.

(5) A permit holder must complete a seven clock-hour continuing education program approved by DHS prior to expiration of the permit in order to renew the permit. Continuing education hours are required for the first renewal.

(6) DHS denies renewal of the permit of a permit holder who is in violation of the statute or this chapter at the time of application for renewal.

(7) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 calendar days before the expiration date of a permit, DHS sends to the permit holder at the address in DHS's records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the permit holder must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder.

(C) DHS issues a renewal permit to a permit holder who has met all requirements for renewal.

(D) DHS will not renew a permit if the permit holder does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) DHS will not renew a permit if renewal is prohibited by the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(F) If a permit holder fails to timely renew his or her permit because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the permit holder may renew the permit pursuant to this subsection.

(i) Renewal of the permit may be requested by the permit holder, the permit holder's spouse, or an individual having power of attorney from the permit holder. The renewal form must include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the permit holder is or was on active military duty serving outside the State of Texas should be filed with DHS along with the renewal form.

(iv) A copy of the power of attorney from the permit holder must be filed with DHS along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(v) A permit holder renewing under this subsection must pay the applicable renewal fee.

(vi) A permit holder is not authorized to act as a home health medication aide after the expiration of the permit unless and until the permit holder actually renews the permit.

(vii) A permit holder renewing under this subsection is not required to submit any continuing education hours.

(8) A person whose permit has expired for not more than two years may renew the permit by submitting to DHS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, prior to expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(9) A permit that is not renewed during the two years after expiration may not be renewed.

(10) Notices of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section (relating to Processing Procedures).

(m) Changes.

(1) Notification of changes shall be reported to DHS within 30 calendar days after a change of address or name.

(2) DHS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is:

(A) combined permit application and examination fee--$25;

(B) renewal fee--$15; and

(C) permit replacement fee--$5.00.

(2) All fees are nonrefundable.

(3) An applicant whose personal check for the combined permit application and examination fee is not honored by the financial institution may reinstate the application by remitting to DHS a money order or cashier's check for the amount within 30 calendar days of the date of the applicant's receipt of DHS's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) A permit holder whose personal check for the renewal fee is not honored by the financial institution must remit to DHS a money order or cashier's check within 30 calendar days of the date of the licensee's receipt of DHS's notice. If proper payment is not received, the permit will not be renewed. If a renewal card has already been issued, it will be void.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Education Agency or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an official form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on official forms and supporting documentation must be originals.

(B) The application includes:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list of instructors and any other person responsible for the conduct of the program. The list must include addresses and telephone numbers for each instructor; and

(v) an outline of the program content and curriculum if the curriculum covers more than DHS's established curricula.

(C) DHS may conduct an inspection of the classroom site.

(D) Notice of approval or proposed disapproval of the application will be given to the program within 30 calendar days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the statute or of this chapter, the reasons for disapproval must be given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten calendar days of receipt of the notice

of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of permit holders in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program consists of 140 hours: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of a RN in an agency, and ten more hours in the return skills demonstration laboratory in the preceding order. A classroom or laboratory hour constitutes 50 clock-minutes of actual classroom or laboratory time.

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 calendar days and a maximum of 180 calendar days from the starting date of the program.

(C) Each program must follow the curricula established by DHS.

(4) At least seven calendar days prior to the commencement of each program, the coordinator must notify DHS in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DHS prior to the program's effective date of the change.

(6) The program instructors of the classroom hours must be an RN and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing of the agency used for the clinical experience.

(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

(B) The coordinator is responsible for final evaluation of the student's clinical experience.

(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Each program must inform DHS of the satisfactory completion for each student within 15 calendar days of completion of the course. The official department class roster form must be used and signed by the coordinator.

(p) Continuing education. The continuing education training program is as follows.

(1) The program must consist of at least seven clock hours of classroom instruction.

(2) The instructor must meet the requirements in subsection (o)(6) of this section.

(3) Each program must follow the curricula established by DHS.

(4) Each program must inform DHS of the name of each permit holder who completes the course within 15 calendar days. The official department class roster form must be used and signed by the coordinator.

(q) Processing procedures. DHS complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:

(A) letter of acceptance of an application for a home health medication aide permit--14 working days; and

(B) letter of application or renewal deficiency--14 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision

and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 calendar days;

(B) the letter of denial for a permit--90 calendar days; and

(C) the issuance of a renewal permit--20 calendar days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the director of the Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period is considered to exist if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by DHS in the application process caused the delay; or any other condition exists giving DHS good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the commissioner of DHS for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the commissioner at the address of DHS that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process are made.

(6) The time periods for contested cases related to the denial of initial home health medication aide permits or renewal permits are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date DHS receives a written request for a hearing and ends when the decision of DHS is final and appealable. A hearing may be completed within one to four months but may extend for a longer period of time depending on the particular circumstances of the hearing.

(r) Denial, suspension, or revocation.

(1) DHS may deny, suspend, emergency suspend, or revoke a permit or program approval if the permit holder or program fails to comply with any provision of the statute or this chapter.

(2) DHS may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to DHS or required to be maintained or complied by the permit holder or program pursuant to this chapter.

(3) DHS may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, DHS must consider the elements set forth in §97.52(c) of this title (relating to Enforcement Action).

(4) If DHS proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, the director notifies the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offer the permit holder or home health medication aide program an opportunity for a hearing.

(A) The permit holder or home health medication aide program must request a hearing within 15 calendar days of receipt of the notice. Receipt of notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to DHS unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Texas Department of Human Services, Medication Aide Program, Mail Code 979, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the permit holder or home health medication aide program does not request a hearing, in writing, within 15 calendar days of receipt of the notice, the permit holder or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) DHS may suspend a permit to be effective immediately when the health and safety of persons are threatened. DHS notifies the permit holder of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the permit holder to request a hearing.

(6) All hearings must be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and DHS's formal hearing procedures in Chapter 79 of this title (relating to Legal Services).

(7) If the permit holder or program fails to appear or be represented at the scheduled hearing, the permit holder or program has waived the right to a hearing and the proposed action is taken.

(8) If DHS suspends a home health medication aide permit, the suspension remains in effect until DHS determines that the reason for suspension no longer exists. DHS investigates prior to making a determination.

(A) During the time of suspension, the suspended permit holder must return his or her permit to DHS.

(B) If a suspension overlaps a renewal date, the suspended permit holder may comply with the renewal procedures in this chapter; however, DHS may not renew the permit until DHS determines that the reason for suspension no longer exists.

(9) If DHS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) DHS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) Upon revocation or nonrenewal, a permit holder must return the license or permit to 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 March 14, 2001.

TRD-200101535

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: April 29, 2001
For further information, please call: (512) 438-3108

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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 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 17. PAYMENT OF FEES, TAXES, AND OTHER CHARGES TO STATE AGENCIES BY CREDIT, CHARGE, AND DEBIT CARDS

34 TAC §17.2

The Comptroller of Public Accounts has withdrawn from consideration proposed new rule to §17.2 which appeared in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1684).

Filed with the Office of the Secretary of State on March 16, 2001

TRD-200101561
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: March 16, 2001
For further information, please call: (512) 463-3699

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Health and Human Services Commission (HHSC) adopts new Chapter 370, State Children's Health Insurance Program: Subchapter A, Program Administration, §§370.1, 370.2, 370.3, 370.4, and 370.10; Subchapter B, Application Screening, Referral and Processing, Division 1, TexCare Partnership application process, §§370.20, 370.21. 370.22, 370.23, 370.24, 370.25; Division 2, Applicant Rights and Responsibilities Regarding Application and Eligibility, §§370.30, 370.31; Division 3, Eligibility Determination, §§370.40; Division 4, Eligibility criteria, §§370.42, 370.43, 370.44, 370.45, 370.46, 370.47, 370.48, 370.49; and Division 5, Review and Reconsideration of Eligibility Denials and Temporary Enrollment, §§370.50, 370.51, 370.52, 370.53, and 370.54, with changes from the proposed text as published in the September 15, 2000, issue of the *Texas Register* (25 TexReg 9131).

Chapter 62, Health and Safety Code, establishes the State Child Health Plan authorized under Title XXI of the federal Social Security Act, 42 U.S.C. §§1397aa, et seq. Section 62.051, Health and Safety Code, designates HHSC as the agency responsible for developing the state-designed child health plan program for Texas, making policy for the program, and adopting rules as necessary to implement chapter 62.

Chapter 63, Health and Safety Code, authorizes health benefits coverage for certain children who are ineligible for the State Child Health Plan authorized under chapter 62 or the state Medicaid program. HHSC is directed to develop and implement this plan which, to the extent possible, must provide benefits comparable to the plan established under chapter 62.

HHSC received comments from the following persons or organizations: Anne Dunkelberg, Center for Public Policy Priorities; the West Texas CHIP Coalition; Sydney Tye Stuart, Texas Universities Health Plan; Birch and Davis Health Management Corporation; Deborah Gardner Raskin, Texas Rural Legal Aid; and the Texas Disability Policy Consortium.

General Comment: One commenter voiced general concern regarding how children in families of mixed immigration status fare in the eligibility process and believe the way in which Texas treats such families is critical to achieving HHSC's ambitious enrollment goals. The commenter commended HHSC and the Texas Department of Health (TDH) for recognizing the importance of addressing the needs of these families.

Response: HHSC appreciates the comment and will continue to monitor changes to federal laws that regulate the eligibility of non-citizens to obtain access public health benefits, including CHIP.

General Comment: One commenter submitted general statements about legislation that is pending in Congress which, if enacted, would create a state option to eliminate the 5-year bar against Medicaid and CHIP participation for qualified aliens who arrived on or after August 22,1996. Recognizing that passage of the federal bill would eliminate the need for the separate "look-alike" program created under chapter 63, Health and Safety Code, the commenter questioned whether a reference to the potential merging of children eligible under chapter 63 into the CHIP program authorized by chapter 62, Health and Safety Code, should be referenced in the rule.

Response: Since Congress did not enact the proposed legislation described in the comment, HHSC did not make any changes to the adopted rules regarding this issue.

Comment: One commenter expressed general concerns about the lapse in coverage that occurs when a child gets off Medicaid and applies for CHIP coverage. The electronic status report generated by the Texas Department of Human Services (DHS) will show the child on Medicaid past the cut-off date for CHIP enrollment although they are no longer on Medicaid, thereby delaying enrollment of the child in CHIP until the following month.

Response: HHSC is aware of issues concerning CHIP and Medicaid eligibility interaction. HHSC has implemented an ongoing CHIP and Medicaid coordination effort intended to address these timing problems.

Comment: One commenter questioned whether non-custodial parents who are ordered by a court to purchase medical insurance for their children can enroll their children in CHIP.

Response: Currently only the custodial parent (or certain other household members) may apply for CHIP. HHSC understands the commenter's concern with this issue and the difficulties this may present to persons attempting to comply with medical support orders. Because a non-custodial parent is not a part of the budget group, as that term is defined under the rules, a non-custodial parent may not be able to provide any information (or reliable information) on income or resources for the household in which the child resides. However, HHSC currently is working

with the Office of the Attorney General and the Office of Court Administration on changes in the medical support order law and other options to address this issue. In addition, all the affected state agencies are working to improve efforts to educate family law judges on this issue.

Comment: One commenter suggested the draft rule is somewhat inconsistent in the level of specificity with which important policies are described. The commenter expressed concern that some areas are quite detailed while others are quite broad and urged HHSC to avoid the situation that currently exists with Medicaid eligibility policy. The commenter also expressed his/her understanding that while administrative rules may not be the best method to document many operational level details, the commenter believes it is imperative that CHIP eligibility policies be thoroughly documented in some location that is accessible to all members of the public. The commenter seeks clarification from HHSC whether detailed manuals or handbooks will be created to describe CHIP eligibility policies.

Response: HHSC agrees in principle with the comment, but must ensure any policies regarding operational details of the program are made in compliance with the Administrative Procedure Act. HHSC also agrees that CHIP eligibility policies should be well documented via administrative rules and that the public should have maximum access to the policies that regulate only the internal management of the program. HHSC intends to provide greater public access in the future to such internal policies through various means, including web site publications.

Comment: Three commenters expressed general concern regarding the inconsistency between CHIP's definition of "countable income" and the definition used by TDHS for purposes of Medicaid and other benefits. One commenter applauded CHIP's definition of "countable income" and recommended its incorporation into the Medicaid income eligibility regulations. One commenter believed the inconsistencies in current CHIP and Medicaid policy create unnecessary inconvenience for parents. One commenter suggested the State may use different definitions of income for CHIP and Medicaid, but proposed federal CHIP regulations require the State to use the Medicaid definitions of income to screen for children potentially eligible for poverty-level Medicaid. See 42 C.F.R. §457.350. Another commenter stated that Texas has chosen to use methods developed under the Temporary Assistance for Needy Families (TANF) program for determining countable income and resources for poverty-level Medicaid, with few exceptions. See 40 T.A.C. §4.1010. These commenters consider TANF methods more inclusive than those now proposed for CHIP because TANF counts irregular and unpredictable income, including even small gifts. See 40 T.A.C §3.902 and 45 C.F.R. §233.20. The commenters request HHSC solve this problem by using the proposed CHIP income definitions for determining eligibility for Children and Pregnant Women Medicaid benefits.

Response: HHSC understands the commenters concerns; however, the requested policy changes concern rules of TDHS. Therefore, the changes sought by the commenters must occur in TDHS Medicaid eligibility rules rather than the CHIP rules that are the subject of this adoption.

Comment: Two commenters requested that the rules include a requirement that CHIP post on the Internet weekly or monthly enrollment figures by county, including a breakdown by category of the number of children denied Medicaid.

Response: HHSC agrees with commenters regarding the importance of posting weekly or monthly CHIP enrollment numbers on the Internet. However, HHSC does not believe that a rule is necessary in order to implement these comments.

Comment: One commenter submitted a general recommendation that CBOs have access to the names of families that are about to "time out"-that is, families whose applications will be administratively closed because of a lack of information and a failure of the family to supply such information following requests by the program. This comment relates to proposed §370.25(c)(1), Termination of an incomplete application.

Response: HHSC acknowledges the commenter's concern regarding "timed out" applications, but does not believe that a rule is necessary to address this issue.

Comment: Several comments were received questioning the necessity of adding a reference to implementation of Chapter 63, Health and Safety Code to §§370.1, 370.2, 370.20,370.30, Division 3, Division 4, and Division 5.

Response: This reference is unnecessary because §370.1 and §370.2, which generally describe the purpose and scope of the CHIP program, provide that the rules implement both chapters 62 and 63, Health and Safety Code.

Comment: One commenter recommended replacement of the word "preventative" with "preventive" used in proposed §370.2(a). Another commenter recommended the paragraph be revised as follows: "The CHIP is a state-designed child health plan . . . which provides access to low-cost preventative and primary health care to children, including a comprehensive benefits package to children with special health care needs, in certain low-income families of this state. One commenter recognized a grammatical error and suggested substituting the word "provides" to "provide" in the same paragraph.

Response: HHSC agrees to substitute "preventative" with "preventive," but does not believe the structure of the sentence should be revised as suggested because it is not an accurate description of the program. Specifically, the suggested sentence gives the impression that a comprehensive benefits package is offered only to children with special health care needs. CHIP provides the same benefit package to all children; children with special needs receive special case management services as part of their general CHIP benefits. HHSC agrees with commenter to substitute the word "provide" for "provides" in the same paragraph.

Comment: One commenter suggested deleting the words "or national" from the definition of "Alien" in §370.4(2) because naturalized citizens are treated identically to native-born citizens under law.

Response: HHSC agrees with the comment and will revise the definition to read "not a natural born or naturalized citizen of America."

Comment: One commenter stated the definition of "applicant" in §370.4(3) does not distinguish between persons receiving benefits (i.e., children) and those who do not (i.e., parents or guardians). The commenter is concerned that use of the term to refer to someone who is not seeking benefits may create confusion for individuals who are not required to submit social security numbers or immigration documentation. The commenter suggests that if HHSC continues to retain the definition as currently drafted, another defined term should be

added that clearly applies only to children seeking to enroll or who are enrolled in CHIP.

Response: HHSC agrees with and appreciates the comment. Section 370.4(3) is revised to define "Applicant" to mean in part "an individual who lives with the child and applies for health insurance coverage on behalf of the child." HHSC has added new language and revised subparagraphs (A), (B), (C), and (D) to further clarify who is considered an applicant. We also recognize the need to substitute where appropriate throughout the rules the term "applicant" for "household" or "family," and have made this change in the following sections: 370.4(4), 370.23(1)(G), 370.25(c)(2), 370.31(b), 370.43(e), 370.44(g)(1), 370.48(1), 370.48(2)(B), 370.48(3)(B), 370.50(a), 370.50(a)(2), 370.50(b), 370.51(a), 370.51(b), 370.53(a)-(c), 370.54(b), and 370.54(3).

Comment: Two comments requested clarification of the meaning of legal or adoptive parent in proposed section 370.4(3)(A). The commenters questioned whether the TexCare Partnership (the name of the CHIP program established under the rules) is now considering applications submitted by non-custodial parents to meet a medical support order for their children.

Response: HHSC agrees this section needs further clarification and has revised the definition of "applicant" in §§370.4(3) to address these and other concerns. Because non-custodial parents may not submit completed applications to the TexCare Partnership, subparagraph (A) is revised to refer to "a child's custodial parent, whether natural or adoptive." Subparagraph (B) is clarified to refer to "a child's grandparent, relative or other adult who provides care for the child. Subparagraph (C) is revised to include "an emancipated minor applying for himself/herself." Subsection (D) is added to clarify that a child's step-parent may apply for CHIP benefits on behalf of a child.

Comment: One commenter requested definition of circumstances in §370.4(4) which will allow a CHIP application to be used for Medicaid, or clarify that the application is for CHIP only and screens only for CHIP.

Response: HHSC agrees with the comment and revises the definition in §370.4(4) by dropping references to Medicaid and THKC because the CHIP application determines CHIP eligibility but only provides information that enables the TexCare Partnership to screen for potential Medicaid eligibility.

Comment: Three commenters requested changes to the definition of "budget group" in §370.4(6). One commenter stated that the definition should enumerate the individuals whose income will be considered and clarify that individuals in one child's budget group may differ from those in the budget group of another child living in the same household. One commenter asked HHSC to define the term "household" to describe individuals living with the child. One commenter indicated that the term "family" should be stricken from the proposed rules because it causes confusion between "budget group," "household," and "applicant." Concern was also expressed that as used in the proposed net income test in §370.44(e)(1)(C), the current definition of "budget group" ensures Medicaid eligible children would be enrolled in CHIP because it counts the needs of fewer children. The commenter requested HHSC consider using the same provision TDHS uses for Children and Pregnant Women Medicaid program (codified at 40 T.A.C. §4.1010 (7)) and to list the adults whose income is counted by the CHIP program. One commenter stated that under Texas law, only natural and adoptive parents have a duty to support a child.

Response: HHSC agrees the rule needs further clarification and revises §370.4(6) to explain that for CHIP income eligibility purposes the budget group consists only of the group of individuals who live with the child for whom an application is submitted, and whose information is used to establish family size and calculate income. Four subsections are added that detail the only persons considered in the budget group, which include the child seeking benefits, siblings of the child, natural or adoptive parents of the child, or step-parents of the child. HHSC believes this level of detail provides greater clarity. The terms "household" and "family" are deleted throughout the rules and HHSC substitutes and/or incorporates the term "budget group" as appropriate for consistency in the following sections: 370.4(6), 370.4(10), 370.4(20), 370.4(22), 370.23(3), 370.23(3)(A)-(D), 470.25((b)(1), 370.46(c)(1), 370.46(c)(1)(D)(i), 370.48(1), 370.48(2), 370.48(3), 370.49, and 370.50(b)(3).

Comment: One commenter, reviewing proposed §370.4(16) (definition of "earned income deductions") asked that the rules consolidate all requirements concerning the computation of income.

Response: As explained below, the definitions affecting computation of income have been clarified, and the rules for computing income for eligibility purposes are codified as §370.44.

Comment: One commenter asked whether the business expenses allowed in §370.44(b)(2) are earned income deductions as defined in §370.4(16).

Response: Business expenses are not considered income deductions as defined in CHIP rules. Deducting business expenses is part of the process of determining actual income for CHIP eligibility purposes and coincides with the standard business practice that subtracts business expenses when determining net income for self-employed individuals

Comment: One commenter requested clarification on whether "earned income deductions" referenced in §370.4(16) are different than "earned income disregards" as referred to in proposed §370.4(23) (definition of "net family income"). Another commenter asked whether there are any work-related earned income deductions other than the work-related expenses, day care, child support, and alimony listed in "net income test and deductions" of proposed §370.44(e)(2). Another commenter sought clarification concerning several issues such as, deducting the income of a child who is enrolled in school, existence of additional business expenses allowed by §370.44(b)(2) (definition of "unearned income deductions") and whether any unearned income deductions exist besides the $50 deducted from the child support a budget group receives.

Response: HHSC agrees that using the terms "disregards" and "earned income deductions," is confusing and will eliminate these terms from the rules. The revised term is "income deductions" (added as new §370.4(15) in the adopted rules and defined as "standardized deductions that are applied to the countable income of the budget group during the CHIP application process"). Please note §370.4(22) is also revised in accordance with this change. There are no earned income deductions under the rules other than work-related expenses, day care, child support, and alimony. Income of a child enrolled in school is not counted for purposes of determining eligibility. As described in §370.44(c)(2), the only unearned income deduction is the $50 deducted from child support the budget group receives.

Comment: One commenter requested a cross-reference to the sections of the rules that define required income and other verifications.

Response: For clarity, HHSC has listed in §370.44(g) the verification process for "current countable income," in §370.44(h) the verification process for "income deductions," and in §370.43(e) the verification requirements for citizenship. We believe these provisions should sufficiently inform applicants of the types of verifications that may be required.

Comment: Regarding §370.4(21) (definition of "income eligibility standard"), one commenter requested clarification of the term "age variable." Another commenter suggested the definition should incorporate by reference the percentage of Federal Poverty Level (FPL) "set by the legislature" rather than the current 200% FPL standard provided in the rule. One commenter is concerned that if the 200% is changed by the legislature it will require amendment of the rules by HHSC.

Response: HHSC agrees that using the term "age variable" is confusing and deletes it from §370.4(21). HHSC disagrees with the comment that this definition should include by reference the "percent FPL set by the legislature" instead of "200%." The Legislature, in §62.101, Health and Safety Code, has delegated to HHSC the responsibility to establish income eligibility criteria for CHIP, subject to the condition that any child whose family income is at or below 200% FPL be eligible for benefits under the program. A change in the FPL limit for CHIP would constitute a significant change in public policy that HHSC believes should be reserved, in the first instance, for the Legislature. The public rulemaking process should reflect the direction of the Legislature as it is applied to the day-to-day operations of the program.

Comment: Three commenters requested the definition of "Net family income" in §370.4(23) be revised to make clear that the child support received by a member of a child's budget group, which is not tied to the support of the child, be excluded in computing the income of the budget group for purposes of that child. The commenters requested the same treatment of other sources of income such as Supplemental Security Income (SSI).

Response: HHSC deleted the term "family" from the rules in response to previous comments that use of the word causes confusion in determining income eligibility. Therefore, the term "net family income" is revised to "net budget group income" to coincide with the new definition of budget group located in §370.4(22). HHSC disagrees with the comment about excluding child support not tied to the support of the applying child, because all siblings are counted in the budget group to determine income eligibility. HHSC agrees that SSI income should not be counted and it is excluded in the definition of budget group in §370.4(6) and the §370.44(c)(4), regarding unearned income.

Comment: One commenter requested that all references to Texas Healthy Kids Corporation in §370.4(28) and throughout the rules, be deleted in light of the Texas Healthy Kids Corporation's impending termination of business operations.

Response: Although HHSC understands this comment, the Texas Healthy Kids Corporation still receives referrals for certain applicants whose income exceeds CHIP and Medicaid eligibility requirements. Consequently, HHSC does not believe this reference should be deleted at this time.

Comment: One commenter requested §370.10 (entitled "Duties and Responsibilities of the Commission") make clear that the list of duties and responsibilities is not exhaustive. Another commenter stated the language in subsection (7) is misleading because federal law imposes no cap on administrative spending for Title XXI; the cap is on federal matching funds available for administrative spending by the state.

Response: HHSC agrees that the duties and responsibilities of HHSC are not exhaustive and revises §370.10 to include "whose CHIP responsibilities include but are not limited to" after state agency. HHSC agrees with the comment regarding federal matching funds, but notes that §370.10(7) is consistent with the language of §62.051(f), Health and Safety Code. Accordingly, no change to this language is made on the basis of this comment.

Comment: One commenter requested §370.20 be revised to clarify that telephone and computer applications are only the beginning of the CHIP eligibility process. One commenter suggested adding the word "process" and substituting the word "initiated" for "completed" in the same section. The commenter asked that the rule include indicate that completion of an application can also be made through telecommunication devices for the deaf (TDD).

Response: HHSC agrees with these comments and has revised the title to §370.20 to read "Availability and method of initiating an application." HHSC substitutes the word "initiated" for the word "completed" in the introductory clause to the section. Subsection (3) is revised to include a reference to TDD.

Comment: Four commenters suggested the wording of §370.21 implies application assistance from sources other than those listed is prohibited. One commenter requested HHSC delete the words "CHIP health plan or" because the independent use of licensed insurance agents and brokers were specifically prohibited at the onset of the CHIP procurement process. One commenter questioned the use of the last sentence in subsection (1) "Telephone applications may also be accepted by TCP staff" as repetitive.

Response: HHSC disagrees that the proposed rule implies that application assistance from sources outside those listed is prohibited. The rule simply outlines how a person may obtain assistance with an application from TCP and a community-based organization (CBO) contracted to HHSC to provide outreach and application assistance. HHSC disagrees with the comment that the words "CHIP health plan or" should be deleted. HHSC currently is operating a pilot project that will assess the use of independent agents for CHIP enrollment. The change sought by the commenter would conflict with that pilot project. HHSC also disagrees that use of the last sentence in §370.21 is redundant. The purpose of the statement is to clarify that TCP also accepts telephone applications, in addition to providing telephone assistance for completing an application. No change is made to §370.21 based on these comments.

Comment: One commenter suggested revising §370.22 to clarify the roles of TCP and the applicant. The commenter believes that, as written, the rule does not explain what TCP does and what the applicant must do.

Response: HHSC agrees with this comment. Section 370.22 is revised as suggested to clarify that, with regard to an application initiated by telephone, TCP's role is to take the application, complete the application as much as possible over the telephone, print the partially completed application, and mail the partially completed application back to the applicant for completion of

missing information and/or the applicant's signature. It is the applicant's responsibility to complete all missing information, sign the application, attach all required verifications, and return it to TCP.

Comment: One commenter expressed concern about disenrollments required because of the determination of a family's eligibility under the State Kids Insurance Program (SKIP) after the determination of CHIP eligibility. To reduce this number, the commenter suggested adding the words "or is eligible for health insurance through an employer program" to §370.23(2)(G).

Response: HHSC disagrees that it is necessary to add the suggested language to §370.23(2)(G) because TCP currently has processes in place to identify and refer SKIP-eligible children during the application process.

Comment: One commenter recommended revising §370.23(2)(G) by substituting the word "Indication" for "Confirmation" and adding the word "Medicaid."

Response: HHSC does not believe the substitution is necessary and declines to revise the rule on this basis.

Comment: One commenter asked HHSC to consider adding in §370.23(3)(B) the words "applying for coverage" after the word "anyone," but indicated that this change in family size may create eligibility for Medicaid.

Response: HHSC disagrees with this recommendation and instead substitutes the phrase "budget group" for "family" because information provided on the application relates only to members of the budget group.

Comment: One commenter noted a grammatical error in §370.23(3)(C).

Response: Section 370.23(3) is revised to correct grammatical errors.

Comment: Two commenters asked for clarification on what verifications HHSC is referring to in §370.23(5).

Response: HHSC agrees with this comment and revises §370.23(5) to read "required income, immigration status, and income deduction verifications."

Comment: One commenter asked whether a child's school status must be reported on an application even if the child does not seek to exempt his or her own income. The commenter requested the rule include a cross-reference to the sections that define required verifications.

Response: A child's school status must be reported as described in §370.23(2)(F); however, §370.4(10) explains that the income of a child enrolled in school is not considered "countable income."

Comment: Three commenters requested two provisions be added to §370.24. The first should reflect that, within three working days of the receipt of additional information from an applicant, TCP enter the new information into the eligibility database for purposes of timely completion. The second request is that, upon entering all required application information, TCP send the applicant a verified receipt of all required information.

Response: HHSC disagrees with these suggestions. HHSC believes that current application practices and the provisions of §370.25 adequately address timeliness of the application process and incomplete applications. HHSC believes that sending a verified receipt will unnecessarily add costs to the program and may slow the application process.

Comment: Two commenters advised changing §370.25(a)(2) from the passive voice to the active voice to clearly identify who is responsible for this step.

Response: HHSC agrees with the comment and revises this rule as suggested.

Comment: Two commenters requested HHSC revise §370.25(b)(1) to more accurately reflect what steps TCP takes when it receives an incomplete application due to a missing signature. The commenters believe the rule would be clearer by changing the words "and returns the application" to "then produces and mails an application back."

Response: HHSC agrees with the comments that §§370.25(a)(2) and (b)(1) require further detail and revises these rules as suggested.

Comment: Three commenters expressed concerns regarding §370.30 (entitled "Applicant Rights"). The commenters suggested the rule should include additional assurances that applicants will be asked for personal information only if it is essential. One commenter requested the addition of four provisions that ensure the following applicant rights: the right to be informed of the reason for the denial, and how and by what date to make a request for review; the right to receive with the enrollment package, information regarding timelines for enrollment, and "next-month" coverage deadlines; the right to not have to provide information that is not essential to an eligibility determination; and the right to petition for a change in cost sharing obligations based on changes in income during the 12-month coverage period. The commenters suggested the procedural protections for such a change be identical to those detailed in §§370.51, 370.52, and 370.53.

Response: HHSC believes that Subchapter B, Division 5 of the rules provides sufficient applicant protections and procedural safeguards. However, as we review the new federal regulations regarding applicant and enrollee protections and evaluate the need for further changes to our rules, we will take these comments into consideration. No change to §370.30 was made based on these comments.

Comment: One commenter pointed out a grammatical error preceding "TCP" in §370.30 (3).

Response: The grammatical error in §370.30 (3) is corrected.

Comment: Two commenters expressed concern regarding proposed §370.31. Specifically, the commenters disagreed with enacting any form of permanent ineligibility of a child for CHIP benefits because of the misrepresentations of an applicant. One commenter suggested the proposed rule in §370.31 illustrates the problem with the proposed definition of "applicant," who generally will be a parent or guardian (except for an emancipated minor) and is not eligible for CHIP in the first place. The commenters recommended that children not lose access to CHIP coverage as the result of the misdeeds of a parent or guardian. Although commenters believe it is proper for the State to pursue restitution for fraudulently received benefits, they feel there are simply no circumstances under which it is in the interest of the State to deny children benefits for which they are truly eligible.

Response: HHSC agrees with these comments and understands commenters' concerns. We agree that eligible children

should not be held responsible for misrepresentation of information from the applicant. Section 370.31 (b) is revised to clarify that it is the applicant who is held responsible for fraudulent information. HHSC revises the language in subsection (b)(2) because adults in fact are not eligible for CHIP. This change eliminates the possibility of holding a child (unless he or she is an emancipated minor) responsible for the actions of the applicant.

Comment: Two commenters suggested that the 30-day standard for making a CHIP eligibility determination be articulated in Division 3 or elsewhere in the rules. One commenter also suggested the proposed rules should clearly apply these sections to the plan created under Chapter 63 of the Health and Safety Code.

Response: HHSC agrees with the commenter regarding the 30-day standard and have revised § 370.40(b) accordingly. It is unnecessary to change the rules in response to the second comment because §370.1 and §370.2 provide that chapter 370 also implements the plan required by chapter 63, Health & Safety Code.

Comment: One commenter suggested that §370.40 directly precede §370.48 and §370.49 for clarity regarding automatic screening. Commenter also stated the rule should make clear that the CHIP determination be made not later than the 30th day after the date a complete application is submitted on behalf of the child, unless the child is referred to Medicaid. Section 62.104(f) of the Texas Health and Safety code dictates that the "commission must require" this 30-day rule.

Response: HHSC appreciates the comment regarding §370.40 but does not believe it is necessary to move the language as requested. HHSC agrees with the commenter and revises §370.40(b) to include a reference to the 30-day rule.

Comment: One commenter advised it was the intent of the Texas Legislature that children be able to access CHIP coverage from birth and strongly urged HHSC to add language to §370.42 allowing for the enrollment of newborns who may currently fall in the 185-200% FPL group and thus be able to access Medicaid's retroactive benefits for newborns. One commenter requested simplification of §370.42.

Response: HHSC disagrees with the commenter's request to add language to §370.42 regarding enrollment of newborns. We believe that such language is unnecessary because in most of these cases, the addition of the infant as a budget group member will cause the family's FPL to fall within the Medicaid income range and make the newborn and mother eligible for retroactive benefits. HHSC agrees that §370.42(a) should be simplified and revises it as suggested.

Comment: One commenter requested clarification regarding §370.43, on whether or not full benefits under CHIP are only available within the Covered Service Area, and that benefits beyond the CHIP Service Area are for emergency services only. The commenter also questioned whether children who do not live in Texas, but whose parent, under court order to provide the children's insurance, does live in the state, are eligible for CHIP.

Response: The commenter's questions relate to the scope of coverage under CHIP and not to eligibility for CHIP benefits. Scope of coverage and benefits will be addressed in subsequent proposed rules. Therefore, no revision is necessary to §370.43. In response to the commenter's second question, the child must be a Texas resident to be eligible for CHIP.

Comment: Two commenters suggested that the use of undefined terms in §370.43(e) to describe non-U.S. citizens may be confusing and requests that HHSC specifically reference children deemed to be qualified aliens under a "VAWA self-petition" in this listing. Commenter also recommends HHSC define the verification requirements to prove a child is a "qualified alien" or a "non-citizen lawfully admitted as a resident." Commenter attached a matrix provided by the National Immigration Law Center (NILC) to be used for additional documents that may be available to immigrants and requested HHSC add language in the rule referencing these documents. Commenter questions why there is a reference to THKC in §370.43(f) when they are no longer taking enrollment.

Response: HHSC agrees with commenter and revises §370.43(e) to include additional verification requirements. However, the suggestion that we adopt the full NILC list of forms as recommended by one commenter is not incorporated into the language because the list of approved documents is subject to change and could necessitate a rule change every time a form was added or deleted. HHSC believes this revision will encompass any INS-approved forms. HHSC agrees with the commenter there is no longer a need to reference THKC in §370.43(f) and deletes subsection from the rule.

Comment: Two commenters requested HHSC to further define the "business expenses" that an applicant may deduct in §370.44(b)(2).

Response: HHSC disagrees with the commenter's recommendation to further define the "business expenses" an applicant may deduct in §370.44(b)(2). Defining a specific list could limit TCP's flexibility in evaluating applications.

Comment: One commenter requested clarification of the statement, "All budget groups must pass the net income test," which appears in §370.44(e)(1)(C)."

Response: In response to this comment, HHSC provides a definition of "net income test" in §370.44(e)(1)(B).

Comment: One commenter indicated that it is difficult to understand in §370.44(e)(2) what an applicant may deduct.

Response: HHSC disagrees with commenter. We believe that §370.44(e)(2) clearly outlines the types of deductions an applicant may take. In addition, subsection (D) was added to clarify that TCP deducts the first $50 of the total child support payments the budget group receives.

Comment: Three commenters suggested the amount of the deductions allowed for dependent care in §370.44(e)(2)(b) be raised to reflect the actual costs for the care of a dependent child or disabled adult.

Response: HHSC disagrees with commenter's request. In order to avoid improperly enrolling Medicaid-eligible children into CHIP, CHIP rules regarding income deductions must be consistent with Medicaid policy.

Comment: Other commenters encouraged the commission to exempt government benefits from countable income.

Response: For the reasons stated above, HHSC cannot make the change requested by the commenters.

Comment: One commenter pointed out a typographical error in §370.44(e)(2)(C).

Response: HHSC has corrected the typographical error in §370.44(e)(2)(C).

Comment: One commenter requested that HHSC make clear in §370.44(g)(3) that verification is required only for the income of budget group members. The commenter also asked for clarification on how many paychecks an applicant must provide and to define the time for which an employer must verify income.

Response: HHSC disagrees with commenter that further clarification is needed to ensure applicants understand that verification is required only for the income of budget group members. Section 370.44(a)(2), provides that "TCP must consider the income of all persons included in the budget group" and repeatedly uses the term "budget group" in an effort to eliminate confusion regarding whose income verification is required. HHSC agrees with commenter that §370.44(g)(3) is unclear about how many paychecks or child support checks are needed for verification and adds the language "one or more" to this section. This standard also applies to employers who verify income.

Comment: Two commenters asked that HHSC clarify in §370.46(a) that a child subject to the waiting period has the right to apply during such waiting period.

Response: HHSC agrees with this comment and revises §370.46(a) to accurately reflect that a child who is otherwise eligible for CHIP, but subject to the waiting period, has a right to apply and be enrolled after the 90-day waiting period.

Comment: One commenter also urged the commission to exempt from the 90-day waiting period any child who meets the eligibility requirements for the CSHCN (Children with Special and Complex Health Care Needs) program.

Response: We disagree with the comment that we should exempt CSCHCN-eligible children from the waiting period. Section 370.46 implements §62.154, Health and Safety Code, which does expressly provide an exemption from the waiting period for children with special and complex health care needs. We believe this change requires legislation.

Comment: One commenter requested HHSC delete from §370.46(c)(1)(A) the words "due to," and eliminate sections (i), (ii), and (iii).

Response: HHSC disagrees with this comment because it is inconsistent with the language of §62.154, Health and Safety Code.

Comment: Commenter also noted in §370.46(c)(4) that the reference to subsection (c) should be changed to "(d)."

Response: We agree with the comment and have incorporated the suggested change.

Comment: Three commenters recommended HHSC revise §370.48(1) because, as written, it indicates that if at least one child appears to meet Medicaid income eligibility standards, TCP transfers the application to TDHS. The commenters find the phrase "at least one child" confusing.

Response: HHSC agrees with commenters that the "at least one child" language in §370.48(1) is confusing and substitutes "a child" at the beginning of this rule.

Comment: One commenter asked that §370.48(1)(B) be revised to require TCP to notify the family of its potential Medicaid eligibility in writing and provide guidance regarding TDHS's role for follow-up with the family.

Response: HHSC agrees with comment and adds §370.48(1)(C) to clarify that TCP will notify the family in writing of its potential Medicaid eligibility and provide guidance regarding TDHS's role for follow-up with the family.

Comment: One commenter asked that HHSC define the "Medicaid assets" that TCP reviews to determine whether a child becomes CHIP-eligible or is referred to Medicaid. The commenter further asks HHSC to define the "guidance" TDHS will provide an applicant who is referred to Medicaid.

Response: HHSC disagrees with this comment because we believe CHIP rules should not duplicate Medicaid eligibility rules, which govern the examination of an applicant's assets for Medicaid eligibility purposes. Similarly, HHSC is not authorized to adopt rules that govern TDHS guidance to Medicaid applicants.

Comment: Two commenters questioned HHSC's use of "permissive" language in §370.49 ("may" deem) because it is inconsistent with the mandatory language in the CHIP statute at §62.104(d).

Response: HHSC disagrees with comment. Section 370.49 in part implements §62.104(d), Health and Safety Code. We believe the adopted rule is consistent with the plain language of this statute. HHSC therefore declines to change the rule as requested.

Comment: Two commenters expressed concern about the meaning of the phrase "failure . . . to comply with other cooperation criteria (for Medicaid)" in proposed §370.49.

Response: HHSC understands the concern and deletes this phrase from the adopted rule.

Comment: One commenter requested HHSC to add language to §370.51 that allows a family to request a review by TCP in writing or by telephone.

Response: HHSC disagrees with the comment that the rules should allow a request for review to be made by telephone. We believe that telephone requests are more difficult to document and verify. In contrast, requests made in writing can be more reliably documented and will include the signature of the individual, providing further integrity to the process.

Comment: One commenter indicated that an applicant should not have to request a review before being informed of the reasoning behind a denial.

Response: HHSC disagrees with this comment. Currently, TCP referral letters state the reason for CHIP ineligibility and provide the applicant instructions on how to obtain a review.

Comment: One commenter recommended the denial letter should include the address and timeframes in which to request a review, TCP response timeframe, and the address and phone numbers of several legal services organizations.

Response: This comment does not address language in the proposed rules; however, we will take these comments, as well as pending federal regulations on the subject, into consideration for future implementation or rulemaking.

Comment: One commenter noted that in §370.52(a) a reference was made to requests being made "by telephone or in writing" although §370.51(b) states the request for review is to be in writing. One commenter requested HHSC delete the wording "whether the request was submitted by telephone or in writing" from this section for consistency.

Response: HHSC concurs there is inconsistency between §370.52(a) and §370.51(b) and deletes the reference to submitting requests by telephone or in writing as suggested.

Comment: Two commenters requested corrections be made to §370.52(b)(1)-(3) changing "5th" to "10th" and substituting the word "family" for "requester."

Response: HHSC revises §370.52(b)(1)-(3) by changing "5th" to "10th."

Comment Several commenters were generally concerned that families would not receive important information regarding the request for review process.

Response: HHSC revises §370.52 (by substituting the term "family" for "requester."

Comment: Two commenters recommended revisions to §370.53(a) and (b) to allow applicants 30 days to request reconsideration by HHSC in writing or by telephone, and grant a right to a hearing on the request for reconsideration.

Response: HHSC believes commenters' request that applicants be allowed additional time to request a review of a TCP eligibility or temporary enrollment decision is reasonable; however, HHSC believes 20 working days is a more reasonable amount of time and will facilitate the prompt and efficient disposition of these matters. HHSC therefore revises §370.53(b) to reflect 20 working days instead of 15. HHSC disagrees that CHIP members are entitled to a hearing on requests for reconsideration and believes that the adopted rules provide sufficient and reasonable safeguards to permit a prompt and efficient review of eligibility and temporary enrollment decisions.

Comment: One commenter requested HHSC substitute "20 working days" for "15 working days" in §370.53(c).

Response: HHSC believes commenters' request that applicants be allowed additional time to request reconsideration by HHSC is reasonable and therefore revises §370.53(b) to reflect 20 working days instead of 15.

Comment: One commenter suggested a list of additional applicant rights be added to §370.53.

Response: HHSC appreciates commenters' concerns regarding applicant rights. HHSC is reviewing pending federal regulations and will consider these comments when changes are made to the CHIP state plan and administrative rules to reflect the final federal regulations.

Comment: One commenter requested HHSC redraft and combine subsections (b) and (e) of §370.54. The commenter also asked for clarification in §370.54 regarding repayment of costs of coverage during temporary enrollment if enrollment is not continued.

Response: Subsections (b) and (e) are simply intended to inform the public of the importance of including factual information in a request for review or reconsideration and the consequences of failing to include such information in the request. HHSC does not believe a change in the adopted rule is necessary in response to this comment. HHSC, however, agrees with the comment concerning repayment of costs of coverage and has added subsection (g) to clarify that the state will not seek repayment for health care costs during temporary enrollment for a child who ultimately is determined to be ineligible for CHIP.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §§370.1-307.4, 370.10

These rules are adopted under authority granted to the Commission by Government Code §531.033, which authorizes the commissioner of health and human services to adopt rules necessary to implement the commission's duties, and under Health and Safety Code §62.051(d), which directs the Commission to adopt rules as necessary to implement the Children's Health Insurance Program.

The adopted rules implement chapters 62 and 63, Health and Safety Code.

The new rules are adopted under §62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The adopted rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.1. Purpose.

This chapter implements the State Children's Health Insurance Plan (CHIP), authorized under chapters 62 and 63, Health and Safety Code, in a manner that is timely, efficient, fair, and that promotes access to quality and economical health care for eligible children and their families in Texas.

§370.2. Scope.

(a) The CHIP is a state-designed child health insurance plan authorized under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.), and chapters 62 and 63, Health and Safety Code, which provides access to low-cost preventive and primary health care to children, including children with special health care needs, in certain low-income families of this state.

(b) The CHIP is administered, in part, in accordance with the state plan for children's health insurance, filed by the Health and Human Services Commission with the federal Secretary of Health and Human Services, which prescribes the general conditions under which joint federal state child health insurance plan funds will be administered in Texas.

§370.3. Non-entitlement.

The establishment of CHIP does not create an entitlement to health insurance benefits or health care or to assistance in obtaining health insurance or health benefits.

§370.4. Definitions.

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

(1) "Administrative Contractor" means the entity that performs administrative services for the CHIP under contract with the Commission.

(2) "Alien" means a person who is not a native born or naturalized citizen of the United States of America.

(3) "Applicant" means an individual who lives with the child and applies for health insurance coverage on behalf of the child. An applicant can only be:

(A) a child's custodial parent, whether natural or adoptive;

(B) a child's grandparent, relative or other adult who provides care for the child;

(C) an emancipated minor applying for himself/herself; or

(D) a child's step-parent.

(4) "Application" means the standardized, written document issued by TCP that an applicant must complete to apply for health care benefits or coverage through CHIP.

(5) "Application completion date" means the calendar date a completed CHIP application is entered into the TCP database.

(6) "Budget Group" means the group of individuals who live in the home with the child for whom an application for health insurance is submitted and whose information is used to establish family size and calculate income. Individuals receiving Supplemental Security Income payments are not included in the Budget group. Budget group members include only:

(A) the child seeking health insurance benefits;

(B) the child's siblings who live with the child (biological, adopted, or step-siblings);

(C) the child's natural or adoptive parents; or

(D) the child's step-parent.

(7) "Children's Health Insurance Program" or "CHIP" means the Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C, §§ 1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(8) "Commission" means the Health and Human Services Commission.

(9) "Completed application" means an application entered into the TCP database that includes all information required under §370.23.

(10) "Countable income" means any type of payment that is a regular and predictable gain or a benefit to a budget group that is not specifically exempted. Regular and predictable income is income received in one month that is either likely to be received in the next month and/or was received on a regular and predictable basis in past months. It does not include income that is not received on a regular and predictable basis in past months, or is received by the child or sibling member of the budget group who is enrolled in school.

(11) "Children's Health Insurance Program Service Area" or "CSA" means one of the designated areas in the state that is served by one or more of the CHIP Health Plans or the CHIP Exclusive Provider Organization.

(12) "Community-based Organization" or "CBO" means an organization that contracts with the Commission to provide outreach services to applicants for CHIP coverage.

(13) "Dental Plan" means an insurance company, health maintenance organization, or other entity regulated by the Texas Department of Insurance that contracts with the Commission to provide dental benefits coverage to CHIP members.

(14) "Department" or "TDH" means the Texas Department of Health.

(15) "Income deductions" means standardized deductions that are applied to the countable income of the budget group during the CHIP application process.

(16) "Enrollment" means the process by which a child determined to be eligible for CHIP is enrolled in a CHIP health plan serving the CHIP Service Area in which the child resides.

(17) "Exempt income" means income received by the budget group that is not counted in determining income eligibility.

(18) "FPL" means Federal Poverty Level Income Guidelines.

(19) "Health Plan" means a licensed health maintenance organization, indemnity carrier, or authorized exclusive provider organization that contracts with the Commission to provide health benefits coverage to CHIP members.

(20) "Income eligibility standard" means monthly net budget group income at or below 200% of current (FPL). A child meets the CHIP income eligibility standard if the budget group's monthly net income exceeds the income eligibility standard applied to the child in the Texas Medicaid Program and is at or below the 200% of FPL CHIP monthly income standard.

(21) "Member" means a child enrolled in a CHIP Health Plan.

(22) "Net budget group income" means monthly countable income minus deductions.

(23) "Qualified alien" means an alien who applies for CHIP coverage and who, at the time of such application, satisfies the criteria established under 8 U.S.C. §1641(b).

(24) "SSI" means Supplemental Security Income.

(25) "State fiscal year" means the 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

(26) "TexCare Partnership" or "TCP" means the name designated to publicly identify the operational entity that provides administrative services for the CHIP program.

(27) "Texas Healthy Kids Corporation" or "THKC" means the non-profit corporation established under chapter 109, Health & Safety Code.

(28) "TDHS" means the Texas Department of Human Services.

§370.10. Duties and Responsibilities of the Commission.

The Commission is the state agency whose responsibilities include, but are not limited to, the following:

(1) developing a state-designed CHIP to obtain health benefits coverage for children in low-income families in a manner that qualifies for federal funding under Title XXI of the Social Security Act;

(2) making policy for CHIP, including policy related to covered benefits provided under the program, a duty which the Commission may not delegate to another agency or entity;

(3) overseeing the implementation of CHIP;

(4) adopting necessary rules to implement CHIP;

(5) contracting with appropriate individuals and organizations to provide CHIP benefits coverage, community-based outreach, and other services related to the implementation or operation of the CHIP program;

(6) conducting a review of each entity that enters into a contract with the Commission to ensure that the entity is available, prepared and able to fulfill the entity's obligations under the contract; and

(7) ensuring that amounts spent for CHIP administration do not exceed any limit on administrative expenditures imposed by federal law.

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 March 15, 2001.

TRD-200101540
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL AND PROCESSING

DIVISION 1. TEXCARE PARTNERSHIP APPLICATION PROCESS

1 TAC §§370.20-370.25

The new rules are adopted under §62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The adopted rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.20. Availability and method of initiating an application.

The TCP application process may be initiated:

(1) in writing from an application booklet available from TCP upon telephone request. The application booklet may also be available through CBOs, local organizations that support CBO outreach efforts, and participating CHIP health care providers;

(2) by computer using printable applications available over the Internet from the TCP website; or

(3) by telephone through TCP's toll-free telephone number or through TDD.

§370.21. Application assistance.

An applicant for CHIP coverage may obtain assistance completing the application:

(1) by telephone from TCP staff during hours that are posted on the TCP website or published in applications, brochures, or other marketing media issued or approved by TCP. Telephone applications may also be accepted by TCP staff;

(2) by telephone or in person from a local CBO; or

(3) by telephone or in person from a licensed insurance agent or broker that contracts with a CHIP health plan or CBO, provided the applicant is not directly or indirectly induced to enroll in a specific health plan.

§370.22. Completion of telephone applications.

If an applicant telephones to apply, TCP completes as much of the application as possible over the telephone, prints it, and mails it to the applicant. The applicant is responsible for completing any missing information, signing the application, attaching all required verifications, and returning it to TCP.

§370.23. Contents of completed applications.

A completed application must include the following:

(1) Information concerning the applicant, consisting of:

(A) The applicant's full name;

(B) The applicant's home address (including city, county, state and zip code); and

(C) The applicant's mailing address (including city, county, state, and zip code) if different from the home address;

(2) Information concerning each child for whom an application is filed, consisting of:

(A) The child's full name;

(B) A description of the applicant's relationship to the child;

(C) The child's date of birth;

(D) The child's status as a United States citizen or a legal resident;

(E) The full name of the child's mother or father;

(F) If the child has income reported on the application, the child's school status; and

(G) Confirmation by the applicant whether the child currently has health insurance, Medicaid, or had health insurance within 90 days prior to the date the application is being completed.

(3) Information concerning the budget group, including:

(A) budget group income, including the name of the person receiving the income, the employer or source of the income, the amount received, and the frequency of receipt;

(B) whether anyone in the budget group is pregnant;

(C) whether anyone in the budget group pays for child or disabled adult care to permit a budget group member to work or receive training;

(D) whether anyone in the budget group pays child support and/or alimony to anyone outside the home;

(4) the applicant's original signature and the date of signature; and

(5) required income, immigration status, and income deduction verifications.

§370.24. Electronic Entry of Application Information.

Within three working days from receipt of an application TCP:

(1) enters the application, regardless of origin or completeness, into a database;

(2) date-stamps the application; and

(3) assigns a unique application identification number.

§370.25. Incomplete applications.

(a) Missing information.

(1) TCP monitors the status of entered, incomplete application information.

(2) If it receives an incomplete application, TCP sends the applicant an initial follow-up letter requesting the missing information. TCP will send the initial follow-up letter within two working days from the date the application information is entered into the database.

(3) If TCP does not receive the requested missing information within 14 calendar days, TCP sends the applicant a second follow-up letter requesting the missing information.

(b) Missing signatures.

(1) If an application is incomplete because it lacks the signature of the applicant, or a parent, or the step-parent in the budget group, TCP enters the application information into the database, then produces and mails an application back to the applicant for signature.

(2) The application remains incomplete until TCP receives the signed application and enters receipt of the signed application into the database.

(c) Termination of an incomplete application.

(1) If an application remains incomplete 90 calendar days from the date TCP entered the incomplete application information into the database, the application process is terminated.

(2) An applicant whose application is terminated because it is incomplete must complete a new TCP application before CHIP coverage is provided.

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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DIVISION 2. APPLICANT RIGHTS AND RESPONSIBILITIES REGARDING APPLICATION AND ELIGIBILITY

1 TAC §370.30, §370.31

The new rules are adopted under §62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The adopted rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.30. Applicant rights.

An applicant has the right to:

(1) be treated fairly and equally regardless of race, color, religion, national origin, gender, political beliefs or disability;

(2) request a review and/or reconsideration of an adverse decision related to CHIP eligibility, disenrollment, or increased cost sharing

(3) file a complaint, in writing or by telephone, about the application process for reasons other than an eligibility decision, disenrollment, or an increase in cost-sharing within 30 working days from the date of an incident. TCP must respond in writing within 15 working days.

§370.31. Applicant responsibilities.

(a) An applicant is responsible for:

(1) correctly and truthfully completing the TCP application form regardless of where the application was obtained;

(2) providing all required verifications; and

(3) mailing the completed, signed application along with all required verifications to TCP.

(b) If an applicant intentionally misrepresents information on an application to receive a program benefit, the applicant:

(1) is responsible for reimbursing the state for the cost of improperly paid benefits; and

(2) may be subject to prosecution under the Texas Penal 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.

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DIVISION 3. ELIGIBILITY DETERMINATION

1 TAC §370.40

The new rules are adopted under §62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The adopted rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.40. Determining Eligibility.

(a) Once TCP enters a completed application into the database, the automated eligibility system passes the information through an eligibility screen to determine potential eligibility for CHIP, Medicaid, or THKC.

(b) CHIP eligibility is determined not later than the 30th day after the date a complete application is submitted on behalf of a child, unless the child is referred for Medicaid application in accordance with the criteria specified in Sections 370.43 through 370.47.

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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DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §§370.42-370.49

The new rules are adopted under §62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The adopted rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.42. Age limits.

(a) A child is eligible for CHIP from the day he or she is born until the end of the month in which the child reaches age nineteen.

(b) The applicant states the child's birth date on the application form. Verification of age is not required.

§370.43. Citizenship and residency.

(a) An eligible CHIP child must be a citizen of the United States of America or a non-citizen who is a qualified alien.

(b) An eligible CHIP child must be a Texas resident. A child is a Texas resident if:

(1) the child's fixed residence is located in Texas and the child's family intends for the child to return to Texas after any temporary absences;

(2) the child has no fixed residence but the child's family intends to remain in the state; or

(3) the child has recently moved to Texas and the child's family intends to remain in the state.

(c) A child does not lose status as a state resident because of temporary absences from the state. No time limits are placed on a child's temporary absence from the state.

(d) There are no durational requirements for residency. A child without a fixed residence or a new resident in the state who intends to remain in the state is considered a Texas resident.

(e) The applicant states the child's citizenship, lawful resident status and Texas residency on the TCP application form. If the applicant states that the child is a United States citizen and a Texas resident, no verification of this status is required. If the applicant states the child is not a United States citizen, the applicant must provide a photocopy of a Resident Alien Card (Green Card), I-94 Card (White Visitor Card), I-688-B, I-766, I-551, an INS asylum letter, an order from an immigration judge granting asylum or showing deportation was withheld, employment authorization, passport or visa, or any other U. S. Immigration and Naturalization Service approved document that demonstrates that the child is a qualified alien.

§370.44. Income.

(a) General principles.

(1) Income is either countable income or exempt income.

(2) TCP must consider the income of all persons included in the budget group.

(b) Earned income is countable income received by the budget group and includes:

(1) Military pay and allowances for housing, food, base pay, and flight pay;

(2) Self-employment income (minus business expenses). A person is self-employed if he is engaged in an enterprise for gain, either as an independent contractor, franchise holder, or owner-operator. If someone other than the earner withholds either income taxes or FICA from the earner's earnings, the earner is an employee and is not self-employed;

(3) Wages, salaries, and commissions; and

(4) On-the-Job Training payments funded under the Workforce Investment Act of 1998, 29 U.S.C. §§ 2801-2872, if received by an adult member of the budget group.

(c) Unearned income is countable income received by the budget group and includes:

(1) Cash contributions received on a regular and predictable basis;

(2) Child support payments, except for the first $50 from the budget group's total monthly child support payments;

(3) Disability insurance benefits;

(4) Government-sponsored program payments, (except for Supplemental Security Income payments); however, payments from crisis intervention programs are exempt;

(5) Pensions;

(6) Retirement, survivors, and disability insurance (RSDI) benefits and other retirement benefits (minus the amount deducted from the RSDI check for the Medicare premium and any amount that is being recouped for a prior overpayment);

(7) Income from property, whether from rent, lease, or sale on an installment plan;

(8) Unemployment compensation;

(9) Veterans Administration (VA) benefits other than benefits that meet a special need;

(10) Worker's compensation benefits; and

(11) Alimony.

(d) All income that is not included as countable earned income or countable unearned income is exempt income.

(e) Net income test and deductions.

(1) Net income test.

(A) The net income test is used to determine eligibility.

(B) Net monthly income is gross monthly income minus income deductions.

(C) A child is eligible if the budget group's net monthly income, after rounding down cents, is equal to or less than the 200% of FPL for the budget group's size. All budget groups must pass the net income test.

(2) Income deductions. TCP makes the following deductions from countable income :

(A) TCP allows a standard work-related expense deduction of $120 a month for each employed budget group member;

(B) TCP deducts payments for the actual costs for the care of a dependent child or disabled adult, if necessary for employment or to receive training. The maximum dependent care deduction is $200 per month for each dependent child and $175 per month for each dependent disabled adult.

(C) TCP deducts payments for the actual costs of alimony or child support paid to an individual who is not a budget group member.

(D) TCP deducts the first $50 of the total child support payments the budget group receives.

(f) Computing countable income. TCP converts income received non-monthly to monthly amounts by:

(1) dividing yearly income by 12;

(2) multiplying weekly income by 4.33;

(3) adding amounts received twice a month; or

(4) multiplying amounts received every other week by 2.17.

(g) Verification of current countable income.

(1) Countable income must be verified unless the amount of income reported by the applicant makes the child ineligible.

(2) TCP verifies all countable income at initial application.

(3) Verification may include, but is not limited to, obtaining:

(A) copies of one or more paycheck stubs issued within the immediately preceding 60-day period;

(B) a copy of the most recent federal income tax return;

(C) a copy of the applicant's most recent Social Security statement;

(D) copies of one or more child support checks; or

(E) written confirmation from an employer of the applicant's income.

(h) Verification of income deductions. Verification may include, but is not limited to, obtaining:

(1) a copy of a paycheck stub showing garnishment of wages for a child support deduction if the paycheck clearly indicates the deduction is for child support;

(2) a copy of a hand written statement authored and signed by the custodial parent verifying the child support deduction; or

(3) a copy of a divorce decree specifying child support payments.

§370.45. Medicaid Eligibility.

A child who meets all Medicaid eligibility requirements is not eligible for CHIP.

§370.46. Waiting period.

(a) A child who is otherwise eligible for CHIP may not be enrolled if the child was covered by health insurance at any time within the 90 days immediately preceding the submission of a CHIP application. After the 90-day waiting period, the child may be enrolled.

(b) Collateral health benefits provided to a CHIP-eligible child under a different type of insurance, such as workers compensation or personal injury protection under an automobile policy, is not health insurance coverage for purposes of this section.

(c) The 90-day waiting period specified in paragraph (a) of this section does not apply to a child under the following circumstances:

(1) The child's budget group lost insurance coverage for the child because:

(A) The employment of a member of the Budget Group was terminated due to:

(i) a layoff;

(ii) a reduction-in-force; or

(iii) a business closure;

(B) Insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) terminated;

(C) The marital status of a parent of the child has changed;

(D) The child's Medicaid eligibility was terminated because:

(i) the budget group's earnings or resources exceed allowable amounts for Medicaid eligibility; or

(ii) the child reached an age for which Medicaid benefits are no longer available; or

(E) Other circumstances similar to those described in this subparagraph that result in an involuntary loss of insurance coverage;

(2) The child had insurance coverage provided by THKC, ERS, Laredo CHIP Pilot, or CHIP in another state;

(3) The child's health insurance coverage costs more than 10 percent of the budget group's net monthly income; or

(4) The Commission grants an exception to the waiting period under paragraph (d) of this section.

(d) The Commission may grant an exception to the 90-day waiting period prescribed by this section if it determines good cause exists to grant an exception and either:

(1) An applicant requests an exception:

(A) Prior to submission of an application;

(B) At the time of application; or

(C) As part of a request for review or reconsideration of a denial of eligibility under sections 370.52 or 370.54 of this chapter; or

(2) The Commission reaches a determination based either on information provided by an applicant or information obtained by the Commission.

§370.47. State Kids Insurance Program.

Children of employees who receive health insurance coverage through the Uniform Group Insurance Program (UGIP) administered by the Employee's Retirement System of Texas are ineligible for CHIP. These children qualify for the State Kid's Insurance Program (SKIP) administered by the Employee's Retirement System of Texas if they otherwise meet the eligibility criteria for CHIP.

§370.48. Completion of Application Process.

If the TCP application screening indicates:

(1) A child in the budget group appears to meet Medicaid income eligibility requirements, TCP sends the applicant a Medicaid Assets Letter to collect information about the budget group's assets and reviews the information returned by the family. If, following this review, the budget group's assets do not exceed Medicaid limits, TCP:

(A) electronically transfers the application to the Texas Department of Human Services (DHS) within one working day of the application completion date for a Medicaid eligibility determination;

(B) delivers the paper application to the appropriate DHS office within two additional working days; and

(C) notifies the applicant of potential Medicaid eligibility in writing with guidance regarding Medicaid's role for follow-up with the family.

(2) A child in the budget group does not meet one or more Medicaid eligibility requirements, the budget group's net income is at or below 200% of FPL, and the budget group meets all other CHIP eligibility requirements, TCP:

(A) Determines that the child is eligible for CHIP; and

(B) Notifies the applicant of the CHIP eligibility by letter and includes a CHIP enrollment packet

(3) A child in the budget group does not meet one or more Medicaid or CHIP eligibility requirements and the budget group's net budget group income exceeds 200% of FPL, TCP:

(A) electronically transfers the application to THKC within one working day of the application completion date; and

(B) Notifies the applicant in writing of the referral to THKC.

§370.49. Medicaid Referrals.

If a TCP applicant child is referred to Medicaid and subsequently determined ineligible for Medicaid, Medicaid denies eligibility and may deem the child eligible for CHIP based on the budget group's income and/or assets, or the child's citizenship or immigration status.

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-200101544

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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DIVISION 5. REVIEW AND RECONSIDERATION OF ELIGIBILITY DENIALS AND TEMPORARY ENROLLMENT

1 TAC §§370.50-370.54

The new rules are adopted under §62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The adopted rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.50. Matters subject to review and reconsideration of Eligibility denials and Temporary Enrollment.

(a) An applicant that is dissatisfied or disagrees with certain decisions made by or on behalf of the CHIP program may request:

(1) a review of the initial decision; and

(2) if the applicant is dissatisfied with the outcome of the review, a reconsideration of the review of the decision.

(b) An applicant may request a review and/or reconsideration of the following decisions:

(1) denial of CHIP eligibility;

(2) disenrollment of a child; or

(3) increase in the budget group's cost-sharing obligation.

§370.51. Deadline and method for requesting review of initial decision.

(a) An applicant may request a review of an initial CHIP decision described in section 370.50(a) within 30 working days from the date the applicant received written notice of the decision.

(b) An applicant may request a review by contacting TCP in writing.

§370.52. Disposition of request for review.

(a) TCP must complete its review of the initial decision within 10 working days of receipt of the request for review.

(b) TCP must notify the requester in writing of the results of its review of the initial decision not later than the 10th day following receipt of the request. The written notification must:

(1) explain the reason for the initial decision;

(2) inform the requester whether the initial decision was reversed following TCP's review; and

(3) if the initial decision is upheld, inform the requester of its right to request reconsideration of the decision by HHSC if the requester disagrees with the decision and provide instructions for submitting a written request for reconsideration by HHSC.

§370.53. Request for reconsideration by HHSC.

(a) An applicant that is dissatisfied or disagrees with the result of TCP's review of an initial decision may request reconsideration of the TCP review by HHSC.

(b) An applicant must request reconsideration by HHSC in writing within 20 working days from the date the applicant received the written notice of the result of the TCP review.

(c) Within 20 working days from the date TCP receives the written request for reconsideration, HHSC must complete the reconsideration and notify the applicant in writing of its final decision.

§370.54. Temporary enrollment pending disposition of review or reconsideration.

(a) There is no retroactive enrollment in CHIP.

(b) If an applicant's request for review by TCP of an adverse eligibility decision includes factual information that could have an impact on the decision, TCP will approve temporary enrollment of the child pending completion of the review and/or reconsideration by HHSC of the eligibility decision.

(c) A child will remain enrolled until the TCP review and/or HHSC reconsideration process is complete.

(d) If the initial eligibility decision is reversed, the child's 12 months of eligibility continues. If the review/reconsideration confirms the initial decision of ineligibility, the child is disenrolled as of the next cut-off date.

(e) TCP will not approve temporary enrollment if the applicant's request for review/reconsideration includes no factual basis for reversing the initial eligibility decision.

(f) TCP may approve temporary enrollment for a child on the basis of a review only once every 12 months.

(g) If a child who is temporarily enrolled under this section ultimately is determined ineligible for CHIP, no repayment for health care costs during the period of temporary enrollment will be sought by TCP or HHSC.

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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Marina S. Henderson
Executive Deputy Commissioner
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For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission (commission) adopts amendments to Chapter 35 concerning the Eradication of Brucellosis in Cattle, without changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12874) and will not be republished. This adoption amends current §35.4 which provides for entry, movement, and change of ownership requirements.

The rule is being adopted to clarify that the vaccination requirements for cattle entering Texas from other states apply to non-vaccinated female cows. Correspondingly, the rule specifically exempts female cattle from other free states as well as specifies the vaccination requirements for female cattle from other than free states. The reason for the change is to recognize and accept similar entry requirements for other states.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing.

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-200101569
Gene Snelson
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For further information, please call: (512) 719-0714

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SUBCHAPTER B. ERADICATION OF BRUCELLOSIS IN SWINE

4 TAC §35.49

The Texas Animal Health Commission (commission) adopts the repeal of §35.49 in Chapter 35, concerning Swine, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12551) and will not be republished. This proposal repeals the current requirement for the sale of swine semen as found in §35.49. The commission is repealing the section because the current requirement is also found in §35.48, regarding the Initial Validation and Revalidation of Individual Swine Herd. Section 35.48 (b) (9) provides that "use of swine semen in validated brucellosis-free herds...must be from boars in validated brucellosis-free herds". That requirement reflects the federal Uniform Methods and Rules regarding "swine Brucellosis Control and Eradication" making the requirement in §35.49 to be unnecessary. The commission adopts the repeal of §35.49.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the

Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

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Gene Snelson
General Counsel
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CHAPTER 41. FEVER TICKS

4 TAC §41.2

The Texas Animal Health Commission adopts amendments to Chapter 41, concerning Fever Ticks, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12552) and will not be republished. This amends §41.2 which establishes the tick quarantine zone county by county.

The area to be included in the quarantine area was released from quarantine, with the exception of the Stone Ranch, in the early 1960s, on the basis of a double fence along the Rio Grande River, which became the current quarantine line. This area has stayed mostly tick free, coinciding with a vigorous eradication program in Coahuila. That program is now defunct, as witnessed by the 70-90 percent infestation rate of the stray Mexican cattle that we have apprehended since 1993. We became concerned in 1993 when the Loma Linda Ranch showed to be tick infested. Subsequent infestations in Loma Linda, Pradon Ranch, Stone Ranch, and in Cinco Cattle Co. demonstrate the regular failure of double fences as a tick barrier, and we feel that lack of a buffer zone will result in the escape of ticks to the final area.

The commission is adopting changes to the boundaries of the quarantine zone. The reason for the change is to establish new boundaries in order to have the line follow a man-made barrier which is more secure in impeding the fever tick from re-establishing its presence outside the boundary line. Also, the boundary is being re-established in part to take in certain premises which have had problems with fever ticks in recent years.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 167, §167.003, which provides for general powers and duties of the commission to eradicate fever ticks. Section 167.004 authorizes the commission by rule to define what animals can be classified as exposed to ticks. Section 167.006 authorizes the commission to designate for tick eradication any county or part of a county that the Commission believes contains ticks. Section 167.007 authorizes the Commission to conduct tick eradication in the free area.

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

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Gene Snelson
General Counsel
Texas Animal Health Commission
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CHAPTER 43. TUBERCULOSIS SUBCHAPTER D. MOVEMENT RESTRICTION ZONE (MRZ)

4 TAC §43.30, §43.31

The Texas Animal Health Commission (commission) adopts amendments to Chapter 43, concerning the Eradication of Tuberculosis, with changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12554). There are two nonsubstantive clarifications made to the rules. In §43.30 the term MRZ is utilized without being fully identified in the body of the text as a "Movement Restriction Zone." The full term is added next to the first use of the acronym "MRZ" in §43.30 (a). Also, a clarification is made in §43.30(c)(3) which references another section of these rules, "(b)(4)(D)." The correct reference is "(b)(4)" not "(b)(4)(D)" and that section is corrected to properly reflect that reference. These regulations create a new Subchapter D adding a new §43.30 regarding creation of two different zones or areas within the state of Texas for the purpose of compliance with federal requirements regarding Tuberculosis (TB) in cattle, bison, goats and captive cervids. This adoption also creates a new §43.31 which provides for testing requirements.

The United States Department of Agriculture has recently amended federal regulations implementing the National Cooperative State/Federal Bovine Tuberculosis Eradication Program. The revised program is contained in 9 CFR, Part 77, "Tuberculosis," and in the "Uniform Methods and Rules--Bovine Tuberculosis Eradication" (UMR), January 22, 1999, edition, which is incorporated by reference into the federal regulations. Those federal regulations were just amended and adopted by USDA to become effective on November 22, 2000. The regulations were amended to do the following: (1) Allow a State to be divided into two zones for tuberculosis risk classification; (2) clarify the conditions for assigning a particular risk classification for tuberculosis; and (3) increase the identification and testing requirements that must be done before certain cattle and bison may be moved interstate.

In view of USDA's recognition of establishing different zones within the state based on risk classifications and in order to address the tuberculosis risk associated with the area located in and around the city of El Paso, Texas, the commission is proposing to create a separate zone or area for El Paso and Hudspeth counties due to the prevalence of tuberculosis in that area. The creation of this zone will almost certainly result in the rest of the state of Texas being recognized for a higher status (Accredited TB Free) which requires zero prevalence for three (3) to five (5) years and will in turn allow easier interstate movement.

Bovine tuberculosis (tuberculosis) is a chronic debilitating disease caused by Mycobacterium bovis. The disease primarily

affects cattle but can be transmitted to humans and other animals. The Animal and Plant Health Inspection Service (APHIS) is working cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and, through continued monitoring and surveillance, to prevent its recurrence. Scientific analysis and field observations have identified significant tuberculosis threats that could lead to the spread of the disease in the United States and compromise international and domestic trade in U.S. animals and animal products. These outcomes would threaten producers with losses and consumers with price increases.

Additionally, the U.S. cattle population continues to be threatened by recurring tuberculosis infection of dairy herds in the El Paso, Tx, area. Recent studies and field observations have indicated that the greatest risk of re-infection in the El Paso area is directly related to the proximity of U.S. dairy herds to tuberculosis-infected dairy herds in the Juarez area of Chihuahua, Mexico. Despite ongoing testing of large dairy herds in the El Paso area and removal of tuberculosis-infected animals from those herds, re-infection of U.S. dairy herds in that area continues to occur.

This adoption to classify the state of Texas into two zones for the purposes of establishing different movement requirements for tuberculosis based on the level of risk is based on sound epidemiological principles. The El Paso area has experienced re-occurring infection of dairy animals and the commission believes that it is necessary to prescribe different control measures and procedures for this area in order to address that problem. This lesser zone status for the El Paso area will also allow the rest of the state of Texas to establish a higher status based on the fact that there has not been a TB infected herd outside the El Paso area since 1993.

In order to allow the rest of the state of Texas to establish a higher status under the federal regulations for tuberculosis, the commission has executed a memorandum of understanding with the USDA which will recognize the different status for the different zones. The M.O.U. provides all the detail on how the two agencies will cooperate to establish, implement and administer the TB program in the two different zones. The El Paso and Hudspeth County area will be a TB Modified Accredited Advanced zone and will have test and identification requirements. The balance of the state will be TB Accredited Free with no federal testing requirements for interstate movement. The location of each herd of livestock located in the MRZ will be maintained through a census conducted by state and federal personnel. This will insure that no unauthorized movement in or out of the zone occurs.

The adopted rules define the area for the zone around El Paso and establishes movement criteria both in and out of the zone as well as herd testing requirements.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state. Section 162.009 authorizes the commission to examine, test and retest any cattle as necessary. Section 161.057 authorizes the commission to adopt rules which may prescribe criteria for classifying areas within the state for disease control. The commission may prescribe different control measures and procedures for areas with different classifications.

§43.30. Special Requirements for Movement Restriction Zone (MRZ).

(a) Definition of Zone Boundaries: The Movement Restriction Zone ("MRZ") is defined as a geographic area which includes an Affected Area, where bovine tuberculosis occurs or has historically occurred, and a Surveillance Area where the disease has not been detected, but which serves as a buffer area between the Affected Area and the Free Zone of Texas. The boundaries of the referenced zones and areas are as follows:

(1) MRZ: The area of El Paso County and Hudspeth County which lies within the boundaries established by the Rio Grande River on the West; Loop 375 to FM 659 to US 62/180 on the North; the El Paso County line to I-10 to Spur 148 at Ft Hancock on the East; and Spur 148 to the Rio Grande River on the South.

(A) Affected Area within the MRZ: The area of the MRZ in El Paso County which lies west of I-10, as defined above.

(B) Surveillance Area within the MRZ: The area of the MRZ in El Paso County which lies east of I-10, and all of the MRZ in Hudspeth County, as defined above.

(2) Free Zone: The area of Texas not included in the MRZ.

(b) The movement of livestock out of the MRZ must be strictly controlled. The movement of all cattle, bison, goats, captive cervids, exotic bovids, and camelids shall be documented on a movement certificate issued by an authorized representative of the State or Federal government. (Accepted documents include VS Form 1-27 permits, Certificates of Veterinary Inspection, and state approved certificates for intrastate movement). The certificate shall include an official identification of each animal in the consignment, and the date and results of tuberculosis tests as specified below.

(1) Breeding animals, including cattle, bison, goats, exotic bovids, and camelids, shall be negative to a tuberculosis test within 60 days of movement. Animals from an Accredited herd are exempt from this test requirement.

(2) Feeder animals, including steers, spayed heifers, and heifers restricted to designated feedlots, may be moved without a tuberculosis test.

(3) Slaughter animals may be moved directly to a state or federally inspected slaughter establishment without a tuberculosis test.

(4) Captive cervids must meet the following test requirements for movement from the MRZ:

(A) Animals from Accredited herds may be moved without a tuberculosis test.

(B) Animals from Qualified or Monitored herds shall be negative to a tuberculosis test within 90 days of movement.

(C) Animals less than 12 months of age that originate from an Accredited, Qualified, or Monitored herd, may be moved without a tuberculosis test.

(D) Animals from all other herds shall be negative to two tuberculosis tests conducted at least 90 days apart, with the second test conducted within 90 days of movement. In addition, the animals in a consignment must be separated from all other members of the herd during the testing period.

(c) Importation of cattle, bison, goats, captive cervids, exotic bovids, and camelids into the MRZ:

(1) To a market - All such livestock will keep the tuberculosis status of the Tuberculosis Free Zone if they are maintained separately from restricted animals originating within the MRZ . To maintain this status, they must be moved directly out of the MRZ from the market within three days of sale with the appropriate movement certificates. Specific arrangement of pens and facilities necessary to provide effective biosecurity must be approved by a representative of the Commission.

(2) To a farm - Animals will assume the lower status of the MRZ, or they must comply with status of the herd, if it is different (e.g. accredited free in the MRZ.)

(3) Captive Cervidae cannot be moved into the MRZ unless they are accompanied by a Certificate of Veterinary Inspection verifying they have been tested twice for tuberculosis at least 90 days apart, or tested as per interstate movement requirements stated in 9CFR, Part 77 and are negative (these requirements are summarized in subsection (b)(4) of this section).

§43.31. Testing Requirements in Movement Restriction Zone (MRZ).

(a) All cattle, bison, captive cervid, exotic bovid, and camelid herds within the Affected Area must be tested annually.

(b) All cattle, bison, captive cervid, exotic bovid, and camelid herds within the Surveillance Area must be tested on an interval not to exceed two years.

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

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Gene Snelson
General Counsel
Texas Animal Health Commission
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CHAPTER 47. APPROVED PERSONNEL

4 TAC §47.1

The Texas Animal Health Commission (commission) adopts amendments to Chapter 47, concerning "Approved Personnel," without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12556) and will not be republished. This proposal amends §47.1 regarding Definitions. The amendment is regarding calfhood vaccinations and changes the vaccination age from ten months to twelve months. The reason is to bring the rule into conformity with recent changes made to Chapter 35, §35.1.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

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Gene Snelson
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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER D. OPERATION OF PAWNSHOPS

7 TAC §85.420

The Office of Consumer Credit Commissioner (the agency) adopts new §85.420 concerning provisions of the rules to purchase transactions entered into by pawnshops and how they affect enforcement of the Texas Pawnshop Act, Chapter 371, Texas Finance Code without changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9304).

The agency received two comments from members of the pawn industry (Handy Super Pawn and Wright Pawn & Jewelry); one comment did not relate to the proposed section.

Section 85.420 applies various provisions of the rules to purchase transactions entered into by pawnshops in the same manner that similar rules applying to pawn transactions would apply. Several comments were received during the initial proposal that suggested that the agency does not have the authority to adopt subsection (a). The agency believes that the agency not only has the authority, but the responsibility to ensure that purchase transactions are adequately documented. The purpose clause of the Texas Pawnshop Act provides that one of the purposes of the Act is to exercise the state's police power to ensure a sound system of making pawn loans and *transfers of personal property* by and through pawnshops [and to] prevent *transactions* in stolen property and other unlawful property transaction by licensing and regulating pawnbrokers and pawnshop employees ... (emphasis added). The Legislature in enacting the Pawnshop Act clearly intended to regulate transfers of personal property. It would completely thwart the purposes of the Act to suggest that pawn transactions must be monitored and documented, but that purchase transactions are not required to be monitored or documented. Furthermore §371.177 requires that records be established regarding purchase of personal property. The rule requires that documentation be legible, include proper identification (also pursuant to §371.174(a)(2)), include a proper description of the item purchased, and include title information if the goods are titled goods. The rule provides that the pawnbroker

shall monitor goods purchased in order to identify and prohibit transactions involving stolen goods as provided in §371.181 and that information pertaining to purchase transactions be made available to law enforcement as provided by §371.204. The section also designates a hold period of 20 days as authorized in §371.182 of the Texas Pawnshop Act. The hold period is necessary to allow law enforcement agencies adequate opportunity to discover and identify stolen property. The rule also permits a reduced hold period if the pawnbroker provides data electronically to the law enforcement agency or if a local ordinance with jurisdiction over the pawnshop specifies a reduced period. A commenter discussed the costs associated with holding merchandise during a hold period. The commenter disagrees that there should be a 20 day hold period. The agency disagrees with the proposition that a 20 day hold is inappropriate. In fact the agency chose 20 days as a hold period, since that period seemed to be preferred by a majority of the law enforcement jurisdictions who have informally expressed a preference on the length of a hold period. In an attempt to make the rule more flexible, however, the agency provided for a reduced hold period in the proposed rule if the pawnshop electronically submits transaction data to law enforcement and the chief local law enforcement officer supports a reduction in the hold period. The agency believes the proposed rule accomplishes the objective of providing a mechanism to allow law enforcement to monitor stolen property, yet retains the greatest flexibility for pawnshops and local jurisdictions. The agency retains the rule as proposed.

The new rule is adopted under §371.006 of the Texas Pawnshop Act, which authorizes the Consumer Credit Commissioner to adopt rules to enforce the Act.

This rule affects the Texas Pawnshop Act, Chapter 371 of the 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.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: April 5, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 936-7640

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SUBCHAPTER G. ENFORCEMENT; PENALTIES

7 TAC §85.702

The Office of Consumer Credit Commissioner (the agency) adopts new §85.702 concerning the enforcement procedures that will be applied for accepting prohibited merchandise as they affect enforcement of the Texas Pawnshop Act, Chapter 371, Texas Finance Code without changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9305).

The agency received no comments on the proposed section.

Section 85.702 details the enforcement procedures that will be applied for accepting prohibited merchandise. Section 371.181 requires that a pawnbroker must monitor goods purchased, accepted in pawn, or otherwise acquired in order to identify and prohibit transactions involving stolen goods. Furthermore, it is one of the stated purposes of the Pawnshop Act to prevent transactions in stolen property and other unlawful property transactions. The commissioner finds that this is an area of substantial concern for non-compliance. In order to discourage noncompliance with the requirement as well as to consistently and uniformly enforce the provisions, the rule provides standard penalties for noncompliance with the requirement.

This new rule is adopted under §371.006 of the Texas Pawnshop Act, which authorizes the Consumer Credit Commissioner to adopt rules to enforce the Act.

This rule affects the Texas Pawnshop Act, Chapter 371 of the 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.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 64. TEMPORARY COMMON WORKER EMPLOYERS

16 TAC §§64.1, 64.10, 64.60, 64.70, 64.90

The Texas Department of Licensing and Regulation adopts amendments to §§64.1, 64.10, 64.60 and 64.70 concerning the Temporary Common Worker Employers administrative rules, as published in the January 26, 2001, issue of the *Texas Register* (26 TexReg 865). No comments were received on the proposal. These sections are adopted without change and will not be reprinted.

The Department adopts amendments to §64.90 concerning Temporary Common Worker Employers, with changes to the proposal as published in the January 26, 2001, issue of the *Texas Register* (26 TexReg 865).

The amendments reflect changes that codified Article 5221a-10 into the Texas Labor Code, Chapter 92 and the codification of Article 9100 into the Occupations Code, Chapter 51. The adopted rules reflect the current information.

The Department noticed that the citation for the Administrative Procedure Act, Texas Government Code, Chapter 2001, had not been changed in the proposal to reflect the codification of Article 6252-13a into the Texas Government Code, Chapter 2001. The changes in §64.90(b)(6) correct the current citation.

The rules were reviewed as required by Rider 167 of the General Appropriations Act to ensure that language is clear and that reasons continue to exist for all rules.

The amendments are adopted under Texas Labor Code, Chapter 92, which authorizes the Department to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The adopted amendments affect Texas Labor Code, Chapter 92, and Texas Occupations Code, Chapter 51.

§64.90. Sanctions.

(a) Any person may file a complaint with the commissioner alleging a violation of Texas Labor Code Chapter 92 or these rules. The commissioner shall investigate the alleged violation upon receipt of the complaint and may investigate any common worker employer as necessary.

(b) If it appears that a person is in violation of Texas Labor Code, Chapter 92 or a rule or an order of the commissioner related to Texas Labor Code, Chapter 92, the commissioner may institute action under Texas Occupations Code, Chapter 51 by:

(1) giving notice to the license holder of the violation(s) by issuing a Preliminary Report; and

(2) providing a statement of the right of the person charged to a hearing on the occurrence of the violation and any proposed sanction and the terms thereof;

(3) not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination;

(4) if the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person;

(5) if the person charged fails to respond in a timely manner to the notice or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing;

(6) if an administrative hearing is held and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final, as provided by the Administrative Procedure Act, Government Code, Chapter 2001, §2001.176(a), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure Act, Government Code, Chapter 2001, §2001.176(b)(1); and

(7) a motion for rehearing is a prerequisite for an appeal.

(c) The commissioner may institute an action with the Attorney General for collection of any assessed administrative penalty not received by the department.

(d) If it appears that a person is in violation of, or is threatening to violate, Texas Labor Code, Chapter 92 or a rule or order of the commissioner related to the Texas Labor Code, Chapter 92, the commissioner may request from the Attorney General an action for injunctive relief to restrain the person from continuing the violation.

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 March 14, 2001.

TRD-200101529
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: April 3, 2001
Proposal publication date: January 26, 2001
For further information, please call: (512) 463-7348

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CHAPTER 67. AUCTIONEERS

The Texas Department of Licensing and Regulation adopts the repeal of §67.40 and new §67.40 concerning the auctioneer education and recovery fund (fund), without changes to the proposed text as published in the January 26, 2001, issue of the *Texas Register* (26 TexReg 867) and will not be republished. No comments were received on the proposed repeal of §67.40 or the proposed new rule §67.40.

The adopted new rule replaces the existing rule that is simultaneously adopted for repeal.

The justification for the adopted new rule is to enable the Department to assess and collect a fee to be paid by all auctioneer license holders at the time that the balance of the fund is less than $300,000 as determined by the Department on December 31st of each year.

If the balance in the fund on December 31 of a year is less than $300,000, each license holder at the next license renewal shall pay, in addition to the renewal fee, a fee that is equal to the greater of $50 or a pro rata share of the amount necessary to obtain a balance in the fund of $300,000.

16 TAC §67.40

The repeal is adopted under the Texas Occupations Code, Chapter 51 and Chapter 1802, which authorizes the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules, and take all action necessary to assure compliance with the intent and purpose of the Code.

The Code affected by the repeal is the Texas Occupations Code, Chapter 51 and Chapter 1802.

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 March 14, 2001.

TRD-200101530
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: April 3, 2001
Proposal publication date: January 26, 2001
For further information, please call: (512) 463-7348

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16 TAC §67.40

The new rule is adopted under the Texas Occupations Code, Chapter 51 and Chapter 1802, which authorizes the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules, and take all action necessary to assure compliance with the intent and purpose of the Code.

The Code affected by the new rule is the Texas Occupations Code, Chapter 51 and Chapter 1802.

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-200101526
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: April 3, 2001
Proposal publication date: January 26, 2001
For further information, please call: (512) 463-7348

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CHAPTER 78. TALENT AGENCIES

16 TAC §§78.1, 78.20, 78.40, 78.70, 78.75, 78.90, 78.91, 78.100

The Texas Department of Licensing and Regulation adopts amendments to §§78.1, 78.20, 78.40, 78.70, 78.75, 78.90, 78.91, and 78.100 regarding the Texas Talent Agencies administrative rules, without changes to the proposed text as published in the January 26, 2001 issue of the *Texas Register* (26 TexReg 868) and will not be republished. No comments were received on the proposal.

The Department is withholding §78.10 and §78.30 from adoption, at this time, because of pending legislation (HB1216), which will affect these sections.

The rules were reviewed as required by Rider 167 of the General Appropriations Act to ensure that language is clear and that reasons continue to exist for all rules.

The amendments reflect changes that codified Article 5221a-9 into the Texas Occupations Code, Chapter 2105 and the codification of Article 9100 into the Occupations Code, Chapter 51. The adopted rules reflect the current information.

The amendments are adopted under Texas Occupations Code, Chapter 2105, which authorizes the Department to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The adopted amendments affect Texas Occupations Code, Chapter 2105 and Chapter 51.

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

Filed with the Office of the Secretary of State on March 14, 2001.

TRD-200101528
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: April 3, 2001
Proposal publication date: January 26, 2001
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.1

The Texas Optometry Board adopts amendments to §279.1 with the following change to the proposed text published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12589): Section "351.359" is added to the list of authority in subsection (a).

The amendments update the items a contact lens prescription must contain, including the deletion of some items no longer necessary to write a complete prescription, the addition of restrictions contained in the Contact Lens Prescription Act regarding length of prescription, and the addition of explanatory language concerning substitution of brand names for private labels versus prescribing of proprietary lenses.

The Board (agency) received comments from the Texas Department of Health, Contact Lens Dispensing Permit Program (the Department). The Department commented that it is against adoption of the amendments. No other comments on the rule were received.

The Department commented that language should be added to subsection (b)(3) directing the doctor to verbally explain to the patient and document in the patient's record the reasons that the prescription was for a period of less than one year. The Agency disagrees with the commentor that this statement is appropriate in a rule that defines the contents of a prescription and not the legal requirements for providing a prescription.

The Department commented that §279.12 had been in effect for several years and that the Agency was changing the rule, and in its comments posed several questions regarding when a proprietary lens was medically indicated. The Agency disagrees with these comments. Section 351.359 of the Texas Optometry Act prohibits a prescription from containing a restriction that limits the parameters to a private label not available to the industry as a whole. The amended language of the rule, as did the original rule language of §279.12 concerning private labels, similarly prohibits such a restriction in a prescription by requiring the inclusion of substitution language. A proprietary lens, which unlike a private label lens is not intended to be an exclusive lens solely because of a brand name, may be medically indicated, for example, in the advanced geometric designs for treating keratoconus or corneal anomalies. Section 351.359 does not prohibit the prescribing of a proprietary lens when medically indicated.

The Department commented that a certain type of lens was a proprietary lens and since it was not available to the public as a whole, could not be prescribed by an optometrist. The Agency disagrees with this comment. The lens referred to by the Department, if not available to the industry as a whole, would properly

be classified as a private label and not a proprietary lens. However, the referenced lens is available to the optical industry as a whole. If the lens were a private label, the rule would require substitution language in the prescription.

The Department commented that the Contact Lens Prescription Act prohibits conditioning the issuance of a prescription on the condition that contact lenses be purchased from the prescribing doctor. The commentor stated that the amendments to the rule regarding proprietary lenses would permit the doctor to restrict the prescription to a proprietary lens that is interchangeable with a non-proprietary lens without a benefit to the ocular health of the patient. The Agency disagrees with these comments. The rule amendments are made pursuant to §351.359 of the Optometry Act. A proprietary lens is not a private label lens but a lens that offers clinical superiority for specific medical conditions, and may only be prescribed when medically indicated. Although a proprietary lens may not be offered by every contact lens dispenser, the lenses are commonly available to a large segment of dispensers and not restricted by brand name to one doctor or practice. Therefore the prescribing of such a lens will not require the patient to obtain the lenses from the prescribing doctor.

The Department commented that if a proprietary lens were prescribed, the rule should require that the prescribing doctor verbally inform the patient and document in the record the reasons for prescribing the proprietary lens. The Agency disagrees that there is any legal authority or requirement for such a provision.

The amended rule is adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.356, 351.357, 351.359, and 351.607, and Contact Lens Prescription Act, §§353.152, 353.153, and 353.158. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §§351.151, 351.356, 351.357, 351.359, 351.607, 353.152, 353.153, and 353.158, as defining the requirements for a contact lens prescription.

§279.1. Board Interpretation Number One

(a) A contact lens prescription must comply with the requirements of the Texas Optometry Act, §§351.005, 351.356, 351.357, 351.359 and 351.607, and the Contact Lens Prescription Act, §§353.152, 353.153 and 353.158.

(b) A fully written contact lens prescription must contain all information required to accurately dispense the contact lens, including:

(1) patient's name;

(2) date the prescription is issued;

(3) expiration date of the prescription, which shall be one year or more unless a shorter period is medically indicated;

(4) examining optometrist's signature or authorized signature in compliance with Rule §279.14(b);

(5) name of the lens manufacturer, if required to accurately dispense the lens;

(6) lens brand name, including:

(A) a statement that brand substitution is permitted if the optometrist intends to authorize a contact lens dispenser to substitute the brand name, and

(B) a statement specifying a substitute brand name when the prescribed brand name is not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated;

(7) lens power;

(8) lens diameter, unless set by the manufacturer;

(9) base curve, unless set by the manufacturer; and

(10) number of lenses and recommended replacement interval.

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 March 15, 2001.

TRD-200101538
Lois Ewald
Executive Director
Texas Optometry Board
Effective date: April 4, 2001
Proposal publication date: December 22, 2000
For further information, please call: (512) 305-8500

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22 TAC §279.12

The Texas Optometry Board adopts amendments to §279.12 without changes to the proposed text published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12590).

The amendments clarify the limited situations in which a proprietary lens may be prescribed.

The Board (agency) received comments from the Texas Department of Health, Contact Lens Dispensing Permit Program (the Department). The Department commented that it is against adoption of the amendments. No other comments on the rule were received.

The Department commented that §279.12 had been in effect for several years and that the Agency was changing the rule, and in its comments posed several questions regarding when a proprietary lens was medically indicated. The Agency disagrees with these comments. Section 351.359 of the Texas Optometry Act prohibits a prescription from containing a restriction that limits the parameters to a private label not available to the industry as a whole. The amended language of the rule, as did the original rule language of §279.12 concerning private labels, similarly prohibits such a restriction in a prescription by requiring the inclusion of substitution language. A proprietary lens, which unlike a private label lens is not intended to be an exclusive lens solely because of a brand name, may be medically indicated, for example, in the advanced geometric designs for treating keratoconus or corneal anomalies. Section 351.359 does not prohibit the prescribing of a proprietary lens when medically indicated.

The Department commented that a certain type of lens was a proprietary lens and since it was not available to the public as a whole, could not be prescribed by an optometrist. The Agency disagrees with this comment. The lens referred to by the Department, if not available to the industry as a whole, would properly be classified as a private label and not a proprietary lens. However, this lens is available to the optical industry as a whole. If the lens were a private label, the rule would require substitution language in the prescription.

The Department commented that the Contact Lens Prescription Act prohibits conditioning the issuance of a prescription on the condition that contact lenses be purchased from the prescribing

doctor. The commentor stated that the amendments to the rule regarding proprietary lenses would permit the doctor to restrict the prescription to a proprietary lens that is interchangeable with a non-proprietary lens without a benefit to the ocular health of the patient. The Agency disagrees with these comments. The rule amendments are made pursuant to Section 351.359 of the Optometry Act. A proprietary lens is not a private label lens but a lens that offers clinical superiority for specific medical conditions, and may only be prescribed when medically indicated. Although a proprietary lens may not be offered by every contact lens dispenser, the lenses are commonly available to a large segment of dispensers and not restricted by brand name to one doctor or practice. Therefore the prescribing of such a lens will not require the patient to obtain the lenses from the prescribing doctor.

The Department commented that if a proprietary lens were prescribed, the rule should require that the prescribing doctor verbally inform the patient and document in the record the reasons for prescribing the proprietary lens. The Agency disagrees that there is any legal authority or requirement for such a provision.

The amended rule is adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151 and 351.359. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.359 as defining the requirements for a contact lens prescription.

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 March 15, 2001.

TRD-200101539
Lois Ewald
Executive Director
Teas Optometry Board
Effective date: April 4, 2001
Proposal publication date: December 22, 2000
For further information, please call: (512) 305-8500

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PART 25. STRUCTURAL PEST CONTROL BOARD

CHAPTER 597. UNLAWFUL ACTS AND GROUNDS FOR REVOCATION

22 TAC §597.2

The Structural Pest Control Board adopts amendments of 22 TAC 597.2 without changes to the proposed text published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 57).

The justification for the rule will allow expedited review by suspension or revocation of licenses the Board has determined no longer able to obey the Board's laws and regulations.

The rule will function in that the licensee must request a hearing within 20 days of the date of the letter setting out legal basis and supporting facts challenging Board decision and relief sought by petitioner.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Tex.Rev.Civ.Stat.Ann., Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 March 16, 2001.

TRD-200101554
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Effective date: April 5, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 451-7200

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CHAPTER 599. TREATMENT STANDARDS

22 TAC §599.11

The Structural Pest Control Board adopts amendments of 22 TAC 599.11 with changes to the proposed text published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 58).

Justification for the rule clarifies the certified applicator as the responsible person for the entire fumigation process, posting, securing the structure, and that the aeration procedures are followed to assure safe re-entry. The regulation also updates language to make it consistent with label requirements approved by the U.S. Environmental Protection Agency (EPA).

The rule will function in that it clearly requires the certified applicator to oversee the entire fumigation process and requires that the clearance devices that ensure safe re-entry are calibrated annually in accordance with manufacturer's requirements.

Summary of comments are as follows. One commentator noted that the requirement to have a clearance device calibrated by an outside entity is not necessary. Companies could train their people to perform the calibration of the device. Companies that sell fumigants also have expressed an interest in having a party besides the user verify the working order of the clearance. One commentator mentioned that the rule should not be adopted until the U.S. Environmental Protection Agency resolved differences on the Vikane fumigant label with Dow Agrosciences. One commentator proposed the wording "monitoring" device be changed to "clearance device". The commentator also suggested that "ventilated" be changed to "aerated". One commentator noted that the revised Rule §599.11(a) no longer requires the certified applicator to be present when aeration of the structure commences. One commentator expressed the concern about the revised Rule §599.11(j) about the requirement on having a security guard perform the inspections.

Names of groups and associations making comments for and against the rule were Southwestern Pest Services Company, Orkin Pest Control, Dow Agrosciences and Elite Exterminating.

Reasons why the agency agrees or disagrees with the comments. The Board disagrees with the commenter in that label requirements may require outside fumigation. Companies that

sell calibration devices utilize proprietary information with those clearance devices and have elected not to train individuals outside their companies in the maintenance of those devices. The Board disagrees with the commenter. The resolution of the label issue between the U.S. Environmental Protection Agency and Dow Agrosciences could take a long time to resolve. The Board needs to take action now to keep the regulation current. Further, the label of any fumigant will still be the controlling factor as to application of the fumigant after the differences are resolved between EPA and Dow Agrosciences. The Board agrees with the commenter on the change of "monitoring" to "clearance" device and is changing the words to reflect that throughout the rule. The Board disagrees with the commenter on the need for the presence of the certified applicator when aeration commences. The label requirements of fumigants are the controlling factor, and the label requirements specify that the certified applicator be present when aeration is commenced. The Board disagrees with the commentator on the requirement of having a security guard perform inspections. The revised rule does not require a security guard to perform inspections on an hourly basis. It is the responsibility of the person posted at the location to deter entry into the structure by routinely inspecting the structure at least once each hour.

The amendment is adopted under Tex.Rev.Civ.Stat.Ann., Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§599.11. Structural Fumigation Requirements.

(a) Fumigation of structures to control wood destroying organisms shall be performed only under the direct on-site supervision of a certified applicator licensed by the Board in the category of fumigation. Direct on-site supervision shall mean that the certified applicator exercising such supervision shall be present at the site of the fumigation during the entire time the fumigants are being released and at the time property is released for occupancy.

(b) Fumigation shall be performed in compliance with all label requirements applicable to state, county, and city laws and ordinances and all applicable laws and regulations of the United States.

(c) Prior to the commencement of fumigation, warning signs shall be posted in plainly visible locations on or in the immediate vicinity of all entrances to the space under fumigation and shall not be moved until fumigation and ventilation have been completed, and the premises determined safe for reocccupancy. Ventilation shall be conducted with due regard for the public safety.

(d) Local fire authorities or, when not available, local police authorities, shall be notified prior to introduction of the fumigant and at the time the structure is released for occupancy.

(e) The space to be fumigated shall be vacated by all occupants prior to the commencement of fumigation. The space to be fumigated shall be sealed in such manner to assure concentration of the fumigant released has been retained in compliance with the manufacturer's recommendations.

(f) Warning signs shall be printed in red on white backgrounds and shall contain the following statement in letters not less than two inches in height; "Danger-Fumigation." They shall also depict a skull and crossbones, not less than one inch in height, the name of the fumigant, the date and time fumigant was introduced, and the name, address, and telephone number where the certified applicator performing the fumigation may be reached twenty four (24) hours a day.

(g) On any structure that has been fumigated, the certified applicator who performed the fumigation shall, immediately upon completion, post a durable sign on the wall adjacent to the electric breaker box, water heater, beneath the kitchen sink or in the interior bath trap access. This shall be a durable sign not less than one inch by two inches in size. It shall have the name of the certified applicator, date of fumigation, fumigant used, and the purpose for which it was fumigated (target pest).

(h) A certified applicator performing fumigation shall use adequate warning agents with all fumigants which lack such properties. When conditions involving abnormal hazards exist, the person exercising direct on-site supervision shall take such safety precautions in addition to those prescribed to protect the public health and safety. The certified applicator shall visibly inspect the structures to assure vacancy prior to introduction of fumigant.

(i) The certified applicator shall also post a person or persons at the location from the time the fumigant is introduced until all tarpaulins and seals are removed and the label concentration for aeration is reached. The certified applicator shall then secure all entrances to the structure in such a manner as to prevent entry by anyone other than the certified applicator or an agent of the certified applicator. The structure shall remain secured until the concentration indicated by the fumigant label for release for occupancy is reached.

(j) For the purpose of maintaining proper safety and establishing responsibility in handling the fumigants, the business license holder shall compile and retain for a period of at least two (2) years a report for each fumigation job and/or treatment. The person posted at the location shall deter entry into the structure by routinely inspecting the structure under fumigation at least once each hour. The person posted at the location shall be alert and on duty to prevent entry into the structure while the structure while the fumigant is present. The report for each fumigation job or treatment shall contain the following information:

(1) name and address of pest control company;

(2) name and address of property and owner;

(3) type of roof;

(4) cubic feet fumigated;

(5) target pest or pest controlled;

(6) fumigant or fumigants used and amount;

(7) name of warning agent and amount used;

(8) type of sealing method;

(9) temperature and wind conditions;

(10) time gas introduced and aerated (date and hour);

(11) name of licensee (certified applicator);

(12) list of any extraordinary safety precautions taken;

(13) time released for occupancy (signed by certified applicator;

(14) the date and hour fire or police authorities were notified; and

(15) verification of clearing procedures and identification of devices used.

(k) Fumigations for the purpose of controlling wood destroying insects are subject to the provisions of 599.4 of this title (relating to Disclosure).

(l) Every business license holder engaged in application of a fumigant is required to use an approved clearance device as prescribed on the fumigant label.

(1) This approved calibrated clearance device must be used as required by the label. As appropriate, this device must be calibrated in accordance with manufacturer's recommendations.

(2) An independent facility or person must perform calibration of the clearance device annually. Calibration shall be in compliance with the manufacturer's requirements.

(3) Proof of calibration must be kept on file for a period of two (2) years and available for review by Board personnel and by placing a yearly validation on the clearance device.

(m) The certified applicator responsible for the fumigation site shall be responsible for following all the label prescribed procedures for aeration and clearing the structure that is being fumigated.

(n) The word "trained" is defined as a person having the same qualifications as an apprentice unless the label states more stringent requirements in the application of the fumigant.

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 March 16, 2001.

TRD-200101553
Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board
Effective date: April 5, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 451-7200

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action

The Commissioner of Insurance will hold a public hearing under Docket No. 2485 on May 15, 2001, at 9:30 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Statistical Plan for Residential Risks. The proposed changes are necessary in order to collect experience to support the adjustment of rates for newly adopted Law & Ordinance endorsements. Staff's petition (Ref. P-0301-05-I) was filed on March 16, 2001.

The petition proposes amendments to the Texas Statistical Plan for Residential Risks to add options to an existing field entitled "Law & Ordinance" that will allow the reporting of the amount of additional coverage purchased by endorsement.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. P-0301-05-I).

Comments on the proposed amendments must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P. O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to C.H. Mah, Senior Associate Commissioner for Property & Casualty, P. O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, ch. 2001).

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

TRD-200101594
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 20, 2001

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

Texas Department of Criminal Justice

Title 37, Part 6

Filed: March 20, 2001

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Proposed Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (TAHC), will review and consider for readoption, revision, or repeal of Chapter 43, Subchapters A and B concerning Tuberculosis in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature. The rules to be reviewed are located in Title 4, Part II, of the Texas Administrative Code and contain the following sections: Subchapter A is regarding "Cattle" and contains: §43.1 Cattle (All Dairy and Beef Animals, genus Bos), and Bison (genus Bison); §43.2 Interstate Movement Requirements; and §43.3 Slaughter Plant Collection. Subchapter B is regarding "Goats" and contains: §43.10 Definitions; §43.11 Accredited Herd Plan for Goats; and §43.12 Requirements for Entry into Texas.

The commission will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the commission after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Edith Smith, P.O. Box 12966, Austin, Texas 78711-2966. They may also be sent by facsimile to (512) 719-0721 or by e-mail to comments@tahc.state.tx.us. Comments will be reviewed and discussed in a future commission meeting.

TRD-200101574

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: March 19, 2001

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The Texas Animal Health Commission (TAHC), will review and consider for readoption, revision, or repeal of Chapter 49, concerning Equine in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature. The rules to be reviewed are located in Title 4, Part II, of the Texas Administrative Code and contain the following sections: §49.1, Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine; §49.2, Interstate Movement Requirements; and §49.3, Requirements for Dealer Recordkeeping.

The commission will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the commission after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Edith Smith, P.O. Box 12966, Austin, Texas 78711-2966. They may also be sent by facsimile to (512) 719-0721 or by e-mail to comments@tahc.state.tx.us. Comments will be reviewed and discussed in a future commission meeting.

TRD-200101575

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: March 19, 2001

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Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider Chapter 97, General Provisions, Rules 97.101, 97.102, 97.103, 97.105, 97.106, 97.113, 97.114, and 97.200 of Title 7, Part VI of the Texas Administrative Code in preparation for the Credit Union Commission's Rule Review as required by the General Appropriations Act, Article IX, Section 167.

Comments or questions regarding these rules may be submitted in writing to Lynette Pool, Deputy Commissioner Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to deputy.commissioner@tcud.state.tx.us.

TRD-200101607
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 21, 2001

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Texas Department of Criminal Justice

Title 37, Part 6

In Fiscal Year 2001, the Texas Department of Criminal Justice (department) will continue from FY 2000 the review and reconsideration for re-adoption, revision, or repeal: Chapter 161, concerning CJAD Administration; and Chapter 163, concerning CJAD Standards. Also in FY 2001, the department will review and consider for re-adoption, revision or repeal: Chapter 151, concerning General Provisions; Chapter 152, concerning Institutional Division; and Chapter 155, concerning Reports and Information Gathering.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete or whether the rule reflects current policies and procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Any proposed changes to the rules 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 period prior to final adoption or repeal by the department.

TRD-200101579
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: March 20, 2001

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Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

The Texas Department of Mental Health and Mental Retardation (department) will review Texas Administrative Code, Title 25, Part 2, Chapter 406, concerning ICF/MR programs, in accordance with the requirements of the Texas Government Code, §2001.039.

The department believes that the reasons for initially adopting Chapter 406 continue to exist. Most of the issues addressed in the chapter are addressed in new sections of Chapter 419, Subchapter E, concerning ICF/MR programs, that are proposed contemporaneously for public review and comment in this issue of the *Texas Register*. The department is publishing this notice of review as a precaution should the proposed new sections of Chapter 419, Subchapter E not be adopted before September 1, 2001. Also published in this issue of the *Texas Register* are the repeals of Chapter 406, Subchapter C, concerning vendor payments; Chapter 406, Subchapter E, concerning eligibility and review; and §§406.302-406.309 and §406.311 of Chapter 406, Subchapter G, concerning additional facility responsibilities.

Interested persons are invited to submit written comments concerning the review of this chapter to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

TRD-200101517
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: March 14, 2001

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Contract Award

The Texas Department has awarded a contract award for an oyster market research benchmark study for Texas oysters. This notice is being published pursuant to the provisions of the Texas Government Code Ann., §2254.030. Activities included in the contract are a secondary market study, customer survey, and conducting of focus groups. The contractor is EGS Research and Consulting, ("EGS"), 6106 Ledge Mountain, Austin, Texas 78731. EGS will provide the Texas Department of Agriculture with a report in week eight of the project, approximately on May 8, 2001. The total cost for the contract is not to exceed $42,000.00, and the term of the contract is from March 13, 2001, until August 31, 2001.

TRD-200101616
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: March 21, 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 March 3, 2001 through March 16, 2001.

Total amount of state ceiling remaining unreserved for the $325,809,688 subceiling for qualified mortgage bonds under the Act as of March 16, 2001: $112,791,708

Total amount of state ceiling remaining unreserved for the $143,356,262 subceiling for state-voted issue bonds under the Act as of March 16, 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 March 16, 2001: $84,742,906

Total amount of state ceiling remaining unreserved for the $215,034,394 subceiling for residential rental project bonds under the Act as of March 16, 2001: $6,049,394

Total amount of state ceiling remaining unreserved for the $136,840,069 subceiling for student loans bonds under the Act as of March 16, 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 March 16, 2001: $23,855,431

Total amount of the $1,303,238,750 state ceiling remaining unreserved under the Act as of March 16, 2001: $402,635,770

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from March 3, 2001 through March 16, 2001:

Issuer: TDHCA

User: Hemma, Ltd.

Description: Multifamily Residential Rental Project--Skyway Villas

Amount: $13,250,000

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 March 3, 2001 through March 16, 2001:

1) Issuer: Port of Corpus Christi Authority of Nueces County, Texas

User: Koch Petroleum Group

Description: All Other Issue--Corpus Christi, Texas

Amount: $12,100,000

2) Issuer: Gulf Coast Waste Disposal Authority

User: Valero Energy Corporation

Description: All Other Issue--Texas City, Texas

Amount: $18,500,000

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from March 3, 2001 through March 16, 2001:

1) Issuer: Sunbelt IDC

User: American Foodservice Corporation

Description: Qualified Small Issue--Fort Worth, Texas

Amount: $10,000,000

2) Issuer: TDHCA

User: Parkside Terrace Ltd.

Description: Multifamily Residential Rental Project--Parkside Terrace Apts.

Amount: $8,750,000

Following is a comprehensive listing of applications, which released a portion or their entire reserved amount pursuant to the Act from March 3, 2001 through March 16, 2001: None

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-200101567
Steve Alvarez
Program Administrator
Texas Bond Review Board
Filed: March 19, 2001

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Children's Trust Fund of Texas

Request for Proposal

The Children's Trust Fund of Texas Council (CTF) announces the availability of funds to establish programs to prevent child abuse and neglect under the CTF Family PRIDE initiative. The Family PRIDE (Principles, Responsibility, Integrity Discipline and Education) initiative seeks to promote an understanding of child abuse and neglect prevention through community involvement and decision-making.

Family PRIDE sites are chosen based on social support needs including but not limited to: incidence of child abuse and neglect, child poverty, teenage pregnancy, juvenile crime, and school drop-outs. Child population, geographic location and current availability of services are also considered.

Proposals are being solicited for the following counties: Anderson, Bexar, Burleson, Childress, Dawson, Jim Hogg, Liberty, Orange, Runnels, Somervell, and Tom Green.

Deadline: Deadline for the submission of proposals is May 31st, 2001 at 5:00pm.

Contract Period: The contract period for funding awarded in response to the Family PRIDE Request for Proposal (RFP) is September 1, 2001 - August 31, 2002. Contracts may be renewed twice for a total contract period of three years, as authorized by the CTF Council. Renewal is not automatic and renewal applications will be requested.

Eligibility Criteria: To be eligible to apply for funding, an applicant must:

1. use the funds for primary or secondary child abuse and neglect prevention and not for treatment. The two funding categories are parent education and children's education.

2. be an organization in operation (i.e., registered with the Secretary of State) for a minimum of two years

3. **not** be a state agency - "State Agency " is defined as a board, commission, department, office or other state agency that:

(a) is in the executive branch of state government,

(b) was created by the constitution or a statute of this state, and

(c) has statewide jurisdiction.

4. provide a cash or in-kind match equal to at least 10% of the contract funding amount for year one, 20% of the contract amount for year two, and 50% of the contract amount for year three.

5. applicant agencies/organizations must be located in the 11 communities listed above.

Approved Curricula: Descriptions of approved curricula and resource persons appear in the RFP. It is required that applicants complete a form verifying contact with the curriculum owner.

Amount of Contract Awards: Contracts will be awarded up to a maximum amount of $50,000 per program for the first year.

Evaluation and Selection: Community Coalitions who serve as the coordinating body for the Family PRIDE Initiative in each site will review and select proposals to recommend to Children's Trust Fund of Texas Council for funding. The emphasis of this Request for Proposal (RFP) is on coordination and collaboration of agencies and organizations to address supporting and strengthening families together in their community. Applicants will be notified in August, 2001 of the status of their request.

The RFP application packet includes complete instructions, application requirements, deadline details, and hours that resource staff at the Children's Trust Fund office will be available to answer questions.

To Request an RFP Application Packet: If potential applicants meet the eligibility criteria as outlined above, they may request an RFP packet by telephone, mail, or in person beginning April 1, 2001: 512/936-9250. (automated 24 hour line for requesting RFP packets only); Children's Trust Fund of Texas, 8100 Cameron Rd., Bldg A, Austin, TX 78754.

TRD-200101595
John Chacon
Executive Director
Children's Trust Fund of Texas
Filed: March 20, 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 February 9, 2001, through March 1, 2001. The public comment period for these projects will close at 5:00 p.m. on April 2, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Vintage Petroleum, Inc.; Location: The project site is located in State tract 224, in Trinity Bay, Chambers County, Texas. The site can be located on the U.S.G.S. Quadrangle maps entitled: Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 320000; Northing: 3269500. CCC Project No.: 01-0069-F1; Description of Proposed Action: The applicant requests authorization to drill their No. 1 Well, to construct a 50-foot drilling platform, and to install a 4 1/2-inch O.D. pipeline between these structures. The proposed pipeline will measure approximately 1,500 linear feet, and will be buried a minimum of 3 feet below the bay bottom by disking, jetting or plowing based on bottom conditions. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Vintage Petroleum, Inc.; Location: The project site is located in State Tracts 64 and 77 in Trinity Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting 327300; Northing: 3276800. CCC Project No.: 01-0080-F1; Description of Proposed Action: The applicant requests authorization to install a 4 1/2-inch diameter O.D. pipeline from their No. 1 Well in State Tract 64 to an existing production platform in State Tract 77. The pipeline will measure approximately 5,133 linear feet, and will be buried a minimum of 3 feet, by disking, plowing or jetting, depending on bottom conditions. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

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-200101619
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: March 21, 2001

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2001

COMPTROLLER OF PUBLIC ACCOUNTS

LOCAL SALES TAX RATE CHANGES EFFECTIVE APRIL 1, 2001

The City Council of Sunset Valley **reimposed** the exemption on local sales and use tax on clothing and footwear during a limited period in August as allowed by Tax Code Section 151.326. The effective date for the reimposition will be April 1, 2001.

City Name	Local Code	Local Rate	Total Rate
Sunset Valley (Travis Co)	2227070	.015000	.077500

The 1% local sales and use tax will become effective April 1, 2001 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Ackerly (Dawson Co)	2156020	.010000	.077500
Ackerly (Martin Co)	2156020	.010000	.072500
Brazos Country (Austin Co)	2008075	.010000	.077500
Wimberley (Hays Co)	2105095	.010000	.082500

An additional 1/4% city sales and use tax for improving and promoting economic and industrial development that includes two additional 1/8% increases as permitted under Article 5190.6, Section 4A will become effective April 1, 2001 in the city listed below.

City Name	Local Code	New Rate	Total Rate
Corpus Christi (Nueces Co)	2178015	.012500	.081250
Corpus Christi (San Patricio Co)	2178015	.012500	.081250

The additional 1/8% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4A will be replaced with an additional 1/8% sales and use tax as permitted under Article 5190.6, Section 4B in the city listed below. This tax type change will become effective April 1, 2001. There will be no change in the local rate or total rate.

City Name	Local Code	Local Rate	Total Rate
New Braunfels (Comal Co)	2046015	.020000	.082500
New Braunfels (Guadalupe Co)	2046015	.020000	.082500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4B will become effective April 1, 2001 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Crystal City (Zavala Co)	2254012	.015000	.077500
Fate (Rockwall Co)	2199047	.015000	.077500
Hughes Springs (Cass Co)	2034019	.015000	.077500
Hughes Springs (Morris Co)	2034019	.015000	.082500

An additional 1% city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2% as permitted under Article 5190.6, Section 4A plus an additional 1/2% as permitted under Article 5190.6, Section 4B will become effective April 1, 2001 in the city listed below.

City Name	Local Code	New Rate	Total Rate
Heath (Rockwall Co)	2199038	.020000	.082500

An additional 1/2% sales and use tax for Sports and Community Venue will become effective April 1, 2001 in the county listed below.

County Name	Local Code	New Rate	Total Rate
Terrell County	4222002	.015000	.077500

A 1/2% Special Purpose District sales and use tax will become effective April 1, 2001 in the Special Purpose District listed below.

SPD Name	Local Code	New Rate	Total Rate
Chambers County Health Services	5036507	.005000	**See Note 1**

The 1/2% Special Purpose District sales and use tax was continued in the Special Purpose Districts listed below. The continuation effective date will be April 1, 2001

SPD Name	Local Code	New Rate	Total Rate
Euless Crime Control and Prevention District	5220521	.002500	**See Note 2**
Haltom City Crime Control and Prevention District	5220530	.002500	**See Note 3**

NOTE 1: The boundaries of the Chambers County Health Services are the same boundaries as Chambers County. The City of Anahuac is currently collecting a 1% city sales tax. The total rate in the City of Anahuac will be .077500. The cities of Old River Winfree and Shoreacres, which are located in multiple counties, are currently collecting a 1% city sales tax. The total rate for the portion of these cities in Chambers County will be .077500. The City of Mont Belvieu, which is located in multiple counties, is currently collecting a 1½% city sales tax. The total rate for the City of Mont Belvieu in Chambers County will be .082500. The City of Baytown, which is located in multiple counties, is currently collecting a 1% city sales tax and an additional ½% tax for the Baytown Crime Control District. The total rate for the City of Baytown in Chambers County will be .082500. The unincorporated areas of Chambers County will have a total rate of .067500.

NOTE 2: The boundaries of The Euless Crime Control and Prevention District are the same as the boundaries as the City of Euless. The total rate in the City of Euless will be .082500.

NOTE 3: The boundaries of The Haltom City Crime Control and Prevention District are the same as the boundaries as the City of Haltom City. The total rate in the City of Haltom City will be .080000.

******NEW******Combined Area Local Code**

Effective April 1, 2001, a new combined area local code will be used to separately distinguish unique areas where a portion of a city overlaps another taxing jurisdiction, resulting in a total local tax rate that would exceed two percent. However, in accordance with a modification of Chapter 323.102 of the Tax Code, the Comptroller will make the necessary adjustments to the total local tax rate to maintain a two percent rate for these unique areas. The new combined area local code will begin with a "6". If you do business in one of these unique city areas, you must use the new combined area local code instead of the regular city code to report local sales and use tax.

A 1½% Combined Area sales and use tax will become effective April 1, 2001 in the combined area listed below.

Combined Area Name	Local Code	New Rate	Total Rate
Belton/Salado Public Library District	6014601	.015000	**See Note 4**

NOTE 4: The tax rate for the overlapping portion of the City of Belton and the Salado Public Library District is 1½% and should be reported by using the combined area local code 6014601. The Belton/Salado Public Library District combined area is located in the southern portion of the City of Belton.

TRD-200101549
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Filed: March 16, 2001

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Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Galveston Telco & Communications Credit Union (Texas City) seeking approval to merge with Amoco Federal Credit Union (Texas City) with the latter being the surviving credit union.

An application was received from Houston Energy Credit Union (Houston) seeking approval to merge with First Energy Credit Union (Houston) with the latter being the surviving credit union.

An application was received from EECU (Fort Worth) seeking approval to merge with Santa Fe Fort Worth Federal Credit Union (Fort Worth) with EECU being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200101605

Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 21, 2001

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Application(s) to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application for a name change was received for Dallas Postal Credit Union, Dallas, Texas. The proposed new name is Neighborhood Credit Union.

An application for a name change was received for Koch-Glitsch Credit Union, Dallas, Texas. The proposed new name is KGR Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200101606
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 21, 2001

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Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from GPS Community Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who work or reside in the zip code 77013, Houston, Texas and zip code 77530, Channelview, Texas to be eligible for membership in the credit union.

An application was received from Houston Postal Credit Union, Houston, Texas to expand its field of membership. The proposal would permit the employees of Auchan, USA, Inc. who work in or are paid from Houston, Texas to be eligible for membership in the credit union.

An application was received from Texas Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit the employees of Atlas General agency, LLC, Dallas, Texas to be eligible for membership in the credit union.

An application was received from MCT Credit Union, Port Neches, Texas to expand its field of membership. The proposal would permit persons who live, work, or are located in Hardin County, Texas to be eligible for membership in the credit union.

An application was received from MCT Credit Union, Port Neches, Texas to expand its field of membership. The proposal would permit persons who live, work, or are located in Orange County, Texas to be eligible for membership in the credit union. The proposal would remove the exclusionary language protecting the fields of membership of three credit unions from overlap.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200101604
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 21, 2001

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Temple Santa Fe Credit Union, Pampa, Texas (BNSF) - See *Texas Register* issue dated December 29, 2000

MemberSource Credit Union, Houston, Texas - See *Texas Register* issue dated January 26, 2001

Associated Credit Union, Deer Park, Texas - See *Texas Register* issue dated January 26, 2001

South Texas Area Resources Credit Union, Corpus Christi, Texas - See *Texas Register* issue dated January 26, 2001

North East Texas Credit Union, Lone Star, Texas - See *Texas Register* issue dated January 26, 2001

Members Credit Union, Cleburne, Texas (Amended) - Individuals and their immediate family members who live or work in Hood County.

Application(s) to Expand Field of Membership - Denied

Texas Telcom Credit Union, Dallas, Texas - See *Texas Register* issue dated December 29, 2000

Application(s) for a Merger or Consolidation - Approved

Dixie Bell Credit Union and EECU - See *Texas Register* issue dated November 24, 2000

Montgomery Ward Credit Union and EECU - See *Texas Register* issue dated March 2, 2001

Application(s) to Amend Articles of Incorporation - Approved

Phillips Employees Credit Union, Pasadena, Texas - See *Texas Register* issue dated January 26, 2001

City Employees Credit Union, Dallas, Texas - See *Texas Register* issue dated February 23, 2001

Vought Heritage Credit Union, Grand Prairie, Texas - See *Texas Register* issue dated February 23, 2001

Application(s) to Amend Articles of Incorporation - Withdrawn

Dallas Teachers Credit Union, Dallas, Texas - See *Texas Register* issue dated January 19, 2001

TRD-200101603

Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 21, 2001

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Texas Department of Criminal Justice

Request for Qualifications

The Texas Department of Criminal Justice-Internal Audit Division (TDCJ-AO) announces that it requires a qualified reviewer to perform an independent external peer review pursuant to Chapter 2102.007 of the Texas Government Code, the provisions of the Government Auditing Standards, Section 3.33 and the Standards for the Professional Practice of Internal Auditing, Section 1330. The TDCJ-AO maintains offices in Huntsville, Texas and Austin, Texas. This service is subject to the Professional Services Act at Chapter 2254, Subchapter A, Texas Government Code.

Services will include a review of necessary documentation, audit reports, working papers and interviews with professional staff to support a formal written report completed by August 31, 2001. The report will contain determinations regarding the effectiveness of the division's internal quality control system, the division's compliance with its charter and various standards, recommendations for improvement where applicable and recommendations for actions to bring the department in compliance with new Red Book Standards. Anticipated award date is on or before June 15, 2001.

To be considered for this service, submittals must be prepared in compliance with the format stipulated in the Request for Qualifications (RFQ) package and must be received no later than 3:00 p.m. on Wednesday May 2, 2001. Submittals received after this time will be subject to disqualification. Persons interested in providing this service should fax their request for RFQ 696-AO-1-Q020 to Naomi Wright, Contract Administrator, at (936) 437-7009. In case of difficulty transmitting a fax, call (936) 437-7133. Questions regarding this RFQ should be faxed to the attention of the Contract Administrator and must be received no later than 3:00 p.m. on Thursday April 12, 2001.

TRD-200101578
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: March 20, 2001

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Texas Department of Health

Licensing Actions for Radioactive Materials

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	Amendment #	Date of Action
Flower Mound	Imaging Specialist Group LTD	L05407	Flower Mound	00	03/07/01
Houston	Northwest Outpatient Cancer Center	L05411	Houston	00	03/01/01
San Antonio	Cardiology Of San Antonio PA	L05408	San Antonio	00	03/06/01
Throughout TX	Bandy & Associates Inc	L05402	Houston	00	03/07/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Andrews	Waste Control Specialists LLC	L04971	Andrews	13	02/28/01
Arlington	Imaging and Medical Diagnostic Specialist PA	L04876	Arlington	04	03/12/01
Arlington	Healthsouth Diagnostic Centers of Texas LP	L05033	Arlington	15	03/13/01
Austin	Cedra Corporation	L04427	Austin	11	03/07/01
Austin	Pet Imaging Ltd	L05365	Austin	04	03/09/01
Austin	Heart Hospital IV LP	L05215	Austin	03	03/09/01
Borger	Chevron Phillips Chemical Company LP	L05181	Borger	07	03/07/01
Brownwood	Brownwood Regional Medical Center	L02322	Brownwood	47	03/12/01
Corpus Christi	Koch Petroleum Group LP	L00322	Corpus Christi	29	03/07/01
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	75	03/01/01
Dallas	Medical Service/Dallas Nephrology Associates	L02604	Dallas	21	03/01/01
Dallas	The Univ of TX Southwestern Med Ctr at Dallas	L00384	Dallas	71	03/05/01
Dallas	Lockheed Martin Corporation	L02670	Dallas	26	03/09/01
Dallas	Texas Instruments Incorporated	L05048	Dallas	05	03/13/01
Dallas	Columbia Hospital at Medical City Dallas Subsidiary LP	L01976	Dallas	130	03/13/01
Denton	Columbia Medical Ctr of Denton Subsidiary LP	L02764	Denton	41	03/07/01
Fort Worth	Columbia Plaza Medical Center of Fort Worth Subsidiary LP	L02171	Fort Worth	38	03/01/01
Freeport	Rhodia Electronics and Catalysis Inc	L02807	Freeport	30	03/07/01
Freeport	The Dow Chemical Company	L00451	Freeport	64	03/13/01
Georgetown	Southwestern University at Georgetown	L00372	Georgetown	17	03/06/01
Hale Center	Hi Plains Hospital	L03438	Hale Center	13	03/13/01
Houston	Baker Hughes Inteq	L04452	Houston	34	03/01/01
Houston	Memorial Hermann Hospital System	L00439	Houston	72	03/13/01
Houston	Memorial Hermann Hospital System Inc	L00650	Houston	55	03/09/01
Houston	Medical Clinic of Houston LLP	L01315	Houston	29	03/09/01
Houston	Spectracell Laboratories Inc	L04617	Houston	03	03/09/01
Houston	Columbia/HCA Healthcare Corp	L02473	Houston	40	03/08/01
Houston	Memorial Hermann Hospital System	L00439	Houston	71	03/09/01
Houston	Mallinckrodt Medical Inc	L03008	Houston	55	03/09/01
Lubbock	Covenant Medical Center	L00483	Lubbock	111	03/05/01

(CONT) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Lubbock	Covenant Health System	L04881	Lubbock	20	03/09/01
Lubbock	M Fawwaz Shoukfeh MD PA	L05276	Lubbock	03	03/14/01
Mineral Wells	Palo Pinto General Hospital	L01732	Mineral Wells	25	03/12/01
Paris	Christus St Josephs Health System	L03199	Paris	19	03/09/01
San Angelo	Shannon Medical Center	L02174	San Angelo	42	03/01/01
San Antonio	Southwest Genetics	L04490	San Antonio	04	03/07/01
San Antonio	Baptist Health System	L00455	San Antonio	98	03/08/01
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	155	03/15/01
Seguin	Guadalupe Valley Hospital	L02292	Seguin	22	03/05/01
Texarkana	Christus Health Ark-La-Tex	L04805	Texarkana	11	03/09/01
Throughout TX	Solutia Inc	L00219	Alvin	64	03/09/01
Throughout TX	Beavers Construction Company	L05003	Bowie	02	03/07/01
Throughout TX	Phoenix Non Destructive Testing Co Inc	L04454	Channelview	39	03/15/01
Throughout TX	Raba-Kistner Consultants (SW) Inc	L02337	El Paso	20	03/09/01
Throughout TX	Probe Technology Services	L05112	Fort Worth	10	03/12/01
Throughout TX	Probe Technology Services	L05112	Fort Worth	09	03/06/01
Throughout TX	Fugro South Inc	L05082	Fort Worth	02	03/15/01
Throughout TX	Professional Service Industries Inc	L03642	Houston	20	03/07/01
Throughout TX	Mandes Inspection & Testing Services Inc	L05220	Houston	19	03/07/01
Throughout TX	McBride Ratcliff & Associates Inc	L02346	Houston	19	03/07/01
Throughout TX	Baker Hughes Oilfield Operations Inc	L00446	Houston	129	03/09/01
Throughout TX	Longview Inspection Inc	L01774	Houston	161	02/27/01
Throughout TX	CB&I Constructors	L01902	Houston	45	03/15/01
Throughout TX	Metco	L03018	Houston	109	03/15/01
Throughout TX	Washington Group International Inc	L02662	Houston	78	03/15/01
Throughout TX	Site Concrete Incorporated	L05025	Irving	03	03/15/01
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	87	03/07/01
Throughout TX	High Tech Testing Service Inc	L05021	Longview	32	03/14/01
Throughout TX	Granite Construction Company	L04836	Lubbock	03	03/12/01
Throughout TX	Conam Inspection	L05010	Pasadena	33	03/09/01
Throughout TX	Technical Welding Laboratory Inc	L02187	Pasadena	136	03/09/01
Throughout TX	Tierra Testing and Consulting Inc	L04822	San Antonio	07	03/02/01
Tyler	Nutech Inc	L04274	Tyler	31	03/06/01
Tyler	East Texas Medical Center	L00977	Tyler	84	03/13/01
Wharton	South Texas Medical Clinics PA	L05163	Wharton	05	03/06/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alice	Physicians and Surgeons Hospital of Alice LP	L02390	Alice	28	03/02/01
Houston	The Univ of TX Health Science Ctr at Houston	L02774	Houston	41	03/05/01
Longview	Longview Regional Hospital Inc	L02882	Longview	29	03/09/01
McAllen	McAllen Edinburg LP	L01713	McAllen	61	03/09/01
Throughout TX	T & N Laboratories & Engineering Inc	L04417	Beaumont	08	03/12/01
Throughout TX	Amtech Roofing Consultants Inc	L04486	Dallas	03	03/12/01
Throughout TX	Oceaneering International Inc	L04463	Houston	25	03/06/01
Throughout TX	Black Warrior Wireline Corp	L04473	Odessa	14	03/16/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	The Heart Institute for Care PA	L05141	Amarillo	01	03/06/01
Fort Worth	UT Southwestern Moncrief Cancer Center	L00940	Fort Worth	23	03/05/01
Fort Worth	UT Southwestern Moncrief Cancer Center	L00047	Fort Worth	46	03/05/01
Houston	Simpro Inc	L04419	Houston	09	03/14/01

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-200101618
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 21, 2001

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Heart of Texas Council of Governments

Public Notice/Strategic and Operational Plan Announcement

PUBLIC COMMENT PERIOD

The Heart of Texas Workforce Development Board (HOTWDB) announces the availability of its Strategic and Operational Plan Modification. Copies of the modified plan are available for review and comment at the Heart of Texas Workforce Development Board (HOTWDB), 300 Franklin Avenue, Waco, Texas between the hours of 8:30 a.m. to 4:30 p.m., Monday-Friday. HOTCOG is the administrative entity for the Heart of Texas Workforce Development Board. The Heart of Texas area includes Bosque, Falls, Hill, Freestone, Limestone and McLennan Counties.

The HOTWDB Strategic and Operational Plan has been modified, where necessary, with changes to reflect the PY01 Budgetary changes and performance standards. The plan includes strategic and operational goals in categorized program components for Child Care services, Temporary Assistance for Needy Families (TANF), Food Stamp Employment and Training, Wagner-Peyser Employment Services, Welfare to work, WIA, Adult, Dislocated Worker, and the Youth Services program. The process requires a thirty (30) day Public Comment Period, which is scheduled to begin March 21, 2001 and end on April 19, 2001.

TRD-200101585
Brenda Campbell
Executive Assistant
Heart of Texas Council of Governments
Filed: March 20, 2001

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Texas Department of Housing and Community Affairs

HOME Investment Partnership Program--Notice of Funding Availability

FY 2001 Funding Cycle

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $39,000,000 for the 2001 funding cycle for the HOME Investment Partnerships Program. The Department will allocate funds to each Uniform State Planning Region using the Regional Allocation Formula based on the need for housing assistance. For information regarding the Regional Allocation Formula methodology, please refer to our website at www.tdhca.state.tx.us.

The availability and use of these funds is subject to the State regulations and the federal Final Rule governing the HOME program (24 CFR Part 92).

Allocation of HOME Funds

A minimum of fifteen percent of the annual HOME allocation is reserved for Community Housing Development Organizations (CHDOs) for the development of housing sponsored or owned by the CHDO. Ten percent of the HOME allocation is reserved for applicants that target persons with special needs.

Owner-Occupied Rehabilitation/Reconstruction Program (40 %)

Homebuyer Assistance (30%)

Tenant Based Rental Assistance (20%)

Demonstration Fund (10%) NOTE: reserved for applicants applying under the Demonstration Fund for the preservation of existing affordable or subsidized rental housing. This may include four percent or nine percent Low Income Housing Tax Credit projects which have applied through TDHCA for the preservation of affordable rental housing.

The Department will not award applicants whose service areas include participating jurisdictions (PJs) with the exception of special needs and CHDO set asides as described below. Applicants will be prioritized by service area (non-PJs), with the highest scoring applicant per activity within each region being recommended up to the limit of funds per region. Should an activity not have enough qualified applicants that are serving a non-PJ area, the funds shall be redirected to the next activity in the region that had a higher number of qualified applicants serving non-PJ areas. Only in the case of Special Needs activities and CHDO eligible activities will the Department allow awards to applicants whose service area falls within a PJ, however priority will still be given to non-PJ service areas.

Eligible Applicants

The Department provides HOME funding from the federal government to eligible recipients:

Community Housing Development Organizations (CHDOs)

Units of Local Governments

Public Housing Authorities (PHAs)

Non-profit and For-profit Organizations.

Under the HOME Program, the Department provides loans or grant funds to eligible recipients for the provision of housing to low, very low and extremely low-income individuals and families. The following activities are eligible under the HOME Program:

a. Rehabilitation or reconstruction of single-family owner-occupied housing;

b. Down payment and closing cost assistance for homebuyers;

c. Acquisition, construction or rehabilitation of multifamily housing;

d. Rental subsidy and security deposits for tenants.

Application Procedures and Final Filing

Applications will be made available on the Department's website on at *www.tdhca.state.tx.us* on April 16, 2001. You may also call 512-475-3109 to request an application on or after April 30, 2001.

Hand delivered Demonstration Fund applications must be received by 5:00pm on June 4, 2001. Hand delivered Owner-Occupied Rehabilitation, Tenant Based Rental Assistance, CHDO set-aside and Special Needs set-aside activity applications must be received by 5:00pm on June 11, 2001. Mailed Demonstration Fund applications must be postmarked no later than midnight on June 4, 2001 and received at the HOME Program within three (3) calendar days of the June 4, 2001 deadline. Mailed Owner-Occupied Rehabilitation, Tenant Based Rental Assistance, CHDO set-aside activities and Special Needs set-aside activity applications must be postmarked no later than June 11, 2001 and received at the HOME Program office within three (3) calendar days of the June 11, 2001 deadline. Applications will not be accepted by facsimile. Applicants must remit a non-refundable application fee at the time of submission in the amount of $30.00 per application to the Texas Department of Housing and Community Affairs. Please send a check, cashier's check or money order; do not send cash. The Department is authorized to waive application fees for nonprofit organizations that offer expanded services such as child care nutrition programs, job training assistance, health services, or human services. Nonprofit organizations must include proof of their exempt status in lieu of the application fee.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing & Community Affairs

HOME Program

P.O. Box 13941, Suite #400

Austin, Texas 78711-3941

Physical Address:

507 Sabine, Suite #400

Austin, Texas 78701

Applications that do not meet the filing deadline requirements will be returned to the applicant. Applications must be on forms provided by the Department and these forms cannot be altered or modified by the applicant.

It is the applicant's responsibility to submit a clear, complete, and accurate application and to apply on or before the final deadline. In addition, the Department may, in its sole discretion, request clarification of information provided that such information does not affect the competitive rating and ranking of the application or improve the substantive quality of the application. No information, whether written or oral, will be accepted if the provision of such information would result in a competitive advantage to the applicant or a competitive disadvantage to other applicants.

This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular local HOME programs. For proper completion of the application, the Department strongly encourages potential applicants to review the State and federal regulations and to attend the application training workshops.

Demonstration Fund Application Deadline

Demonstration Fund applicants are encouraged to submit applications by May 28, 2001 to allow for program review and underwriting performed by the Credit Underwriting division. The application deadline for Demonstration Fund applications is June 4, 2001 at 5:00pm as stated above. Recommended applications will be presented to the TDHCA Governing Board at the July 2001 board meeting.

Application Workshops

The Department will present one day application workshops around the State of Texas April 30-May 7, 2001. The Application workshop schedule will be posted on our website at *www.tdhca.state.tx.us.* The workshops will include a brief overview of the State HOME Program, the application evaluation criteria and general information regarding the major Federal and State requirements that may affect a HOME project. The application workshops focus on the requirements for application preparation and submission.

Staff Recommendations

It is anticipated that staff recommendations for the Demonstration Fund will be presented at the July 2001 TDHCA Governing Board meeting.

It is anticipated that staff recommendations for Owner-Occupied Rehabilitation, Tenant Based Rental Assistance, CHDO set-aside and Special Needs set-aside activity awards will be presented at the August 2001 TDHCA Governing Board meeting.

Changes in Application Guidelines and Evaluation Criteria

The 2001 application, guidelines and evaluation criteria have undergone significant changes from previous year's versions. All applicants are encouraged to review all documents thoroughly prior to submission of applications.

Resolution Requirements

The Department requires that all applications submitted must include a resolution dated within 6 months from the application submission deadline. The resolution must be from the applicant's direct governing body (For example: City Council, County Commissioner's Court or Board of Directors) authorizing the submission of the application.

Audit Requirements

An applicant is ineligible to apply for funds or any other assistance from the Department unless any past audit has been submitted to the Department in a satisfactory format on or before the application deadline for the funds or other assistance per 10 TAC 1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Furthermore, staff recommendations for funds will not be presented to the TDHCA Governing Board for applicants unless all unresolved audit findings, questioned or disallowed costs are resolved per 10 TAC 1.3(c).

CHDO Certification

Applicants for CHDO certification (and CHDOs with certificates expiring before the application submission deadline) must have their certification documents delivered to the Department's Housing Resource Center division no later than April 16, 2001 to enable the Department sufficient time to review and evaluate the documents. Applicants are encouraged to submit the documents significantly earlier than the April 16, 2001 deadline as it can take as long as 3-4 weeks for application processing.

TRD-200101623

Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 21, 2001

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Texas State Affordable Housing Corporation

Notice of Public Hearing

MULTIFAMILY HOUSING REVENUE BONDS (WHAC ALLIANCE DEVELOPMENT) SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on May 3, 2001 at 11:30 a.m., at the Austin History Center, 810 Guadalupe St., Reception Room, Austin, Texas, 78701, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in the aggregate amount not to exceed $130,000,000, the proceeds of which will be loaned to WHAC Alliance LLC, an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of ten separate multifamily housing projects (collectively, the "Projects") located in the cities of Amarillo, Austin, Corpus Christi, Houston, Lubbock, San Antonio, Temple,. Texas. The public hearing, which is the subject of this notice, will concern the Lakeview Apartments containing 504 units, located at 2401 S. Lakeshore Blvd., Austin, Texas 78741. The Projects will be owned by WHAC Alliance LLC.

All interested parties are invited to attend such public hearing to express their views with respect to the Projects and the issuance of the Bonds. Questions or request for additional information may be direct to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda Houchin David, ADA Responsible Employee, at 1-888-638-3555, ext.417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda Houchin David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.com.

TRD-200101621
Daniel C. Owen
Vice President
Texas State Affordable Housing Corporation
Filed: March 21, 2001

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Texas Department of Insurance

Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2485 on May 15, 2001, at 9:30 a.m., in Room 100 of the

Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Statistical Plan for Residential Risks. The proposed changes are necessary in order to collect experience to support the adjustment of rates for newly adopted Law & Ordinance endorsements. Staff's petition (Ref. P-0301-05-I) was filed on March 16, 2001.

The petition proposes amendments to the Texas Statistical Plan for Residential Risks to add options to an existing field entitled "Law & Ordinance" that will allow the reporting of the amount of additional coverage purchased by endorsement.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. P-0301-05-I).

Comments on the proposed amendments must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P. O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to C.H. Mah, Senior Associate Commissioner for Property & Casualty, P. O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, ch. 2001).

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

TRD-200101593
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 20, 2001

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Texas Natural Resource Conservation Commission

Enforcement Orders

An order was entered regarding SEABROOK SEAFOOD, INC., Docket No. 1998- 0376-AIR-E on March 13, 2001 assessing $28,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MARY RISNER, Staff Attorney at (512) 239-6224, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding FELIX RODRIGUEZ, Docket No. 1999-1200- PST-E on March 13, 2001 assessing $8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200101600
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 20, 2001

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an executive director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 30, 2001**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 30, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Francisco Solis; DOCKET NUMBER: 2000-0014-OSSF-E; TNRCC ID NUMBER: 14247; LOCATION: Route 5, Box 65A, Harlingen, Cameron County, Texas 78552-4850; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: §366.071, and TWC, §285.50(b), by installing an OSSFs without being registered by the TNRCC to operate as an installer; PENALTY: $1,250; STAFF ATTORNEY: Laurel Lindsey, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Ave., Harlingen, Texas 78550-5247, (956) 425- 6010.

(2) COMPANY: Gbak Properties Inc. dba Sunrise Convenience Store; DOCKET NUMBER: 2000-0600-PST-E; TNRCC ID NUMBER: 0035534; LOCATION: 1331 9th Avenue, Texas City, Galveston County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: §382.085(b), and TWC, §115.245 and §115.246(5), by failing to maintain and provide documentation of the testing conducted at the Store; PENALTY: $1,250; STAFF ATTORNEY: Laurencia N. Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: R. J. Sherwin dba The Marina On Lake Medina LLC; DOCKET NUMBER: 2000-0210-MLM-E; TNRCC ID NUMBER: MJ-0065-D; LOCATION: 200 County Road 2620 in Mico, Medina County, Texas; TYPE OF FACILITY: boat marina and campgrounds; RULES VIOLATED: §382.085(b) and TWC, §111.201, by failing to abide by the outdoor burning prohibition by burning solid waste generated from commercial activities, §330.4(a), by failing to properly dispose of solid waste and ash residues which resulted from the outdoor burning of solid wastes; PENALTY: $3,000; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233- 4480, (210) 490-3096.

TRD-200101599
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: March 20, 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 (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 30, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 30, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Joe Hamilton dba Keg Korner; DOCKET NUMBER: 1999-0443-PST- E; TNRCC ID NUMBER: 13617; LOCATION: intersection of Farm-to-Market Road (FM) 1476 and FM 1496 in Proctor, Comanche County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: §334.7(a)(1), and TWC, §26.346(a), by failing to register USTs with the commission on authorized forms; §§334.401(a), 334.414 and 334.55(a)(3), by failing to have the permanent removal from service of a UST conducted by a qualified person possessing the required license or certification, by failing to utilize a contractor registered with the Commission for the permanent removal, by failing to utilize a licensed installer or on-site supervisor for the permanent removal, by failing to complete permanent removal from service of a UST system in a manner designed to minimize the risks to human health and safety or the environment; §334.55(a)(6) and §334.55(e), by failing to conduct a site assessment in response to the permanent removal from service of a UST system; §334.55(b)(4)(A), by failing to transport a tank from the removal site within 24 hours of removal; §334.21, by failing to pay required annual UST registration fees; PENALTY: $13,500; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: Kenneth F. Smith; DOCKET NUMBER: 2000-0759-WOC-E; TNRCC ID NUMBER: 460903510; LOCATION: North Guadalupe River, U.S. Hwy. 175, Victoria, Victoria County, Texas; TYPE OF FACILITY: certified Class B wastewater operator; RULES VIOLATED: §325.11, falsified official documents and reports; PENALTY: $0; STAFF ATTORNEY: Reynaldo De Los Santos, Litigation Division; MC R13, (210) 403-4016; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Ste. 1200, Corpus Christi, Texas 78412-5503 (361) 825-3100.

(3) COMPANY: Richard Tatsch; DOCKET NUMBER: 1999-1370-OSI-E; TNRCC ID NUMBER: 3685; LOCATION: 1312 FM 32 Unit 11 Garza Mhp, San Marcos, Hays County, Texas; TYPE OF FACILITY: on site sewage facility (OSSF); RULES VIOLATED: §285.58(a)(3), and TWC, §366.051(c), by failing to obtain an authorization to construct from local authorized agents; §285.58(a)(5), by failing to install the OSSF that was authorized by the permitting authority; PENALTY: $750; STAFF ATTORNEY: Darren Ream, Litigation Attorney, MC R4, (817) 588-5878; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Ste. 150, Austin, Texas 78758-5336, (512) 339- 2929.

(4) COMPANY: Texas Lehigh Cement Company; DOCKET NUMBER: 88-06(j); TNRCC ID NUMBER: 10899(2); LOCATION: two miles south of Buda on FM 2770 in Hays County, Texas; TYPE OF FACILITY: cement plant; RULES VIOLATED: order terminating an Agreed Order effective August 12, 1988 in the matter of Texas Lehigh Cement Company under the authority of the Texas Health and Safety Code, (THSC), Chapter 382; PENALTY: $0; STAFF ATTORNEY: Victor Simonds, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Ste. 150, Austin, Texas 78758-5336; (512) 339-2929.

(5) COMPANY: Texas Lehigh Cement Company; DOCKET NUMBER: 87-08(m); TNRCC ID NUMBER: 10899(1); LOCATION: two miles south of Buda on FM 2770 in Hays County, Texas; TYPE OF FACILITY: cement plant; RULES VIOLATED: order terminating the an Agreed Order effective September 18, 1987 in the matter of Texas Lehigh Cement Company under the authority of THSC, Chapter 382; PENALTY: $0 STAFF ATTORNEY: Victor Simonds, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Ste. 150, Austin, Texas 78758-5336; (512) 339- 2929.

(6) COMPANY: Weatherford Aerospace, Inc.; DOCKET NUMBER: 1999-1476-IHW-E; TNRCC ID NUMBER: 33990; LOCATION: 1020 East Columbia Street, Weatherford, Parker County, Texas; TYPE OF FACILITY: aircraft component manufacturing facility; RULES VIOLATED: TWC, §26.121, by discharging industrial solid waste into or adjacent to the waters in the state; §335.4, by causing, suffering, allowing or permitting collection, handling, storage, processing or disposal of industrial solid waste in an inappropriate manner; PENALTY: $50,000; STAFF ATTORNEY: Lisa Uselton Dyar, Litigation Division, MC 175, (512) 239-5692; REGIONAL OFFICE: Arlington Regional

Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(7) COMPANY: Worth Oil Company; DOCKET NUMBER: 1999-1438-PST-E; TNRCC ID NUMBER: 8810; LOCATION: 2400 Montgomery Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks (UST); RULES VIOLATED: §115.241, and TWC, §382.085(b), by failing to have a Stage II Vapor Recovery System installed while operating and dispensing gasoline; PENALTY: $2,875; STAFF ATTORNEY: Rich O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(8) COMPANY: Worth Oil Company dba Worth Oil #9724; DOCKET NUMBER: 1999- 1069-PST-E; TNRCC ID NUMBER: 8815; LOCATION: 500 North Las Vegas Trail, White Settlement, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: §334.7(d)(3), by failing to amend the Facility's registration for any change within 30 days from the date of the occurrence; §334.50(a)(10(A) and TWC, §26.3475, by failing to provide a method of release detection capable of detecting a release from any portion of the UST system; §334.93(a) and (b), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases; §26.121, by discharging waste into or adjacent to any water in the state; PENALTY: $50,000; STAFF ATTORNEY: Rich O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

TRD-200101598
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: March 20, 2001

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Notice of Water District Applications

Petitioner filed a petition for creation of SOUTH SHORE HARBOUR MUNICIPAL UTILITY DISTRICT NUMBER 7 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the land to be included in the proposed district ; (3) the proposed District will contain approximately 469.7435 acres located within Galveston County, Texas; and (4) the proposed District is within the limits of the City of League City, Texas, and is not within such jurisdiction of any other city. By City of League City Resolution No. 2000-11, the City of League City, effective March 7, 2000, passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $18,000,000.

Petitioner filed a petition for creation of BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 21 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the petition states that there is only one lienholder on the property to be included in the proposed district; (3) the proposed District will contain approximately 590.17 acres located within Brazoria County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Pearland, Texas, and is not within such jurisdiction of any other city. By City of Pearland Resolution No. R2000-127, the City of Pearland, effective October 23, 2000, passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $28,300,000.

Petitioner filed a petition for creation of BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 22 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the petition states that there is only one lienholder on the property to be included in the proposed district; (3) the proposed District will contain approximately 327.38 acres located within Brazoria County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Pearland, Texas, and is not within such jurisdiction of any other city. By City of Pearland Resolution No. R2000-128, the City of Pearland, effective October 23, 2000, passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $14,650,000.

ARANSAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for authority to adopt and impose an annual uniform operations and maintenance standby fee of $42 per equivalent single family connection (ESFC) for calendar years 2002-2004, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TNRCC. The Commission may approve the annual standby fees as requested, or it may approve a lower annual standby fee, but it shall not approve an annual standby fee greater than the amount requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of his pro-rated share of the standby fee obligation on transfer of title to the property. On January 1 of each year, a lien is attached to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District. The purpose of standby fees is to distribute a fair portion of the cost burden for operations and maintenance costs and debt service of the District facilities to owners of property who have not constructed vertical improvements but have water, wastewater or drainage facilities or services available. Any revenues collected from the operations and maintenance standby fees shall be used to supplement the District's operations and maintenance account.

Petitioner filed a petition for creation of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 374 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the petition states that there are no lienholders on the property to be included in the proposed district; (3) the proposed District will contain approximately 343.80 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within such jurisdiction of any other city. By City of Houston Ordinance No. R2000-1122, the City of Houston, effective December 20, 2000, passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $8,750,000.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the 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) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition 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. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 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.

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of NORTHEAST MEDINA COUNTY MUNICIPAL UTILITY DISTRICT NO. 2 (District) signed by Frost National Bank, Trustee for the City Public Service of San Antonio, Texas, Employees' Pension Trust (Petitioner) joined by Land Systems Company and Martex Corporation (Buyers). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, June 6, 2001, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. On February 18, 2000, the Texas Natural Resources Conservation Commission (Commission) declared the application administratively complete. The application requests the District be dissolved. On April 27, 1989, the Commission created the District which operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness, or assets and liabilities. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1995 through 1999 are on file. An affidavit of the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of NORTHEAST MEDINA COUNTY MUNICIPAL UTILITY DISTRICT NO. 3 (District) signed by Frost National Bank, Trustee for the City Public Service of San Antonio, Texas, Employees' Pension Trust (Petitioner) joined by Land Systems Company and Martex Corporation (Buyers). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, June 6, 2001, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. On February 18, 2000, the Texas Natural Resources Conservation Commission (Commission) declared the application administratively complete. The application requests the District be dissolved. On April 27, 1989, the Commission created the District which operates under Texas Water Code Chapters

49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness, or assets and liabilities. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1995 through 1999 are on file. An affidavit of the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. The TNRCC may approve the petition unless a written request for a contested case hearing is filed within 30 days after the 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) the name of the petitioner and the TNRCC Docket Number; (3) the statement "I/we request a contested case hearing"; and (4) a brief description of how you would be affected by the request in a way uncommon to the general public. You may also submit your proposed adjustments to the petition 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 contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, 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. Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the Office of Public Assistance at 1- 800-687-4040 or 1-800-RELAY-TX (TDD), at least one week prior to the hearing.

TRD-200101601
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 20, 2001

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Notice of Water Rights Applications

PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1, P.O. Box 98, Mineral Wells, Texas 76068, applicant, seeks a Temporary Water Use Permit pursuant to §11.138, Texas Water Code and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, et seq. Applicant owns Certificate of Adjudication No. 12-4031 which authorizes owner to maintain two existing on-channel reservoirs: Reservoir 1, Lake Palo Pinto, impounds 44,100 acre-feet of water and Reservoir 2 impounds 24 acre-feet of water. Both reservoirs are located on Palo Pinto Creek, tributary of Brazos River, in the Brazos River Basin. Certificate of Adjudication No. 12-4031 also authorizes the owner to divert and use not to exceed 12,500 acre-feet of water per annum for municipal use and 6,000 acre-feet of water per annum for industrial purposes from the perimeter of the reservoirs at a maximum combined rate of 85.00 cfs (38,250 gpm). The time priority of July 3, 1962 for the storage of 34,250 acre-feet of water in Lake Palo Pinto, the diversion of 10,000 acre-feet of water for municipal use and 6,000 acre-feet of water for industrial use at a maximum diversion rate of 85 cfs (38,250 gpm). The time priority of September 8, 1964 for the storage of an additional 9,850 acre-feet of water in the Lake Palo Pinto, the storage of 24 acre-feet of water in the small reservoir, and the diversion of an additional 2,500 acre-feet of water for municipal purposes. Applicant seeks a temporary water use permit to add a diversion point on Palo Pinto Creek downstream of the already existing diversion points and reservoirs for the diversion of the water authorized in Certificate of Adjudication No. 12-4031 for a period of not more than three years or until that time within the three (3) years period when and if the applicant requests to amend Certificate of Adjudication No. 12-4031 to add the aforesaid additional diversion point and it is granted by the Commission. The proposed diversion point is located 12.5 miles in a southeast direction from the City of Palo Pinto and .5 miles in a southeast direction from the City of Brazos, in Palo Pinto County. The maximum diversion rate will be 6.19 cfs (2777 gpm). Applicant has indicated that the total amount of water that will be diverted during the three year period will be 13,140 acre-feet (not to exceed a maximum diversion of 4,380 acre-feet during any one permit year). This temporary water use permit, if granted, will include a special condition that the applicant can only divert from the additional diversion point when the water stored in Lake Palo Pinto is less than 860 msl. This notice is being sent to the owners of water rights with diversion points found in the Brazos River watershed between the proposed diversion point and Lake Granbury. The temporary water use permit, if granted, will also be junior in priority to all senior and superior water rights in the Brazos River Basin.

Written public comments and request for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 4, 2001. A public meeting is intended for the taking of public comment, and is not 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 by April 4, 2001. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by April 4, 2001. 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, a fax number, if any; (2) applicant's name and permit number; (3) the statement [I/We] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Request for a contested case hearing must be submitted in writing to the TNRCC 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 temporary permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing request, public comments or request for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at (800) 687-4040. General information regarding the TNRCC can be found at our web site a www.tnrcc.state.rx.us.

BN LEASING CORP., 777 Main Street, Suite 1300, Fort Worth, Texas, 76102, applicant, seeks to amend Water Use Permit No. 3757, as amended, pursuant to Texas Water Code (TWC) §11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Water Use Permit No. 3757, as amended, authorizes permittee to maintain a dam and reservoir on an unnamed tributary of Big Fossil Creek, tributary of West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, Tarrant County, and to impound therein 69 acre-feet of water for training purposes (a non-consumptive use) to simulate off-shore oil and gas rig operation. Permittee is also authorized to divert and use not to exceed 140 acre-feet of water per annum from the reservoir, at a rate of 1.8cfs (800 gpm) to irrigate 100 acres of land out of a 234.75 acre tract located in the Milly Gilbert Survey, Abstract No. 565, the W. Smith Survey, Abstract No. 1418, the A. Smith Survey, Abstract No. 1419, and the R. Morris Survey, Abstract No. 1036. Permittee is also authorized to use the aforesaid impoundment for recreation purposes. Water Use Permit No. 3757, as amended, contains a special condition stating that the authorization to divert 140 acre-feet of water per annum for irrigation purposes shall expire and become null and void on December 31, 2000. After that date, no diversion is authorized and the reservoir will remain for domestic and livestock and in-place recreation purposes only. The applicant seeks to amend Water Use Permit No. 3757, as amended, to delete or extend the expiration date for irrigation purposes.

Notice is given that applicant, VERSTRAETEN BROTHERS FARMS, INC., 7844 #1 Pearsall Road, San Antonio, Texas, 78252, seeks an amendment to Water Use Permit No. 5598, pursuant to §11.122, 11.145, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Water Use Permit No. 5598 currently authorizes applicant to construct a dam and reservoir on Long Hollow Creek, tributary of the Medina River, tributary of the San Antonio River, San Antonio River Basin, Bexar County, and to impound therein not to exceed 300 acre-feet of water at its normal operating elevation. The midpoint of the dam at the stream will be at Latitude 29.3117° N, Longitude 98.6583° W, also being W 32° S, 2,700 feet from the southeast corner of John Barber Survey No. 63, Abstract No. 53, Bexar County. Permittee is also authorized to divert and use not to exceed 120 acre-feet of water per annum at a maximum rate of 1500 gpm (3.34 cfs) from the perimeter of the reservoir to irrigate 320 acres of land out of a 394.889 acre-tract located in the aforesaid survey and the J. M. Becerra Survey No. 58, Abstract No. 50. Water Use Permit No. 5598 has a time priority of August 1, 1997, and was issued on October 30, 1998. It includes time limitations to commence construction of the aforesaid dam by October 29, 2000 and to complete its construction by October 29, 2001. Failure to commence and/or complete construction of the aforesaid dam within the aforesaid time period shall cause this permit to expire and become null and void, unless permittee applies for an extension of time to commence and/or complete construction prior to the respective deadlines for commencement and completion. Verstraeten Brothers Farms, Inc., seeks to amend Permit No. 5598 to extend the time to commence construction of the dam by October 29, 2002 and to complete construction of the dam by October 29, 2003. Permittee also seeks to add municipal and industrial uses to the authorized irrigation use.

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, Texas 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-200101602
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 20, 2001

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Texas Parks and Wildlife Department

Notice of Public Hearing and Opportunity for Public Comment

This is a notice of a public hearing and opportunity for public comment regarding the application of Sand Supply/A Division of Campbell Concrete and Materials, L.P. (Sand Supply) for amendment and renewal of Texas Parks and Wildlife Sand and Gravel Permit No. SR95-003. Sand Supply has applied to renew its permit at its current dredging location, adjacent to the Smith property. This location is on the Brazos River in Fort Bend County near Richmond, Texas, approximately 3.0 miles downstream from the U.S. Highway 90A crossing, and approximately 3.8 miles upstream from the U.S. Highway 59 crossing. Sand Supply requests permission to remove from this location 50,000 cubic yards of sand and 20,000 cubic yards of gravel monthly, a total of 840,000 cubic yards of sedimentary materials per year.

Sand Supply's application also requests permission to amend its permit to allow dredging at a second location, adjacent to the Booth property. This location is also on the Brazos River in Fort Bend County, near Richmond, approximately 1.7 miles downstream from the US Highway 59 crossing, and approximately 30 miles upstream from the FM 1462 crossing. Sand Supply requests permission to remove from this location 50,000 cubic yards of sand and 20,000 cubic yards of gravel monthly, a total of 840,000 cubic yards of sedimentary material per year.

The hearing will be held on April 27, 2001, at 9:30 a.m. in the Commissioners' Hearing Room at Texas Parks and Wildlife headquarters, 4200 Smith School Rd., Austin, TX, 78744. The purpose of the hearing is to

receive public comment on the proposed application. The hearing is not a contested case hearing under the Administrative Procedure Act. Public comment may be submitted at the hearing orally or in writing. Written public comment will be accepted until thirty days after the publication of this notice in the newspaper or the Texas Register, whichever is later, and should be submitted to: Mr. Rollin MacRae, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX, 78744, fax 512-389-8059, e-mail rollin.macrae@tpwd.state.tx.us. To review a copy of the application or with any questions, please contact Mr. MacRae.

TRD-200101581
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: March 20, 2001

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 12, 2001, Trinity Valley Services, 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 60239. Applicant intends to change the name from Trinity Valley Services, Inc. to its assumed name, TVS Communications, thereby relinquishing SPCOA Certificate Number 60398.

The Application: Application of Trinity Valley Services, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23818.

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 April 4, 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 23818.

TRD-200101527
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 13, 2001, Pathwayz Communications, 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 60344. Applicant intends to remove the resale restriction.

The Application: Application of Pathwayz Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23822.

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 April 4, 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 23822.

TRD-200101534
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 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 March 13, 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 Emergent Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 23823 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, switched access service, PBX trunking, exchange access services and optional features, exchange usage services and Operator, DA, BLV/BLVI Services, and Carrier Access services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than April 4, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101533
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 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 March 13, 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 NetVoice Technologies, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23824 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes several Texas local access and transport areas.

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 April 4, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101532
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 14, 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 March 16, 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 Jilapuhn Inc., doing business as VI-Telco for a Service Provider Certificate of Operating Authority, Docket Number 23753 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service to residential and business customers.

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 April 4, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101564
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 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 March 9, 2001, for waiver of certain requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of El Paso Global Networks, L.L.C. for Waiver of Bill Formatting Requirements of P.U.C. Substantive Rule §26.25. Docket Number 23825.

The Application: El Paso Global Networks, L.L.C. (EPGN), formerly Waller Creek Communications, Inc., holds Service Provider Certificate of Operating Authority (SPCOA) Number 60112, and maintains that it is currently providing service to 1,517 residential customers in Texas. EPGN advises the commission that it will no longer be a provider of retail residential services in Texas after June 29, 2001. According to EPGN, the cost of implementing the necessary changes to its billing system in order to comply with P.U.C. Substantive Rule §26.25(e)(1)(C) and (e)(3)(E) is estimated at $150,000. EPGN asserts that it would suffer an undue financial burden if it were required to implement the bill format changes for a market EPGN no longer intends to serve after June 29, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 23825.

TRD-200101565
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 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 March 14, 2001, for waiver of certain requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of RTex Communications Group, Inc. (RTex) for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23832.

The Application: On August 15, 2000, the commission adopted P.U.C. Substantive Rule §26.25 requiring implementation of the changes required by the rule on or before February 15, 2001. RTex is requesting an extension of the implementation deadline, from February 15, 2001 to September 1, 2001, with respect to P.U.C. Substantive Rule §26.25(e)(1)(C) notification of change in service provider, and §26.25(e)(3)(E) identification of charges that must be paid to retain basic local telecommunications service.

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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 23832.

TRD-200101566
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 2001

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on February 8, 2001, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Trenton Exchange for Expanded Local Calling Service, Project Number 23664.

The petitioners in the Trenton Exchange request ELCS to the exchanges of Denison, Greenville, and McKinney.

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 April 13, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101555
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2001

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition filed on February 9, 2001, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Rosharon Exchange for Expanded Local Calling Service, Project Number 23666.

The petitioners in the Rosharon exchange request ELCS to the exchanges of Alvin, Clute, Freeport, and Lake Jackson.

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 April 16, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200101556
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2001

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Public Notice of Amendment to Interconnection Agreement

On March 16, 2001, Southwestern Bell Telephone Company and ICG ChoiceCom, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 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 and Supplement 2001) (PURA). The joint application has been designated Docket Number 23841. 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 23841. 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 April 17, 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 Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23841.

TRD-200101591
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 20, 2001

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Public Notice of Amendment to Interconnection Agreement

On March 16, 2001, Southwestern Bell Telephone Company and TXU Communications Telecom Services Company, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 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 and Supplement 2001) (PURA). The joint application has been designated Docket Number 23842. 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 10 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 23842. 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 April 17, 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 Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23842.

TRD-200101592
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 20, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of a LRIC Study for National Directory Assistance Service Pursuant to P.U.C. Substantive Rule §26.215 on or about March 25, 2001, Docket Number 23836.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 23836. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at 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.

TRD-200101577
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214

Docket Title and Number. Central Telephone Company of Texas doing business as Sprint for Approval of LRIC Study for Asynchronous Transfer Mode (ATM) Service for Business Customers Pursuant to P.U.C. Substantive Rule §26.214 on or about March 22, 2001, Docket Number 23827.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 23827. Written comments or recommendations should be filed no later than 45 days after the date of a sufficiency study and should be filed at 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.

TRD-200101558
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214

Docket Title and Number. United Telephone Company of Texas doing business as Sprint for Approval of LRIC Study for Asynchronous Transfer Mode (ATM) Service for Business Customers Pursuant to P.U.C. Substantive Rule §26.214 on or about March 22, 2001, Docket Number 23828.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 23828. Written comments or recommendations should be filed no later than 45 days after the date of a sufficiency study and should be filed at 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.

TRD-200101559
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2001

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Public Notice of Interconnection Agreement

On March 13, 2001, Guadalupe Valley Telephone Cooperative, Inc. and San Antonio MTA LP doing business as Verizon Wireless, 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 & Supp. 2001) (PURA). The joint application has been designated Docket Number 23826. 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 23826. 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 April 12, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23826.

TRD-200101557
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2001

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Public Notice of Interconnection Agreement

On March 16, 2001, Southwestern Bell Telephone Company and Tri-Tel Services, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 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 and Supplement 2001) (PURA). The joint application has been designated Docket Number 23839. The joint application and the underlying interconnection agreement is 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 23839. 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 April 17, 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 Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23839.

TRD-200101589
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 20, 2001

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Public Notice of Interconnection Agreement

On March 16, 2001, Southwestern Bell Telephone Company and Emergent Communications, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 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 and Supplement 2001) (PURA). The joint application has been designated Docket Number 23840. The joint application and the underlying interconnection agreement is 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 23840. 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 April 17, 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 Public Utility Commission Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23840.

TRD-200101590
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 20, 2001

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Texas Department of Transportation

Notice of Invitation - Texas Highway Traffic Safety Program

Notice of Invitation - Texas Highway Traffic Safety Program: The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) from project initiation to March 31, 2004. The project will be funded through the Texas Highway Traffic Safety Program and administered by the Traffic Safety Section of the Traffic Operations Division of TxDOT.

Purpose: The purpose of this request is to solicit proposals to provide a team of traffic law enforcement experts to support Selective Traffic Enforcement Programs (STEP) and all other programs with occupant restraint as a component of the Texas Department of Transportation (TxDOT), Traffic Operations Division, Traffic Safety Section.

Eligible Applicants: Eligible applicants are limited to state agencies, local government agencies, educational institutions, and nonprofit organizations.

Availability of Funds: Approximately $524,000 is available to fund the occupant restraint program activities for fiscal year 2001 through March of fiscal year 2003. An additional estimated $268,000 may be available to fund the program from April of fiscal year 2003 through March of fiscal year 2004, contingent upon the availability of funds.

Law Enforcement Liaison Team (LELT) Goal: Provide operational and technical support of occupant restraint programs and act as a liaison between program partners. Funded services include: (1) contacting and providing operational and technical assistance to law enforcement agencies on the performance requirements of the occupant restraint programs; (2) assisting law enforcement agencies to achieve an increase in occupant restraint usage rates; (3) assisting law enforcement agencies in identifying highway traffic safety problems; (4) monitoring participating law enforcement agencies for compliance with the requirements of the occupant restraint programs requirements; (5) providing timely information on traffic laws and available training programs to law enforcement agencies; (6) acting as spokespersons for the occupant restraint program efforts; and, (7) performing other assigned activities (as detailed in the RFP) in support of the occupant restraint program.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers will score proposals. The proposals will be evaluated using the criteria and review process described in the RFP.

Pre-RFP Submission Meeting: To clarify and answer questions concerning the Highway Safety Plan (HSP), occupant restraint program, and the LELT services, a meeting will be held on April 11, 2001 for

all interested parties who have requested a RFP. Interested parties are urged to attend, but attendance is not mandatory.

Deadlines: Proposals prepared according to instructions in the RFP Package must be received by TxDOT by 5:00 p.m., Central Time, on or before April 30, 2001.

To Obtain a Copy of the RFP: Request for a copy of the RFP should be submitted to Ms. Tracie Mendez, Texas Department of Transportation, Traffic Operations Division, Attn: TRF-TS, 125 East 11th Street, Austin, TX 78701-2483, Telephone (512) 416-3175, Fax (512) 416-3349, tmendez@dot.state.tx.us

TRD-200101622
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 21, 2001

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Texas Water Development Board

Request for Applications

The Texas Water Development Board (TWDB) requests, pursuant to 31 Texas Administrative Code (TAC) §355.92, the submission of regional water planning proposals leading to the possible award of contracts to develop a scope of work (SOW) to be used in the revision or update of a regional water plan as described in 31 TAC Chapter 357. In order to receive a grant, the applicant must be a political subdivision and must have been designated an eligible applicant by a regional water planning group as defined in 31 TAC §355.91.

Description of Funding Consideration. For state fiscal year 2001 funding is available for 100 percent grants for the development of a SOW in an amount not to exceed $10,000 per regional water planning area as defined in 31 TAC §355.91. The $10,000 will be for **all** eligible expenses associated with SOW development if the proposed amendments to 31 TAC Chapter 355, Subchapter C are approved. If the amendments are not approved, however, funding will be only for direct expenses relating to the development of the SOW. Any funds not used by a Regional Water Planning Group during SOW development may be transferred to the contracts to be executed for the next round of regional water planning.

All contracts will include provisions to prevent any work starting on SOW development prior to Board approval of proposed amendments to 31 TAC Chapter 357 related to the guidelines for regional water planning. This contract provision will be included to ensure that no funds will be expended on efforts that may not be required or may be different as a result of amendments to 31 TAC Chapter 357. In the event that acceptable proposals are not submitted, the TWDB retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete regional planning grant application may be filed with the TWDB at any time for funding consideration. Upon successful review by the TWDB, recommendations for funding of proposals will be presented to the TWDB's governing board at its earliest meeting possible. All grant applications must be filed with the TWDB prior to 5:00 p.m., April 30, 2001. Proposals can be directed either in person to Ms. Phyllis Thomas, Room 447, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.94 and the evaluation criteria included in the Texas Water Development Board's application instruction sheet for Senate Bill 1 Scope of Work Development Regional Water Planning Grants. All potential applicants should contact the Board to obtain these guidelines. Requests for information, the Board's rules and guidelines covering the research and planning fund, including evaluation criteria may be directed to Ms. Phyllis Thomas at the preceding address or by calling (512) 463-7926 or may be obtained from the Texas Water Development Board's webpage at: www.twdb.state.tx.us.

TRD-200101617
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: March 21, 2001

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January - December 2001 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents and meeting notices. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue date	**Rules:** **12 Noon**	**Other Documents:** **12 Noon**
1 Friday, January 5	**Friday, December 22*	Wednesday, December 27
2 Friday, January 12	**Friday, December 31*	Wednesday, January 3
3 Friday, January 19 *Annual Index*	Monday, January 8	Wednesday, January 10
4 Friday, January 26	**Friday, January 12*	Wednesday, January 17
5 Friday, February 2	Monday, January 22	Wednesday, January 24
6 Friday, February 9	Monday, January 29	Wednesday, January 31
7 Friday, February 16	Monday, February 5	Wednesday, February 7
8 Friday, February 23	Monday, February 12	Wednesday, February 14
9 Friday, March 2	**Friday, February 16*	Wednesday, February 21
10 Friday, March 9	Monday, February 26	Wednesday, February 28
11 Friday, March 16	Monday, March 5	Wednesday, March 7
12 Friday, March 23	Monday, March 12	Wednesday, March 14
13 Friday, March 30	Monday, March 19	Wednesday, March 21
14 Friday, April 6	Monday, March 26	Wednesday, March 28
15 Friday, April 13 *First Quarterly Index*	Monday, April 2	Wednesday, April 4
16 Friday, April 20	Monday, April 9	Wednesday, April 11
17 Friday, April 27	Monday, April 16	Wednesday, April 18
18 Friday, May 4	Monday, April 23	Wednesday, April 25
19 Friday, May 11	Monday, April 30	Wednesday, May 2

Issue date	**Rules:** **12 Noon**	**Other Documents:** **12 Noon**
20 Friday, May 18	Monday, May 7	Wednesday, May 9
21 Friday, May 25	Monday, May 14	Wednesday, May 16
22 Friday, June 1	Monday, May 21	Wednesday, May 23
23 Friday, June 8	**Friday, May 25*	Wednesday, May 30
24 Friday, June 15	Monday, June 4	Wednesday, June 6
25 Friday, June 22	Monday, June 11	Wednesday, June 13
26 Friday, June 29	Monday, June 18	Wednesday, June 20
27 Friday, July 6	Monday, June 25	Wednesday, June 27
28 Friday, July 13 *Second Quarterly Index*	Monday, July 2	**Tuesday, July 3*
29 Friday, July 20	Monday, July 9	Wednesday, July 11
30 Friday, July 27	Monday, July 16	Wednesday, July 18
31 Friday, August 3	Monday, July 23	Wednesday, July 25
32 Friday, August 10	Monday, July 30	Wednesday, August 1
33 Friday, August 17	Monday, August 6	Wednesday, August 8
34 Friday, August 24	Monday, August 13	Wednesday, August 15
35 Friday, August 31	Monday, August 20	Wednesday, August 22
36 Friday, September 7	Monday, August 27	Wednesday, August 29
37 Friday, September 14	**Friday, August 31*	Wednesday, September 5
38 Friday, September 21	Monday, September 10	Wednesday, September 12
39 Friday, September 28	Monday, September 17	Wednesday, September 19
40 Friday, October 5	Monday, September 24	Wednesday, September 26
41 Friday, October 12 *Third Quarterly Index*	Monday, October 1	Wednesday, October 3
42 Friday, October 19	Monday, October 8	Wednesday, October 10
43 Friday, October 26	Monday, October 15	Wednesday, October 17
44 Friday, November 2	Monday, October 22	Wednesday, October 24

Issue date	**Rules:** **12 Noon**	**Other Documents:** **12 Noon**
45 Friday, November 9	Monday, October 29	Wednesday, October 31
46 Friday, November 16	Monday, November 5	Wednesday, November 7
47 Friday, November 23	Monday, November 12	Wednesday, November 14
48 Friday, November 30	Monday, November 19	Wednesday, November 21
49 Friday, December 7	Monday, November 26	Wednesday, November 28
50 Friday, December 14	Monday, December 3	Wednesday, December 5
51 Friday, December 21	Monday, December 10	Wednesday, December 12
52 Friday, December 28	Monday, December 17	Wednesday, December 19

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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