TEXAS REGISTER

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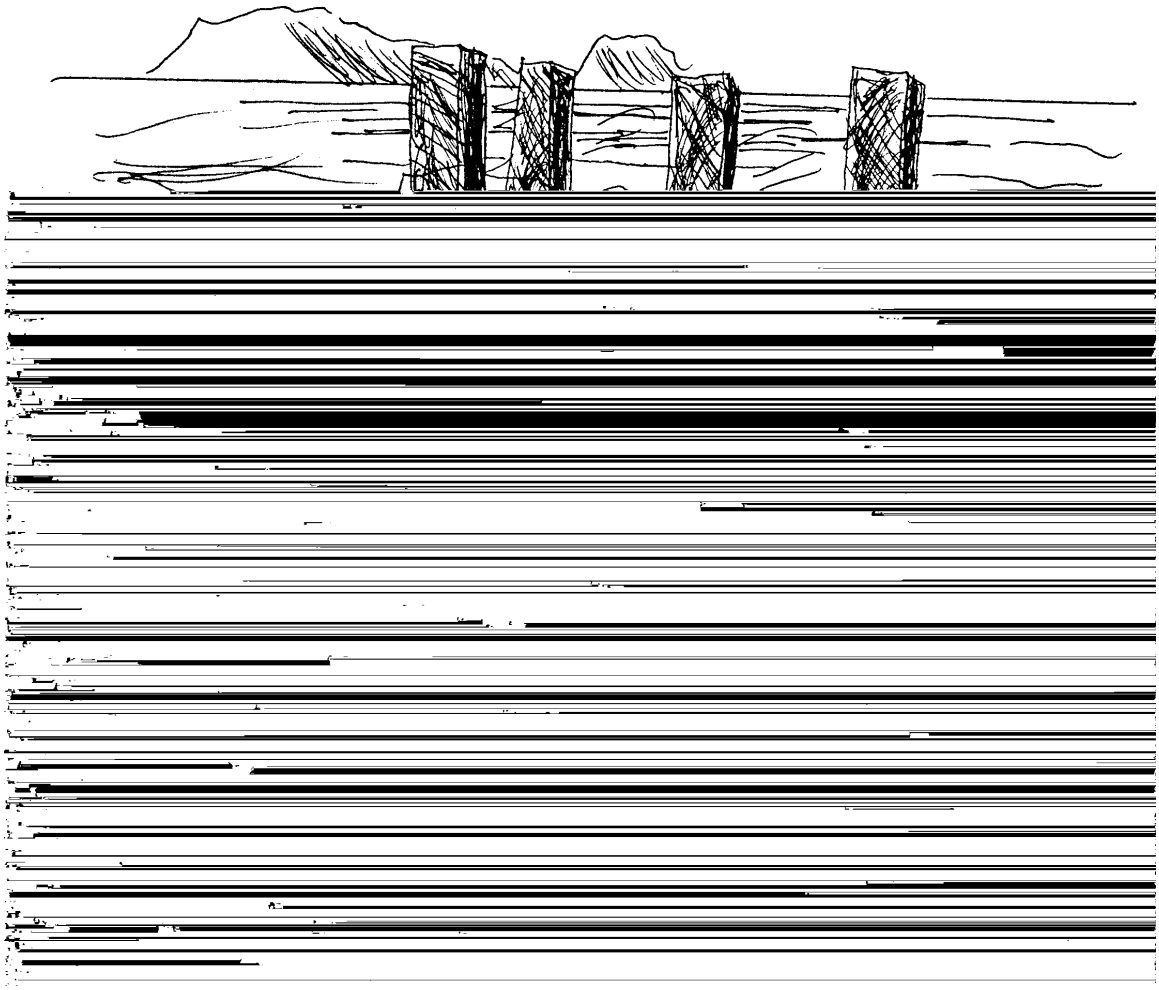

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2nd grade
Trinity School

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

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

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

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

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

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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. TTY: 7-1-1.

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.

Request for Opinions

RQ-0412-JC

Mr. Tom Harrison, Executive Director, Texas Ethics Commission, 201 East 14th Street, 10th Floor Austin, Texas 78711-2070

Re: Whether the Ethics Commission may make electronic copies of finance reports available prior to the dates specified in section 254.0401, Election Code (Request No. 0412-JC)

Briefs requested by September 17, 2001

RQ-0413-JC

The Honorable Jim Solis, Chair, Economic Development Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the nepotism statutes apply to the hiring of a substitute teacher (Request No. 0413-JC)

Briefs requested by September 20, 2001

RQ-0414-JC

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

Re: Whether the Texas Department of Health is authorized to promulgate a rule requiring that all dietary supplements containing ephedrine alkaloids include certain labeling information (Request No. 0414-JC)

Briefs requested by September 20, 2001

RQ-0415-JC

Mr. Jim Nelson, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Re: Whether a school district is required to expel students who commit certain felonies within 300 feet of school property Mr. Jim Nelson

Briefs requested by September 20, 2001

For further information, please call the Opinion Committee at (512) 463-2110.

TRD-200104939
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 21, 2001

♦ ♦ ♦

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 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 379. FEES AND LICENSE RENEWAL

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners adopts on an emergency basis an amendment to §379.1, concerning Fees.

The board must adopt this on an emergency basis due to the fact that they must raise the renewal fee to cover costs mandated by the 2002 - 2003 Appropriations Bill. The bill states that we must raise additional revenue above and beyond what we already collect in order to receive the funding. The renewal for the Board begins in September and ends November 1st. We must have that increase in effect in order to raise the needed revenue in fiscal year 2002.

The amendments are adopted on an emergency basis under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. This rule is also authorized by and affects Texas Occupations Code §202.153 which authorizes the board by rule to establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

§379.1. Fees.

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

(b) Fees are as follows:

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

(7) Renewal--$425 [~~$335~~]

(8) Renewal Penalty--as specified in Texas Occupations Code, Chapter 202, §301(d) [~~Texas Civil Statutes, Article 4571,§1(e)-(h)~~].

(9) Non certified podiatric technician registration--$25

(10) Non certified podiatric technician renewal--$25

(11) Duplicate License--$50

(12) - (15) (No change.)

This agency hereby certifies that the emergency adoption 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 August 20, 2001.

TRD-200104851
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective Date: September 1, 2001
Expiration Date: December 30, 2001
For further information, please call: (512) 305-7002

♦ ♦ ♦

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts on an emergency basis an amendment to §535.51, concerning requirements for a real estate license. The amendment is necessary to implement House Bill 695, 77th Legislature (2001) which is effective September 1, 2001. House Bill 695 alters the process by which a person becomes licensed as a real estate salesperson. A sponsoring broker will no longer be required in the original application, and all applications must be for an inactive salesperson license. After an applicant has qualified for an inactive license, the person may then enter the sponsorship of a broker and engage in business. The amendment to §535.51 adopts by reference revised application forms which may be used by a person seeking a license as a real estate salesperson. The forms have been modified to remove the identification and

signature of a sponsoring broker. The amendment also deletes references to a sponsoring broker where they appear in the section.

TREC has determined that adoption of the amendment on an emergency basis is necessary to prevent confusion and disruption in the filing of applications by prospective real estate salespersons and to prevent delays in licensing persons to begin real estate brokerage work. If the new application forms are not revised to be available for use on September 1, 2001, TREC would have no appropriate application forms for use by salesperson applicants in compliance with House Bill 695. TREC finds that these circumstances constitute an imminent peril to the public welfare requiring adoption of the amendment on fewer than 30 days' notice. TREC also has proposed adoption of the amendment on a permanent basis; the proposal appeared in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4822).

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties, and under the Texas Government Code, §2001.034, which authorizes a state agency to adopt a rule on an emergency basis with less than 30 days' notice in the event of an imminent peril to the public health, safety, or welfare.

§535.51. General Requirements.

(a) (No change.)

(b) If the commission develops a system whereby a person may electronically file an application for a license, a person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Within 60 days after paying the fee, the applicant must complete the application process by submitting a printed copy of the application signed by the applicant [~~and any sponsoring broker~~] and including a photograph of the applicant. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(c) The commission shall return applications to applicants [~~or the sponsoring broker (in the case of an application for an active salesperson license)~~] when it has been determined that the application fails to comply with one of the following requirements.

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

(d) (No change.)

(e) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

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

(5) Application for Real Estate Salesperson License, TREC Form SL-7 [~~SL-6~~];

(6) Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-6 [~~SLR-5~~];

(7) - (8) (No change.)

(9) Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-3 [~~BSL-2~~]; and

(10) (No change.)

This agency hereby certifies that the emergency adoption 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 August 17, 2001.

TRD-200104806
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective Date: September 1, 2001
Expiration Date: December 30, 2001
For further information, please call: (512) 465-3900

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts on an emergency basis an amendment to §535.101, concerning fees. The amendment is necessary to implement House Bill 695, 77th Legislature (2001) which is effective September 1, 2001. House Bill 695 increases the fee from $15 to $20 for a person to obtain an evaluation of the person's educational coursework. Under TREC rules, a person must obtain this evaluation prior to filing an application for a license. The amendment to §535.101 makes the fee schedule listed in the section consistent with House Bill 695.

TREC has determined that adoption of the amendment on an emergency basis is necessary to prevent confusion and disruption in the filing of applications by prospective real estate salespersons and brokers and to prevent delays in licensing persons to begin real estate brokerage work. TREC finds that these circumstances constitute an imminent peril to the public welfare requiring adoption of the amendment on fewer than 30 days' notice. TREC also has proposed adoption of the amendment on a permanent basis; the proposal appeared in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4824).

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties, and under the Texas Government Code, §2001.034, which authorizes a state agency to adopt a rule on an emergency basis with less than 30 days' notice in the event of an imminent peril to the public health, safety, or welfare.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

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

(11) a fee of $20 [~~$15~~] for transcript evaluation;

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

This agency hereby certifies that the emergency adoption 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 August 17, 2001.

TRD-200104807
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective Date: September 1, 2001
Expiration Date: December 30, 2001
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208, §535.210

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §535.208, concerning applications for an inspector license, and §535.210, concerning fees. Adoption of the amendments is necessary to implement House Bill 695, 77th Legislature (2001) which is effective September 1, 2001. House Bill 695 alters fees which are paid by real estate inspectors licensed by TREC and those persons applying for an inspector license.

The amendment to §535.208 adopts by reference revised application forms used by a person to obtain a license as a real estate inspector or as a professional inspector. Under current law, a person who was previously licensed as an inspector by TREC is required to pay additional fees in connection with an application for a license. The additional fees range from $16.50 to $35, depending on the length of time since the person was last licensed. House Bill 695 repeals the requirement for these additional fees effective September 1, 2001.

The amendment to §535.210 concerns fees paid by licensed inspectors. House Bill 695 requires TREC to charge a fee when an inspector requests a new license certificate due to a change of name, return to active status, or change in sponsoring broker. TREC must set the fee, which may not exceed $20. Also, TREC presently charges $10 when an inspector licensee requests a new license due to a change of address or replacement of a lost or destroyed license. TREC has determined that this fee should be increased to $20 to be consistent with the fees being paid by other TREC licensees to obtain new license certificates.

TREC has determined that adoption of the amendments on an emergency basis is necessary to prevent confusion and disruption in the filing of applications by prospective inspector licensees and the reporting of changes which require issuance of new license certificates. If the application forms are not revised to be available for use on September 1, 2001, TREC would have no appropriate application forms for use by inspector applicants in compliance with House Bill 695. It is also necessary that TREC set statutory fees in appropriate amounts to recover the costs of issuing licenses. TREC finds that these circumstances constitute an imminent peril to the public welfare requiring adoption of the amendment on fewer than 30 days' notice. TREC also has proposed adoption of the amendment on a permanent basis; the proposal appeared in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4825).

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties, and under the Texas Government Code, §2001.034, which authorizes a state agency to adopt a rule on an emergency basis with less than 30 days' notice in the event of an imminent peril to the public health, safety, or welfare.

§535.208. Application for a License.

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

(c) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

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

(3) Application for a License as a Real Estate Inspector, Form REI 4-8 [~~4-7~~]; and

(4) Application for a License as a Professional Inspector, Form REI 6-8 [~~6-7~~].

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

§535.210. Fees.

(a) The commission shall charge and collect the following fees:

(1) - (7) (No change.)

(8) a fee of $20 [~~$10~~] for requesting a change of address or replacement of a lost or destroyed license certificate; [~~and~~]

(9) a fee of $20 for requesting issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector; and

(10) [~~(9)~~] a fee of $100 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination.

(b) (No change.)

This agency hereby certifies that the emergency adoption 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 August 17, 2001.

TRD-200104808
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective Date: September 1, 2001
Expiration Date: December 30, 2001
For further information, please call: (512) 465-3900

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. QUALITY ASSURANCE FEE FOR LONG-TERM CARE FACILITIES

1 TAC §§352.1 - 352.9

The Health and Human Services Commission (the Commission) proposes new chapter 352, Quality Assurance Fee for Long-term Care Facilities, §352.1 (concerning the Purpose and Duration of chapter 352), §352.2 (concerning Definitions), §352.3 (concerning quality assurance fee), §352.4 (concerning required reports), §352.5 (concerning review and Determination of the Quality Assurance Fee), §352.6 (concerning Payment and Collection of Quality Assurance Fee), §352.7 (concerning Enforcement), §352.8 (concerning Penalty), §352.9 (concerning Informal Reviews), and §352.10 (concerning Formal Appeals), to implement the requirements of chapter 252, subchapter H, Health and Safety Code (effective September 1, 2001).

The proposed chapter establishes a methodology for the determination of the quality assurance fee, the reporting of data by regulated facilities, the collection of the quality assurance fee, the assessment of a penalty for certain types of noncompliance, and the conduct of informal reviews and formal appeals by the Commission or its designee.

Background and Summary of Factual Basis for the Rules

The 77th Texas Legislature enacted Senate Bill number 1839, which included a new subchapter H to chapter 252, Health and Safety Code. Subchapter H authorizes the establishment, collection, and enforcement of a quality assurance fee for intermediate care facilities for persons with mental retardation (ICFs/MR) and facilities operated according to the requirements of chapter 252, Health and Safety Code, and owned by community mental health mental retardation centers, as described in chapter 534, Health and Safety Code.

Section 252.202 (as added by S.B. 1839), authorizes the Commission or the Texas Department of Human Services to set a quality assurance fee in an amount that generates annual revenues not to exceed 6 percent of a facility's gross annual receipts in the state. The statute requires the fee to be based on the number of patient days and gross receipts reported by a facility. Section 252.205 requires HHSC to adopt rules to implement Subchapter H and authorizes the Commission to assess an administrative penalty. The rules may not grant exceptions to the quality assurance fee, and the administrative penalty may not exceed the greater of one-half the amount of any outstanding quality assurance fee or $20,000. Section 252.207 directs the Commission's disposition of the proceeds of collected quality assurance fees. Section 252.209 provides for the expiration of subchapter H on September 1, 2005, if the 79th Texas Legislature fails to reauthorize the subchapter.

Section 9.02 of S.B. 1839 provides that for the first9.8(th)-3313(534,)]T

As used in this chapter, the following terms shall have the meanings prescribed below, unless the context clearly indicates otherwise:

(1) "Facility" means:

(A) An intermediate care facility for the mentally retarded or the corporate parent of an intermediate care facility for the mentally retarded licensed under chapter 252, Health and Safety Code; or

(B) A facility operated according to the requirements of chapter 252, Health and Safety Code, and owned by a community mental health and mental retardation center as described in chapter 534, subchapter A, Health and Safety Code.

(2) "Gross receipts" means money paid to a facility as compensation for services provided to patients, including client participation, but does not include charitable contributions to a facility.

(3) "Total patient days" means the sum, computed on a monthly basis, of the following:

(A) The total number of patients occupying a facility bed immediately before midnight on each day of the month;

(B) The total number of facility beds that are on hold on each day of the month and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is in a hospital during the month; and

(C) The total number of beds that are on hold on each day of the month and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic home leave during the month.

(D) The total number of days a patient is discharged from a facility are not counted in the calculation of the total patient days under this chapter.

§352.3. Quality Assurance Fee Determination Methodology.

(a) Interim quality assurance fee. As provided in section 9.02 of the Act of May 28, 2001, 77th Leg. R.S., (Senate Bill 1839), the quality assurance fee for the month September 2001, and for each month thereafter until implementation of a final quality assurance fee under subsection (b) of this section is the total number of patient days reported by a facility under §352.4 of this chapter multiplied by $5.25.

(b) Quality assurance fee. Beginning November 1, 2001 the quality assurance fee for a facility is in the amount of 5.5 percent of each reimbursement or payment rate received, including those received from the resident, for each resident in the facility during a calendar month, provided the amount of all such quality assurance fees assessed for the facility during the 12-month period following assessment of the quality assurance fee do not exceed six percent of the facility's total annual gross receipts in Texas.

(c) Not later than July 31, 2002, and every six months thereafter, the commission or its designee will review each individual facility's quality assurance fee calculation. A facility's liability for the quality assurance fee may be adjusted following this review to ensure that the quality assurance fee does not exceed six percent of annual revenue.

§352.4. Required reports.

(a) The following reports must be filed by a facility in accordance with the instructions of the Commission or its designee:

(1) The monthly patient day report required under subsection (c) of this section; and

(2) The semi-annual report of gross receipts required under subsection (d) of this section.

(b) Amended reports.

(1) A facility may amend a report required under subsections (c) or (d) of this section;

(2) An amended monthly patient day report must be filed no later than 10 calendar days following the filing of the report required under subsection (c) of this section.

(3) An amended report of gross receipts must be filed no later than 10 calendar days following the filing of the report required under subsection (d) of this section.

(c) Monthly patient day report.

(1) A facility must report, not later than the 10th calendar day after the last day of a month, the total number of patient days for the facility during the preceding month.

(2) A facility must file the report required by this subsection on forms or in the format and according to the instructions prescribed by the commission or its designee.

(3) The first report required under this subsection is not due until the 10th day after the end of the first full month following the effective date of this chapter. This report will cover the months September 1, 2001 through the end of the first full month following the effective date of this chapter.

(d) Reporting of gross receipts.

(1) A facility must report, not later than the 10th calendar day following the last day of the sixth month following the effective date of this chapter, the total gross receipts the facility received during the preceding 6-month period.

(2) A facility must file the report required by this subsection on forms or in the format and according to the instructions prescribed by the commission or its designee.

§352.5. Payment and Collection of Quality Assurance Fee.

A facility must:

(1) Pay the amount of the quality assurance fee in accordance with the instructions of the commission or its designee not later than the 30th day of the month; or

(2) Pay the amount of the quality assurance fee in accordance with the instructions of the commission or its designee and request an informal review of the calculation of the quality assurance fee in accordance with §352.8 of this chapter.

(3) The first payment required under this section is not due until the 30th day after the end of the first full month following the effective date of this chapter. That payment will cover all the months beginning September 1, 2001 through the end of the first full month following the effective date of this chapter.

(4) The commission or its designee may review the calculation of the quality assurance fee to ensure its accuracy and instruct the facility to correct its calculation and payment.

§352.6. Enforcement.

(a) The commission or its designee may audit a facility's records or the record of any corporate parent or affiliate of a facility for the purpose of determining the total patient days or gross receipts of the facility.

(b) The commission may not grant any exceptions from the quality assurance fee or the provision of any data necessary for the Commission or its designee to calculate the fee.

§352.7. Penalty.

(a) The commission or its designee will assess a financial penalty against a facility that:

(1) Fails to timely file the monthly facility report required under §352.4 of this chapter;

(2) Files a false, erroneous, or fraudulent monthly facility report that the commission or its designee concludes resulted in the assessment of a quality assurance fee that is less than the facility should have been assessed; or

(3) Fails to timely pay a quality assurance fee assessed under §352.5 of this chapter.

(4) A penalty assessed under this section is in an amount equal to one-half the amount of the outstanding quality assurance fee or fees, not to exceed $20,000.

(b) The commission or its designee will notify a facility in writing of the assessment of a penalty under this section and the amount of the penalty.

(c) The commission or its designee may make a referral to an appropriate authority in cases where the commission or its designee makes a good faith determination that a facility has:

(1) Committed fraud in the submission of information to the commission or its designee;

(2) Willfully submitted erroneous information to the commission or its designee; or

(3) Violated a requirement of its license or Medicaid certification.

(d) The commission or its designee may report a facility that fails to pay the quality assurance fee to the Comptroller of Public Accounts or other appropriate authority for purposes of implementing a suspension of payments to the provider.

(e) The assessment of a penalty under this section does not relieve a facility from:

(1) Providing services to patients in accordance with its obligations under contract or the law;

(2) Paying additional quality assurance fees that may be assessed to the facility; or

(3) Otherwise complying with licensure and certification requirements.

§352.8. Informal review.

(a) A facility that believes the commission or its designee incorrectly calculated the amount of a quality assurance fee as defined in this chapter, may request an informal review from the commission or its designee in accordance with this section.

(b) The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute. An informal review is not a formal administrative hearing, but is a prerequisite to obtaining a formal administrative hearing and is conducted according to the following procedures:

(1) The facility must request an informal review in writing to the commission or its designee, delivered by United States mail or special mail delivery within 20 calendar days of the date on the written notification of any of the actions described in subsection (a) of this section.

(2) A facility's written request for an informal review must include:

(A) A concise statement of the specific actions or determinations the facility disputes;

(B) The facility's recommended resolution; and

(C) Any supporting documentation the facility deems relevant to the dispute. It is the responsibility of facility to submit all pertinent information at the time of its request for an informal review.

(c) On receipt of a request for informal review, the commission or its designee assigns the review to appropriate staff.

(1) The lead staff member coordinates a review by appropriate staff of the information submitted by the interested party.

(2) Staff may request additional information from the facility, which the facility must submit in writing to the lead staff member within 14 calendar days of the request for additional information. Information received after 14 days may not be used in the panel's written decision unless the interested party receives approval of the lead staff member to submit the information after 14 days.

(d) Within 30 days of the date the request for informal review is received by the commission or its designee or the date additional requested information is received by the commission or its designee, the lead staff member must send the interested party its written decision by certified mail, return receipt requested.

§352.9. Formal Appeal of Penalty.

A facility that wishes to appeal the assessment of a penalty under §352.8 of this chapter may request a formal appeal from the Texas Department of Human Services in accordance with 40 T.A.C. §90.236.

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 August 20, 2001.

TRD-200104886
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 424-6576

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CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.114

The Texas Health and Human Services Commission (HHSC) proposes new §355.114, concerning vendor fiscal intermediary payment option, in its Medicaid Reimbursement Rates chapter. The purpose of the new section is to create a vendor fiscal intermediary (VFI) payment model for programs that offer personal attendant services.

This proposal establishes the payment rate methodology used to determine the consumer payment rate. The consumer can use the methodology to pay a personal attendant, and use the VFI payment rate to pay for contracted VFI services. The sum of these two payment rates cannot exceed the payment rate for

contracted providers who deliver services to clients who do not participate in the VFI option. This option will be made available in the Consumer-Managed Personal Attendant Services, Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Deaf- Blind with Multiple Disabilities, In-home and Family Support, Medically Dependent Children, Primary Home Care, and Family Care Services programs within the Texas Department of Human Services (DHS). The VFI model was piloted in DHS's Client Managed Attendant Services program and the Personal Attendant Services program of the Texas Rehabilitation Commission (TRC) under House Bill 2084 of the 75th Legislature. The pilot has been expanded to other Community Care for the Aged and Disabled (CCAD) programs under Senate Bill 1586 of the 76th Legislature, which directs HHSC to expand this model to other HHSC community programs.

Don Green, chief financial officer, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Commissioner Don Gilbert has determined that for 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 consumers enrolled in these programs will be able to determine the compensation of their attendants within an approved service plan budget that is based on the consumer payment rate. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because a limited number of consumers will take advantage of the VFI payment option. A contracted provider who currently serves a consumer who decides to participate in the option can choose to continue providing some of the employer-related responsibilities, such as processing payroll and maintaining records for business tax filings at the VFI payment rate. 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 Carolyn Pratt at (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-202, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The proposal is available for public review at local offices of DHS. For further information, contact Carolyn Pratt in DHS's Rate Analysis Department at (512) 438-4057.

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

The section implements the Government Code, §531.033 and §531.021(b).

§355.114. Vendor Fiscal Intermediary Payment Option.

(a) The vendor fiscal intermediary (VFI) payment option is made available to eligible consumers in the Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Deaf-Blind Multiple Disabilities, Medically Dependent Children, and Primary Home Care (PHC) programs.

(b) The sum of the payment rate for the contracted VFI and the payment rate for the consumer must not exceed the hourly attendant compensation enhancement participant payment rate made to contracted providers in these programs. The payment rate for the contracted VFI is determined by modeling the estimated administrative cost to carry out the responsibilities of the VFI. The payment rate for the consumer is determined by subtracting the contracted VFI payment rate from the attendant compensation enhancement participation payment rate made to contracted providers in these programs.

(c) The VFI payment rate is paid to the VFI as a percentage of the amount expended and claimed to the Texas Department of Human Services (DHS).

(d) Consumers must expend on the average hourly compensation of attendants, an amount equal to the calculated consumer payment rate per hour of service divided by 1.07. Compensation includes salaries and wages, payroll taxes, workers' compensation, employee benefits/insurance, and mileage reimbursement.

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 August 17, 2001.

TRD-200104829
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 438-3734

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.311

The Texas Health and Human Services Commission (HHSC) proposes new §355.311, concerning Medicaid reimbursement rates for state veterans homes, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to implement appropriations rider 56 passed by the 77th Legislature. Rider 56 directs HHSC to work in consultation with the Texas Veterans Land Board to develop reimbursement rates for state veterans homes.

The proposed rule creates the reimbursement methodology for state veterans homes that defines how payment rates will be determined for these homes. Medicaid payment rates for these homes will be based on actual cost to the state for Medicaid services delivered in the homes.

Don Green, chief financial officer, has determined that for the first five-year period the section is in effect, there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five- year period the sections will be in effect is an estimated additional cost of $146,042 in fiscal year (FY) 2002; $146,042

in FY 2003; $146,042 in FY 2004; $146,042 in FY 2005; and $146,042 in FY 2006. There will be no fiscal implications for local governments as a result of enforcing or administering the section.

Commissioner Don Gilbert has determined that for 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 Medicaid-eligible veterans and qualified family members will be able to receive services in a state veterans home. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because the section allows Medicaid funds to be used for the care of Medicaid-eligible veterans and their family members. It is anticipated that most veterans and their family members served in these homes will transfer from veterans hospitals. 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 Carolyn Pratt at (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-193, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The proposal is available for public review at local offices of DHS. For further information, contact Carolyn Pratt in DHS's Rate Analysis Department at (512) 438-4057.

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

The new section implements the Government Code, §§531.033 and 531.021(b).

§355.311. Medicaid Reimbursement Rates for State Veterans Homes

(a) The following definitions apply to this section:

(1) Debt service on revenue bonds--The principal and interest payments on Veterans Home Revenue Bonds sold under authorization of Chapter 164, Texas Natural Resources Code, and issued for the purpose of acquisition, construction, operation, and maintenance of a state veterans home or homes.

(2) Deposits to the operating reserve--The monthly deposits by the Veterans Land Board (VLB) to a facility's operating reserve as required by the trust indenture(s) related to State of Texas Veterans Home Revenue Bonds as authorized under 40 TAC §176.3 (relating to Sale of Bonds).

(3) Health and Human Services Commission (HHSC)--The state administrative agency authorized to adopt standards and rules to govern reimbursement rates and methodologies for Medicaid nursing facility services pursuant to Government Code §531.021.

(4) Management agreement--The management and operations agreement between the Veterans Land Board (VLB) of the State of Texas and the operator of a state veterans home in effect during the rate period.

(5) Rate period--The state fiscal year.

(6) State veterans home--A nursing facility as defined in Title 40, Texas Administrative Code (TAC) §176.1 (relating to Veterans Homes Definitions) that is contracted with DHS under 40 TAC §19.2322 (relating to Allocation, Reallocation, and Decertification Requirements) to provide nursing facility services to eligible Medicaid recipients who reside in a state veterans home.

(7) Texas Department of Human Services (DHS)--The state administrative agency authorized to contract for nursing facility services to Medicaid recipients pursuant to Chapter 32, Human Resources Code.

(8) Transportation agreement--The agreement between the VLB and the operator of the facility in effect during the rate period. Not all operators may have a transportation agreement.

(9) Veterans Land Board (VLB)--The state administrative agency authorized under Chapter 164, Natural Resources Code, to establish and operate state veterans homes.

(10) VLB administrative expenses--VLB expenses related to oversight of the state veterans home program.

(b) DHS reimburses the VLB for nursing facility services provided by the VLB to Medicaid clients in state veterans homes.

(c) HHSC determines reimbursement rates for state veterans homes to provide nursing facility services.

(d) Reimbursement rates for state veterans homes are determined prospectively for each home based on the lower of an estimate of per diem cost for the rate period as calculated in subsection (e) of this section or the state veterans home semi-private room basic daily rate. Rates are reconciled retrospectively based on actual cost in accordance with subsection (k) of this section.

(e) For each home, the estimated per diem costs are calculated as follows:

(1) For the rate period, sum the following:

(A) the monthly fixed-fee component of the management and operation fee as described in the management agreement for each month in the rate period,

(B) the variable-fee component of the management and operation fee per patient day in effect during the rate period times estimated patient days during the rate period,

(C) vehicle payments, if any, as defined in the transportation agreement,

(D) deposits to the operating reserve,

(E) debt service on the revenue bonds, and

(F) VLB administrative expenses.

(2) Divide the sum, as determined in paragraph (1) of this subsection, by the estimated patient days for the rate period to determine the interim prospective per diem rate. Estimated patient days for the rate period are determined based on the most recently available, reliable utilization data for the facility.

(f) The facility-specific payment rate as, determined in subsection (d) of this section, will be paid for all Medicaid eligible residents of a state veterans home regardless of the Texas Index for Level of Effort (TILE) level of the resident.

(g) Veterans Administration (VA) per diem payments to the State of Texas VLB for nursing home care as defined in 38 Code of Federal Regulations (CFR) §51.40 (relating to monthly payment) are considered third-party resources (TPRs) under 40 TAC §15.215 (relating to Third-Party Resources). These payments are offset against per diem payment rates for Medicaid-eligible residents of a state veterans home.

(h) Residents of a state veterans home are not eligible to receive the supplemental reimbursements authorized under §§355.307(b)(3)(E) and (F) of this title (relating to Qualifying Ventilator-Dependent Residents and Qualifying Children with tracheostomies).

(i) State veterans homes are not eligible to participate in §355.308 of this title (relating to Enhanced Direct Care Staff Rate).

(j) The VLB submits financial and statistical information in a format designated by HHSC. This information may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Financial and statistical information submitted by the VLB is not included in the cost report databases used in the reimbursement determination process for the Texas Medicaid Nursing Facility program.

(k) For each state veterans home, the prospective per diem rate is adjusted retrospectively based on actual costs accrued during the rate period, with capital equipment and capital improvement costs accrued by the VLB for the facility substituted for deposits to the operating reserve in the cost calculation, and actual patient days provided substituted for estimated patient days.

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 August 17, 2001.

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3734

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. HOSPITAL SERVICES

1 TAC §355.8061

The Health and Human Services Commission (HHSC) proposes an amendment to §355.8061. The proposal changes the designation of reimbursement oversight from the Department of Health to the Health and Human Services Commission, provides a date specific reference to the applicable Medicare reimbursement methodology, and amends the wording on the discount factor applied to allowed costs for hospital outpatient services. The proposal also allows the commission to make adjustments in the discount factor for high volume providers.

Sections (a), (a)(2), and (a)(3) contain references to TDH, and these have been changed to HHSC/the commission. Section (a)(2) also provides specific reference discount factor amounts and the period during which the discount factor is applicable. The specific reference in (a)(2) to a discount factor is amended to allow for multiple discount factors. For the period beginning September 1, 2001, the discount factor will be increased from 80.3% to 84.48%, for high volume providers. This represents a 5.2% increase in average payment rates to these hospitals. High volume providers are defined as those enrolled hospitals that were paid more than $200,000 for Medicaid outpatient hospital services in SFY 2000. Wording has also been added that requires HHSC to give public notice, hold a public hearing, and respond to public comment before additional changes can occur. Finally, an end-date of July 31, 2000 has been added which references the beginning of the federal Prospective Payment System.

Don Green, Chief Financial Officer, has determined that during the first five years that the proposed rules are in effect, the public will benefit from adoption of the rules. The public will benefit from the greater flexibility afforded health and human services and agencies and other eligible entities in making the determination of the discount factor.

Don Green, Chief Financial Officer, has determined that for the first five years that the proposed rules are in effect, there will be no fiscal impact to health and human services agencies. No additional costs will be borne by local governments as a result of the rules, nor is there any anticipated impact of revenues of state or local government.

Steve Lorenzen, Director of Medicaid rate setting, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to provide the commission with greater flexibility in determining the discount factor and maintaining a cost effective reimbursement methodology. The proposed rules will not result in additional costs to persons required to comply with the rules, nor do the rules have any anticipated adverse effect on small or micro-businesses. The rules will not affect local employment.

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

The Health and Human Services Commission has prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The commission has determined that this action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The majority of the proposed amendments are administrative and do not impose any new regulatory requirements. The proposed rules are reasonably taken to fulfill requirements of state law.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 2:00 PM, Monday, September 17, 2001, in the Texas Health and Human Services Commission Conference Room 4501 of the Brown-Heatly State office building at 4900 North Lamar Boulevard, in Austin, Texas. Persons requiring accommodations for a

disability should notify Jeff Phelps, at least 72 hours prior to the hearing at (512) 424-6657.

Public comments on the proposal may be submitted to Jeff Phelps, Manager, Rate Analysis Division, State Medicaid Office, Health and Human Services Commission, P. O. Box 13247, Austin Texas 78711-3247, or by facsimile to (512) 424-6665, within 30 days of publication of this proposal in the *Texas Register*. To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request. Further information may be obtained by calling Mr. Phelps at (512) 424-6657.

The amendment is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32 and the Government Code, Chapter 531.

§355.8061. Payment for Hospital Services.

(a) The Health and Human Services Commission (commission) [~~Department of Health (department)~~] or its designated agent shall reimburse hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in paragraphs (1)-(3) of this subsection.

(1) The amount payable for inpatient hospital services shall be determined as specified in §29.606 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services).

(2) The amount payable for outpatient hospital services shall be determined under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as may be otherwise specified by the Health and Human Services Commission. For the period beginning October 1, 2001, Medicaid reimbursement for outpatient hospital services for high-volume providers, as defined by the commission, shall be at 84.48% [~~77.6%~~] of allowable cost. For the remaining providers [~~2000-2001 biennium~~], reimbursement for outpatient hospital services shall be at 80.3% of allowable cost. For the propose of establishing the proposed discount factor, a high-volume provider is defined as one which is paid at least $200,000 during state fiscal year 2000. Any subsequent changes to the discount will require HHSC to hold a public hearing on proposed reimbursements before the HHSC approves any changes. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed change will be made available to the public. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to the HHSC. Reimbursement for outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's customary charge, or the allowable cost determined by the commission [~~department~~] or its designee.

(3) Variances shall be accounted for in the Texas State Plan for Medical Assistance or as otherwise specified by the commission [~~department~~].

(b) Title XIX providers may not carry forward those unreimbursed costs attributed to either the lower costs or charge limitations authorized by 42 Code of Federal Regulations §405.455 et seq., effective for all accounting periods beginning on or after January 1, 1982.

(c) The direct and indirect costs of caring for charity patients shall have no relationship to eligible recipients of the Texas Medical Assistance program and are not allowable costs under the Texas Title XIX Medical Assistance program. Obligations by hospitals to provide free care, under the Hill-Burton Act or any other arrangement as a condition to secure federal grants or loans, are not recognized as a cost under the Texas Medical Assistance program.

(d) The contents of subsection (a)-(c) of this section do not describe the amount, duration, or scope of services provided to eligible recipients under the Texas Medical Assistance Program.

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

Filed with the Office of the Secretary of State, on August 20, 2001.

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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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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§1.1303, 1.1305, 1.1307

The Finance Commission of Texas proposes amendments to 7 TAC §§1.1303, 1.1305, and 1.1307 concerning motor vehicle installment sales contract provisions.

The purpose of the amendments are to clarify the definitions for the accrual method and scheduled installment earnings method. The 77th Legislature enacted House Bill 2154 which purported to authorize a late charge in addition to the regular accrual of interest for certain motor vehicle installment sale contracts. The term "accrual" as used in House Bill 2154 has a broad meaning and is intended to encompass contracts written using a true

daily earnings method as well as the scheduled installment earnings method. These rules as they were adopted in September 2000 established a definition for the term "accrual" that conflicts with the usage and intended meaning of House Bill 2154. The amendments to these rules correct the definition as well as prescribing the appropriate model language for a creditor to contract for the late charges authorized by House Bill 2154.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws and consistency in credit contracts. No net economic cost will result to persons affected by the rules. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

Comments on the proposed amendments may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The amendments proposed under the Texas Finance Code § 11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code § 14.108 grants the Consumer Credit Commissioner and the Finance Commission the authority to interpret the provisions of Title 4, Subtitle B, in which Chapter 348 is located.

These rules affect Chapter 348, Texas Finance Code. Expect as proposed by this amendment, 7 TAC §§1.1301-1.1308 remain in full force and effect.

§1.1303. Definitions.

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

(1) Accrual method means a method to compute a finance charge and apply the finance charge to the unpaid principal balance. Both the true daily earnings method and the scheduled installment earnings method are accrual methods. [~~or Scheduled installment earnings method--The scheduled installment earning method, or the accrual method, is a method to compute a finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this subsection, the creditor may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 fee for other vehicles, so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than $1.00. The accrual method or scheduled installment earnings method may be used with either an Irregular Payment Contract or a Regular Payment Contract. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).~~]

(2) Creditor--The seller or any subsequent holder or assignee of the retail installment contract.

(3) Daily Rate--The rate authorized under Texas Finance Code §§303.201 or 303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104, computed on a daily basis using a 365 day calendar year.

(4) Irregular Payment Contract--A contract:

(A) That is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) The first scheduled installment of which is due later than 1 month and 15 days after the date of the contract.

(5) Regular Payment Contract--Any contract that is not an irregular payment contract.

(6) Scheduled installment earnings method--The scheduled installment earnings method is a method to compute a finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this subsection, the creditor may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 fee for other vehicles, so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than $1.00. The scheduled installment earnings method may be used with either an Irregular Payment Contract or a Regular Payment Contract. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(7) Seller--The seller of the motor vehicle.

(8) [~~(7)~~] Sum of periodic balances method (Rule of 78s)--

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than $150 for a heavy commercial vehicle, or $25 for other vehicles, from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:

(i) Multiply the total finance charge by a refund percentage determined as follows:

(I) Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(ii) From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed $150.

(C) The creditor is not required to give a finance charge refund if it would be less than $1.00.

(D) These methods may not be used with an irregular payment contract.

(9) [~~(8)~~] True daily earnings method--The truly daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. [~~No late charges may be assessed under this method.~~] The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

§1.1305. Other Disclosures Required by Commission Rule.

(a) (No change.)

(b) In a contract using the true daily earnings method, a brief description of the method of earning finance charge must be given. In a contract using the scheduled installment earnings [~~accrual method~~] or the sum of the periodic balances method of refunding precomputed finance charges, the name of the method used, and at the creditor's option, a description of that method. If in the same contract form, the creditor uses the scheduled installment earnings [~~accrual~~] method in certain circumstances and the sum of the periodic balances method in other circumstances, the creditor shall provide a brief description of the circumstances under which each method will be used, along with the name of the method.

§1.1307. Model Clauses.

(a) (No change.)

(b) Consumer warning. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(1) For contracts using the sum of the periodic balances (Rule of 78s) or the scheduled installment earnings [~~accrual~~] method or a permissible combination of the methods. The notice may read: "Notice to the Buyer-Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to a copy of the contract you sign. Under the law, you have the right to pay off in advance the full amount due and under certain conditions may obtain a partial refund of the finance charge. Keep this contract to protect your legal rights."

(2) For contracts using the true daily earnings method. The bracketed portion of the notice may be included at the creditor's option. The notice may read: "Notice to the Buyer - Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to a copy of the contract you sign. Under the law you have the right to pay off in advance the full amount due (and under certain conditions save a portion of the finance charge). Keep this contract to protect your legal rights."

(c) (No change.)

(d) True daily earnings contract clauses.

(1) Method of computing earned finance charge.

(A) Description of Method. The following clause is sufficient to explain the method for earning finance charges: "We figured the Finance Charge using the daily rate on the unpaid principal balance."

(B) Prepayment. The following clause is sufficient to explain the buyer's prepayment rights: "If you pay off all your debt early, you will not have to pay a penalty."

(2) Optional Additional Description of Method. The creditor has the option to add the following additional explanations:

(A) Application of Payments. The model clause reads as follows: "We will apply each payment first to the earned and unpaid part of the Finance Charge, and then to the unpaid balance owed under this contract."

(B) Calculation of daily rate. The model clause reads as follows: "The daily rate is 1/365th of the equivalent contract rate."

(C) Effect of early and late payments. The model clause reads as follows: "We based the Finance Charge, Total of Payments, and Total Sale Price on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment."

(3) Model clause for interest on past due installments and for late charges. The following sufficiently disclose interest on past due installments and [~~discloses the~~] late charges [~~charge~~] for contracts using the true daily earnings method so long as the blanks are completed so as to result in a late charge that does not exceed that permitted by law. The blank in this disclosure may be completed with a rate permissible under Texas Finance Code §§303.201 or 303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104. If the interest will be charged on past due installments

at the same [~~late charge~~] rate as [~~is~~] the [~~same as the~~] annual percentage rate[~~,~~] are, then no disclosure is required, but the creditor may, at its option, insert subparagraph (A) of this paragraph in the contract. If the creditor chooses to contract for a rate of interest on late payments that is greater than the contract rate, but not greater than the maximum rate authorized for the contract, the creditor may use subparagraph (B) of this paragraph. If the creditor chooses to contract for a late charge under subparagraph (C) of this paragraph that charge may not exceed five percent of the amount of the installment. If a creditor does not finance heavy commercial vehicles or elects to subject the late charge on contracts for heavy commercial vehicles to the same limits as apply to contracts for other vehicles, the parenthetical phrase applicable to heavy commercial vehicle purchases may be omitted. A creditor has the option of contracting for interest on past due installments at any rate up to the maximum lawful rate for the contract, or for a late charge under subparagraph (C) of this paragraph, or for both interest on past due installments and a late charge under subparagraph (C) of this paragraph. If the creditor does not charge interest on the late installment at a rate higher than the annual percentage rate, the word "also" may be deleted in subparagraph (C) of this paragraph. The model clauses read [~~clause reads~~] as follows:

(A) "[~~Late Charge.~~] If any [~~a~~] payment is not received in full on its due date, you will pay interest on the amount of the payment that is late at the annual percentage rate [~~of~~ ___% ~~per annum~~]."

(B) Late Charge. If any payment is not received in full within 15 days after it is due (10 days if you are buying a heavy commercial vehicle), you will pay interest at the rate of ___% per annum on the amount of the payment that is late, beginning from the date the payment is due.

(C) "Late Charge. If any payment is not received in full within 15 days after it is due (10 days if you are buying a heavy commercial vehicle), you will also pay a late charge of ___% of the amount of the payment."

(e) Contracts using the sum of periodic balances method, or the scheduled installment earnings [~~accrual~~] method or a permissible combination of these methods.

(1) Refund upon prepayment. The following clause is sufficient to explain the buyer's right to a finance charge refund upon prepayment in full of the buyer's contract obligations. The model clause reads as follows: "You may prepay all of your debt and get a refund of part of the Finance Charge."

(2) Refund upon acceleration. The following clause is sufficient to explain the buyer's right to a finance charge refund upon acceleration of the contract: "If the creditor demands that you pay all you owe on this contract at once, the creditor will give you a credit of part of the Finance Charge as if you had prepaid in full."

(3) Contracts using the sum of the periodic balances method.

(A) Name of the method. The following clause is sufficient to identify the method of refunding finance charge: "We will figure the Finance Charge refund by the sum of the periodic balances method as defined by the Finance Commission of Texas rule."

(B) Optional description of the method. The creditor may include the following additional description of the method. The creditor may insert any amount up to $25 (or up to $150 for a heavy commercial vehicle) at the location indicated by the first set of brackets. The words in the second and third bracketed portions are optional. The model clause reads as follows: "We will figure your refund by first subtracting (insert an amount not exceeding $25)((insert an amount not exceeding $150) if you are buying a heavy commercial vehicle) from the Finance Charge. Then we will multiply the difference by the refund percentage. We will figure the refund percentage by dividing the sum of the unpaid monthly balances in the payment schedule by the sum of all of the monthly balances in the payment schedule. (We will figure the sum of the unpaid monthly balances based on the due date of the next scheduled payment after you prepay, unless you prepay before the date the first scheduled payment is due. If you prepay before the date the first scheduled payment is due, we will figure the sum of the unpaid monthly balances based on the due date of the second scheduled payment.) You will not get a refund if the refund would be less than $1.00."

(C) At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The words in the first bracketed portion are optional. The creditor may insert any amount up to $150 at the location indicated by the second set of brackets. The model clause reads as follows: "We will figure your refund by dividing the sum of the unpaid monthly balances in the payment schedule by the sum of all of the monthly balances in the payment schedule. (We will figure the sum of the unpaid monthly balances based on the due date of the next scheduled payment after you prepay, unless you prepay before the date the first scheduled payment is due. If you prepay before the date the first scheduled payment is due, we will figure the sum of the unpaid monthly balances based on the due date of the second scheduled payment.) From the result of that multiplication, we will then subtract (creditor insert an amount not exceeding $150). You will not get a refund if the refund would be less than $1.00."

(4) Contracts using the scheduled installment earnings [~~accrual~~] method.

(A) Name of the method. The following clause is sufficient to identify the method of refunding the finance charge: "We will figure the Finance Charge refund by the scheduled installment earnings [~~accrual~~] method as defined by the Finance Commission of Texas rule."

(B) Optional description of the method. The creditor may include the following additional description of the method: "We will figure your refund by deducting earned finance charges from the Finance Charge. We will figure earned finance charges by applying a daily rate to the unpaid principal balance as if you paid all your payments on the date due. If you prepay between payment due dates, we will figure earned finance charges for the partial payment period. We will do this by counting the number of days from the due date of the prior payment through the date you prepay. We will then multiply that number of days times the daily rate. The daily rate will be the annual rate divided by 365. We will also add (an amount not exceeding $25)) ((an amount not exceeding $150) if you are buying a heavy commercial vehicle) to the earned finance charge. You will not get a refund if the refund would be less than $1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following illustrates one way that this may be done: "The creditor will figure the Finance Charge refund using the applicable method described below. We will figure the finance charge rebate using the sum of the periodic balances method as defined by the Finance Commission of Texas rule if two things are true. First, this contract must have a regular payment schedule. Second, it must not have a term greater than 61 months. A regular payment schedule is one with substantially equal monthly payments and a first scheduled payment due no later than one month plus 15 days from the date of this contract. If this contract does not have a regular payment schedule or if it has a term greater than 61 months, we will

figure the Finance Charge refund using the scheduled installment earnings [accrual] method as defined by the Finance Commission of Texas rule. You will not get a refund if the refund would be less than $1.00."

(5) Model clause for late charges. The following sufficiently discloses the late charge for contracts using the sum of the periodic balances method or scheduled installment [accrual] earnings method so long as the blanks are completed so as to result in a late charge that does not exceed that permitted by law. The blank in this disclosure should be completed with a rate permissible under Texas Finance Code §§303.201 or 303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104. If the creditor chooses to contract for a late charge under subparagraph (C) of this paragraph that charge may not exceed five percent of the amount of the installment. A creditor who uses the scheduled installment earnings method has the option of contracting for interest on the late installment at any rate up to the maximum rate for the contract, or for a late charge under subparagraph (C) of this paragraph, but not both. If a creditor does not finance heavy commercial vehicles to the same limits as apply to contracts for other vehicles, the parenthetical phrase applicable to heavy commercial vehicle purchases may be omitted. If the creditor does not charge interest on the late installment at a rate higher than the annual percentage rate, the word "also" may be deleted in subparagraph (C) of this paragraph. A creditor who uses the sum of the periodic balances method may choose to contract either interest under subparagraph (A) of this paragraph or a late charge under subparagraph (B) of this paragraph, but not both. The model clause reads as follows:

(A) "[Late Charge.] If any [a] payment is not received in full within 15 days after it is due (10 days if you are buying a heavy commercial vehicle), you will pay interest on the amount of the payment that is late at the annual percentage rate." [a late charge of:]

(B) "Late charge. If any payment is not received in full within 15 days after it is due (10 days if you are buying a heavy commercial vehicle), you will also pay interest at the rate of ___% per annum on the amount of the payment that is late, beginning from the date the payment is due."

(C) "Late charge. If any payment is not received in full within 15 days after it is due (10 days if you are buying a heavy commercial vehicle), you will also pay a late charge of ___% of the amount of the payment.

[(A) __% of the part of the payment that is late.]

[(B) Interest on the part of the payment that is late at the rate of ____% per annum."]

(f) - (q) (No change.)

(r) Returned Insurance Premiums and Service Contract Charges. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(1) The following is permissible for contracts using the true daily earnings method: "If we obtain a refund on insurance or service contracts, we will subtract the refund from what you owe.

(2) For contracts using the scheduled installment earnings [accrual] or sum of the periodic balances method, the creditor may substitute the following: "If we obtain a refund of insurance or service contract charges, we will apply the refund and the unearned finance charges on the refund to as many of your payments as they will cover beginning with the final (next) payment. We will tell you of what we do."

(s) - (y) (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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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

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PART 4. TEXAS SAVINGS AND LOAN DEPARTMENT

CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

SUBCHAPTER A. LICENSING

7 TAC §80.5

The Texas Savings and Loan Commissioner (the "Commissioner") and the Finance Commission (the "Finance Commission") jointly propose to amend the regulations implementing the Mortgage Broker License Act, *Finance Code*, Chapter 156, (the "Act") through the adoption of a new subsection, 7 TAC §80.5(c), providing for the staggering of the dates on which licenses expire and are subject to renewal. The Act became effective September 1, 1999. It requires that mortgage brokers and the loan officers who work for them meet certain requirements, that they obtain licenses, that they adhere to certain standards of conduct, and that they provide required disclosures to mortgage loan applicants. The Act charges the Commissioner with oversight of the Act and directs that the Commissioner promulgate regulations (the "regulations") to implement the Act.

House Bill 1636, 77th Legislature, shifts the authority to promulgate regulations under the Act from the Commissioner to the Finance Commission effective September 1, 2001. Therefore, this proposed amendment to the regulations is issued jointly by the Commissioner and the Finance Commission. After September 1, 2001, action on this proposed amendment will rest exclusively with the Finance Commission.

The Act establishes an Advisory Committee to advise the Commissioner (and, after September 1, 2001, the Finance Commission) on the promulgation of forms and regulations and the implementation of the Act. The Advisory Committee met on August 1, 2001, to review this proposed amendment to the regulations.

Section 156.208(a) and (b) of the Act provide that a license issued under the Act is issued for a period of two years. Section 156.208(f) of the Act authorizes the Commissioner to adopt, by rule, a system whereby licenses expire on dates other than December 31 (staggering). This statutory provision recognizes the need to spread license renewals evenly throughout the year

to balance the staffing demands on the Department. Because the Act required initial licensing by January 1, 2000, there was a huge inflow of applications immediately prior to and after January 1, 2000. More than 75 percent of the licenses issued during the first year were issued during the period December to March.

In order to spread more evenly the administrative workload associated with future license renewals, he Commissioner proposes to stagger or adjust renewal dates for those licenses that were issued during the peak of the initial licensing process. The licenses affected would be those issued during the months of: December 2000; January 2001; February 2001; and March 2001.

This group of licenses will be referred to in this proposed rule as the "Licenses Subject to Adjustment." Staggering the renewal dates of these licenses will enable the Department to handle renewals during these months without having to increase licensing staff in order to accommodate recurring peak renewal volumes.

All licensees will receive a renewal notice sixty days prior to the expiration date of their license. The renewal notice will indicate the next renewal date for their license and the fee required to renew the license. In addition to accepting a check or money order for renewal, it is expected that the Department will be able to receive payment of license renewal fees over the Internet at the Department's website (www.TSLD.state.tx.us) before Licenses Subject to Adjustment expire.

Under the proposed rule, as Licenses Subject to Adjustment come due for renewal, they will be renewed for a time period other than the standard two-year time period. Renewal fees will be prorated based on the number of months for which the licenses will be renewed.

The adjusted renewal date will be based on the last two digits of the license number. The last digit of the license will determine the month of renewal and the next to last digit will determine the year in which the license will renew. Licenses Subject to Adjustment will be renewed for a period of not less than nine months and not more than thirty months. Licenses will all expire on the same day during the month as the expiration date of the original license. Because of an anticipated reduction in the renewal fee, no licensee will incur a prorated renewal fee that exceeds the current $375 or $175 rates plus the statutory recovery find fee.

The adjustment of renewal dates should only be necessary one time. Thereafter, all licenses would be renewed on a two year basis.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the new sections, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections.

Mr. Pledger estimates that for the first five years the proposed sections are in effect, the public will benefit from the staggering of renewal dates for the licensees covered by the new subsection. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed amendment may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@tsld.state.tx.us.

The new section is proposed under §156.102 of the *Finance Code*, which authorizes the Commissioner to adopt rules necessary to ensure compliance with the intent of the Act.

The *Finance Code*, Chapter 156, Subchapter A, §156.208 is affected by this proposed amendment.

§80.5. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal on the prescribed form (together with any requested additional, clarifying, or supplemental information) and

(2) providing the Commissioner with satisfactory evidence of compliance with the applicable educational requirements or licensing requirements specified in Section 156.204 of the Act and Section 80.4 of this Chapter (relating to Qualifications for Obtaining Licenses).

(b) A license may not be renewed if the license holder has been convicted of a Criminal Offense, as defined in paragraph (13) of §80.2 of this Chapter (relating to Definitions) unless the Commissioner finds, pursuant to Section 4(c) of Article 6252-13c of the Texas Civil Statutes, to be fit to be licensed as a Mortgage Broker or Loan Officer.

(c) THIS SUBSECTION (c) APPLIES ONLY TO LICENSES THAT EXPIRE IN THE PERIOD OF DECEMBER 1, 2001, THROUGH MARCH 31, 2002. Mortgage Broker and Loan Officer licenses that expire during the period of December 1, 2002, and March 31, 2002, will not be issued for the usual two-year period. Pursuant to Section 156.208(f) of the Act, these licenses will be assigned a different expiration date in order to spread more evenly license renewals throughout the year. The adjusted expiration date on these licenses will be determined by the last two digits of the license number. Licenses will expire on the same day of the month as the current license, or if a change in the month of expiration makes this impossible, the next preceding day. The last digit will determine the month in which the license expires, 1 corresponding to January, 2 corresponding to February, and so on. The next to last digit of the license number will determine the year in which the license will expire. If the next to last digit is an even number, the license will expire in an even numbered year (2002, 2004, etc.). If the next to last digit is an odd number, the license will expire in an odd numbered year (2003, 2005, etc.). For licenses renewing after the effective date of this system, the term of the initial renewal may, depending on the last two digits of the license number, be for a period of not less than nine months but not more than thirty months. License renewal fees and continuing education requirements will be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. For example, if license number 1234 expires on December 27, 2001, it will be issued with an expiration date of April 27, 2003. Once a license has been renewed so that it will expire at a date determined by the license number, subsequent renewals will be for a two-year period. Nothing herein will limit the ability of the Commissioner to issue probationary or provisional licenses for terms of less than twenty-four months.

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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Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
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For further information, please call: (512) 475-1350

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SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

7 TAC §80.20, §80.21

The Texas Savings and Loan Commissioner (the "Commissioner") and the Finance Commission (the "Finance Commission") jointly propose to amend the regulations implementing the Mortgage Broker License Act, *Finance Code*, Chapter 156, (the "Act") through the adoption of a new 7 TAC §80.20, providing for the inspection of licensees under the Act and their operations, and a new 7 TAC §80.21, related to investigations of licensees. The Act became effective September 1, 1999. It requires that mortgage brokers and the loan officers who work for them meet certain requirements, that they obtain licenses, that they adhere to certain standards of conduct, and that they provide required disclosures to mortgage loan applicants. The Act charges the Commissioner with oversight of the Act and directs that the Commissioner promulgate regulations (the "regulations") to implement the Act.

HB 1636, 77th Legislature, shifts the authority to promulgate regulations under the Act from the Commissioner to the Finance Commission effective September 1, 2001. Therefore, this proposed amendment to the regulations is issued jointly by the Commissioner and the Finance Commission. After September 1, 2001, action on this proposed amendment will rest exclusively with the Finance Commission.

HB 1636 also amended Section 156.301 of the Act to provide for routine inspection of mortgage brokers and loan officers. These amendments to the Act become effective September 1, 2001.

The Act establishes an Advisory Committee to advise the Commissioner (and, after September 1, 2001, the Finance Commission) on the promulgation of forms and regulations and the implementation of the Act. The Advisory Committee met on August 1, 2001, to review this proposed amendment to the regulations.

The proposed amendment will provide for inspections to be conducted on an ongoing and recurring basis and describes the general nature of the activities that will be conducted in the course of such inspections.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the new sections, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections.

Mr. Pledger estimates that for the first five years the proposed new sections are in effect, the public will benefit from the inspection and investigation of licensees. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed new sections may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@tsld.state.tx.us.

The new sections are proposed under Section 156.102 of the *Finance Code*, which authorizes the Commissioner to adopt rules necessary to ensure compliance with the intent of the Act.

Finance Code, Chapter 156, Subchapter A, Section 156.301, is affected by these proposed new sections.

§80.20. Inspections.

(a) The Commissioner, operating though the Department staff and such others as the Commissioner may, from time to time, designate will conduct periodic inspections of mortgage broker and loan officer licensees as the Commissioner deems necessary.

(b) The Department will give licensees advance notice of each inspection. Such notice will be sent to the licensee's address of record on file with the Department and will specify the date on which the Department's inspectors are scheduled to arrive at the licensee's office. Failure of the licensee to actually receive the notice will not be grounds for delay or postponement of the inspection. The notice will include a list of the documents and records the licensee should have available for the inspector to review.

(c) Inspections will be conducted to determine compliance with the Act and will specifically address whether:

(1) All persons conducting mortgage broker or loan officer activity are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with 7 TAC §80.13;

(4) Legal and regulatory requirements applicable to licensees or the licensee's mortgage broker business are being properly followed; and

(5) Such other matters as the Commissioner may deem necessary or advisable to carry out the purposes of the Act

(d) Inspections will be conducted at no additional cost to the licensees.

(e) The inspector will review a sample of Mortgage Loan Files identified by the inspector on the date of inspection and randomly selected from the licensee's Mortgage Transaction Log. The inspector may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(f) The inspector may require a licensee, at its own cost, to make copies of loan files or such other books and records as the inspector deems appropriate for the preparation of or inclusion in the inspection report.

(g) The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an inspection conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(h) Failure of a licensee to cooperate with the inspection or failure to grant the inspector access to books, records, documents, operations, and facilities of the licensee will subject the licensee and any sponsoring broker (if applicable) to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

§80.21. Investigations.

(a) The Commissioner may, upon a finding of reasonable cause, investigate a person licensed under the Act to determine whether the person is complying with the Act and these regulations.

(b) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carryout the purposes of the Act.

(c) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of the Act.

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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Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
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SUBCHAPTER J. FORMS

7 TAC §80.22

The Texas Savings and Loan Commissioner (the "Commissioner") and the Finance Commission (the "Finance Commission") jointly propose to amend the regulations implementing the Mortgage Broker License Act, *Finance Code*, Chapter 156, (the "Act") through the adoption of a new section, 7 TAC §80.22, providing for the adoption of approved forms for use by mortgage brokers in advising loan applicants of preapproval or prequalification for a mortgage loan. This is necessary to implement §156.105 of the Act, added by House Bill 1493, 77th Legislature.

House Bill 1636, 77th Legislature, shifts the authority to promulgate regulations under the Act from the Commissioner to the Finance Commission effective September 1, 2001. Therefore, this proposed amendment to the regulations is issued jointly by the Commissioner and the Finance Commission. After September 1, 2001, action on this proposed amendment will rest exclusively with the Finance Commission.

The Act establishes an Advisory Committee to advise the Commissioner (and, after September 1, 2001, the Finance Commission) on the promulgation of forms and regulations and the implementation of the Act. The Advisory Committee met on August 1, 2001, to review this proposed amendment to the regulations.

Section 156.105 of the Act directs the Finance Commission to adopt one or more standard forms for use by a mortgage broker or loan officer in representing that an applicant for a mortgage loan is preapproved or prequalified for the loan.

At the August 1, 2001, meeting of the Advisory Committee, there was an extended discussion among the members of the Advisory Committee, the staff of the Department, and representatives of the Texas Association of Realtors regarding the proposed forms. It was the conclusion of those present that these forms should, first and foremost, explain clearly and understandably to a mortgage loan applicant whether they had a binding commitment for a loan or not and to enable them to understand the additional steps that would need to be taken to obtain such a commitment. Another objective, of paramount importance to the real estate industry, was for the forms to communicate to parties to a home purchase and sale transaction the status of a party who was to apply for financing and obtain certain approvals within prescribed periods.

During the course of the Advisory Committee meeting, it was determined that the terms "pre-qualification" and "pre-approval" had a variety of meanings and uses throughout the industry. The conclusion of those participating was that two forms would be useful: one to provide a "status report" of the loan application process as it progressed and one to advise of a "credit" approval, as distinguished from a full loan approval, which also includes an approval of the collateral property. This second form was directed toward the specific requirement in the standard earnest money contracts promulgated by the Texas Real Estate Commission, which requires buyers to obtain credit approval within a specified time.

The forms which are proposed are model forms for use by mortgage brokers and loan officers. The amended regulations set forth the manner in which these forms may be used.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the new sections, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections.

Mr. Pledger estimates that for the first five years the proposed sections are in effect, the public will benefit from the use by mortgage brokers and loan officers of these model forms. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed amendment may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD@tsld.state.tx.us.

The new section is proposed under §156.102 of the *Finance Code*, which authorizes the Commissioner to adopt rules necessary to ensure compliance with the intent of the Act. The *Finance Code*, Chapter 156, Subchapter A, §156.105, also directs the promulgation of forms for use by a mortgage broker or loan officer in representing that an applicant for a mortgage loan is preapproved or prequalified for the loan.

The *Finance Code*, Chapter 156, Subchapter A, §156.105 is affected by this proposed amendment.

§80.22. Loan Status Forms.

(a) Whenever a mortgage broker or loan officer provides a loan applicant with written confirmation of the status of a mortgage loan that has not been approved, the licensee shall use the form attached as Form A below. Such form may be modified as follows:
Figure: 7 TAC §80.22(a)

(1) The descriptive heading "Conditional Qualification Letter" maybe omitted;

(2) Additional aspects of the Loan may be described as long as they are not misleading;

(3) Fees charged may be disclosed but such disclosure shall not serve as a substitute for the disclosure required by Section 156.004

of the Act or the Good Faith Estimate required by the Real Estate Settlement Procedures Act;

(4) Additional items that the mortgage broker or loan officer has review may be described; and

(5) Additional terms, conditions, and requirements may be added.

(b) Whenever a mortgage broker or loan officer provides a loan applicant with conformation that an application for a mortgage loan has been approved as to credit but not as to collateral, the licensee may use the form attached as Form B below. Such form maybe modified as follows:
Figure: 7 TAC §80.22(b)

(1) The descriptive heading "Conditional Approval Letter" may be omitted;

(2) Additional aspects of the Loan may be described as long as they are not misleading;

(3) Fees charged may be disclosed but such disclosure shall not serve as a substitute for the disclosure required by Section 156.004 of the Act or the Good Faith Estimate required by the Real estate Settlement Procedures Act;

(4) Additional items that the mortgage broker or loan officer has reviewed may be described;

(5) Additional terms, conditions, and requirements may be added;

(6) An alternative form prepared by an attorney licensed in Texas may be used if it provides at least the same information as is set forth in the approved form.

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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Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER D. OPERATION OF PAWNSHOPS

7 TAC §85.405

The Finance Commission of Texas and the Office of Consumer Credit Commissioner propose amendments to 7 TAC §85.405, concerning pawn transactions.

The purpose of the amendments are to harmonize the administrative pawnshop operational rules with the amendment made by the 77th Legislature to the Texas Pawnshop Act in Senate Bill 317. In the legislation, the grace period for pawn transactions was shortened from 60 days to 30 days. The rule makes technical changes to correspond to the legislative amendment. Further, the rule clarifies that a pawnbroker may voluntarily use a longer grace period.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws and consistency in credit contracts. No net economic cost will result to persons affected by the rules. There is no adverse impact to small business. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

Comments on the proposed amendments may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The amendments are proposed under the Texas Finance Code § 371.006, which authorizes the Consumer Credit Commissioner to adopt rules to enforce the Texas Pawnshop Act. After September 1, 2001, Texas Finance Code §271.006 will authorize the Finance Commission to adopt rules to enforce the Texas Pawnshop Act. This rule proposal is a joint proposal of the Consumer Credit Commissioner and the Texas Finance Commission.

These rules affect Chapter 371, Texas Finance Code.

§85.405. Pawn Transaction.

(a) Pawn Ticket.

(1) Prescribed form.

(A) The front and back of the original pawn ticket are prescribed in Figures 1 and 2: 7 TAC §85.405(a)(1)(A). The original portion of the pawn ticket must be given to the pledgor when the pawn transaction is made.
Figure 1: 7 TAC §85.405(a)(1)(A) (No change)
Figure 2: 7 TAC §85.405(a)(1)(A) (No change)

(B) The prescribed back of the printed copy of the pawn ticket, as shown in Figure: 7 TAC §85.405(a)(1)(B), must be maintained in the numerical pawn ticket file.
Figure: 7 TAC §85.405(a)(1)(B) (No change)

(2) Modifications of the pawn ticket.

(A) Spacing. Spacing of the forms prescribed may be modified.

(B) Other changes. Any other changes to the prescribed forms must be approved, in writing, in advance, by the commissioner.

(3) Information required on pawn ticket. The pawn ticket must contain all information required in the Texas Finance Code, §371.157, and satisfy the requirements of the Truth-in-Lending Act, 15 U.S.C. §1601 *et seq*., and Regulation Z, 12 CFR §226.1 *et seq*. The pawn ticket must disclose the date that is thirty (30) [~~sixty~~ ~~(60)~~] days following the maturity date, and it must be captioned "last day of grace." The system used to create and store information about pawn transactions must include alphabetical or numerical characters sufficient to identify the pawnshop employee or owner writing the

pawn ticket and handling the renewal or redemption of the pawn transaction. All parts of the pawn ticket form must be sequentially numbered by the automated information system unless produced manually in accordance with the requirements of §85.402(f) of this title, of this chapter.

(4) Prescribed copies.

(A) Original. The top original copy is to be given to pledgor. This is the copy that is to be presented upon redemption and filed with the numerical file of redemptions and renewals.

(B) Alphabetical. This copy is for use in maintaining an alphabetical index. This copy may be omitted where an automated system is capable of producing the alphabetical index.

(C) Law enforcement copy. This copy is for the use of law enforcement as defined in §85.406 of this title. If the law enforcement agency is given all of the information on the pawn ticket electronically, this copy may be omitted.

(D) Hard card. This copy is maintained in a sequential file in the records of the pawnshop.

(5) Legible information. Reasonable procedures must be in place to ensure that all information on the original pawn ticket and all copies of the pawn ticket is legible.

(6) Proper identification. The pledgor must present a proper form of identification at the time of the pawn transaction. For purposes of this paragraph, any form of identification found in Texas Finance Code, §371.174(b), that is either current or has not been expired for more than one (1) year, will be considered acceptable.

(b) Term of transaction. The maturity date of a pawn transaction may not be greater than one month from the date of the transaction. The "last day of grace" is thirty days following the maturity day. A pawnbroker may, at the pawnbroker's option, choose to extend the last day of grace. The pawn loan will be considered to be an open pawn loan until the expiration of the last day of grace or until the pawnbroker exercises the option to take the pledged goods into inventory as provided in §85.414, whichever is later.

(c) [~~(b)~~] Identification of pledged goods. A unique label for each item pledged must be produced in order to ensure that the correct item is returned to the pledgor.

(d) [~~(c)~~] Voided pawn tickets. Voided pawn tickets must be clearly marked "VOID." All printed parts of a voided pawn ticket except those produced for local law enforcement must be retained and filed with the fourth part of the pawn ticket. The printed part must be made available to a local law enforcement agency.

(e) [~~(d)~~] Standards for describing goods. Pledged goods and purchases must be accurately and fully described. All serial numbers, including vehicle identification numbers and boat hull numbers that are reasonably available, must be accurately entered on required documents. Any visible owner applied number or other identifying marks must be recorded on the original pawn ticket and all copies and entered in the system that produces the pawn ticket. As applicable, the item type, brand, make, model number, engraving, inscriptions, color, size, length, unique markings, and design must be recorded. In addition, a record of the additional descriptors in paragraphs (1) - (4) of this subsection, must be included as applicable.

(1) Firearms. Descriptions of firearms must include caliber and type of firearm (e.g., handgun, rifle, shotgun, black powder weapon).

(2) Jewelry. Descriptions of jewelry must include weight, type of metal including purity, style, stones, and the gender of the person for which the item was manufactured. Stones must be described as to type, including results of electronic testing, color as apparent to the untrained eye, shape, number, size, and approximate weight. Class ring descriptions must also include school name and class year.

(3) Motor vehicles. Descriptions of motor vehicles must also include the year of manufacture, model, body style, license plate number, and state of registration.

(4) Accessories. Descriptions of accessories must include the applicable information required within this subsection.

(f) [~~(e)~~] Titled goods.

(1) Negotiation. Goods pledged on a pawn transaction, a motor vehicle, or other property having a certificate of title may be accepted. When entering into the pawn transaction, the pawnbroker must not permit or require the owner to endorse the title to effect transfer.

(2) Limited power of attorney. If a pawn transaction involves titled property, the owner may be required to sign a power of attorney form appointing the pawnbroker as the owner's attorney-in-fact for the sole purpose of transferring the ownership of the property in the event the pledgor fails to pay the pawn transaction.

(3) Documentation. A notation of the location of powers of attorney, certificates of title, and registration receipts must be made on the printed copy of the ticket in the numerical pawn ticket file or an alternative filing method must be provided to facilitate retrieval of these documents.

(g) [~~(f)~~] Items usually sold as a set in a retail transaction or pledged together with their accessories.

(1) Items usually sold as a set in a retail transaction or pledged together with their accessories may not be required to be split into separate transactions or that they be pledged separately where the result would be a total pawn service charge over the legal maximum for the single transaction.

(2) If items usually sold as a set in a retail transaction or pledged together with their accessories are split into separate transactions, the effective rate of the separate transactions must not be greater than the rate a single transaction would have produced.

(3) Items that may usually sold as a set in a retail transaction or pledged together with their accessories, but which are pledged on separate days will not normally be considered to fall within the provisions in paragraph (2) of this subsection.

(4) If a pledgor requests separate pawn transactions on items usually sold as a set in a retail transaction or pledged together with their accessories, a notation of that request in the description field of the pawn ticket must be made and will not normally be considered to fall within the provisions in paragraph (2) of this subsection.

(h) [~~(g)~~]Alphabetical file of pawn tickets. Either an automated or a manual system capable of allowing searches utilizing the pledgor's name in the case of a lost or destroyed pawn ticket must be maintained.

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 August 17, 2001.

TRD-200104822

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 936-7640

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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, repayment, 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 microbusinesses or 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)-(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)-(q) (No change.)

§9.7. Texas Capital Fund.

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

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

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDED has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDED and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the first month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

After the contract between the applicant and the department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

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

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. All funds for public infrastructure do not require repayment.[~~Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the first month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. 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 on private property[~~, regardless of the location,~~] require full repayment. Terms for repayment will be no interest, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the first month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(e) (No change.)

(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) Depending on availability of funds, TDED may elect not to make jumbo awards in program year 2001 after the April 30, 2001 round of applications.

(3) [~~(2)~~] Community Need (maximum 40 [~~30~~] points) Measures the economic distress of the applicant community.

(A) Unemployment (maximum 5 points). Awarded if the applicant's [~~average county~~]unemployment 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 1999[~~average~~] county poverty rate, as provided in Appendix A of the Application, (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. Applicants will score 5 points if their rate meets or exceeds the state average of 16.54%; score 10 points if this figure exceeds 19.02% (15% over the state average); and score 15 points if this figure exceeds 20.68% (25% over 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 10 points). Points are awarded to applying cities with populations of 3,000 or less and counties with a population of 32,343 or less, using 1990 census data. For cities: score 5 points if the city population is less that 3,000 and score 10 points if the city population is less than 1,177. For counties: score 5 points if the county population is less than 32,343 and score 10 points if the county population is less than 15,072.

(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 20 points).

(A) Manufacturers (max 10 points). Awarded if the Business' primary Standard Industrial Classification (SIC) code number starts with 20-39 or if their primary North American Industrial

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

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

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

(6) [~~(5)~~] Leverage/Match (maximum 10[~~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:

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

(B) [~~(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)-(j) (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 August 15, 2001.

TRD-200104714

Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 475-3726

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TITLE 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.14, §111.25

The State Preservation Board proposes amendments to §111.14, concerning Events in the Capitol and Capitol Complex and §111.25, concerning Memorials/Monuments on the Capitol Complex.

The amendment to §111.14 is necessary to allow the agency more flexibility in providing public access to the Capitol and Capitol Extension for organized activities. The amendment to §111.25 deletes the reference to "Permanent Advisory Committee" as this committee has been abolished. The Board's current administrative rule prohibits the approval of any memorials or monuments on the historic capitol grounds. This amendment will expand the Board's flexibility for responding to legislative directives.

Rick Crawford, Executive Director, State Preservation Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Mr. Crawford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be updated regulations. The agency will be allowed more flexibility in providing public access to the Capitol and Capitol Extension for organized activities. The Board's flexibility will be expanded for responding to legislative directives. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposed amendments may be sent to: Rick Crawford, Executive Director, State Preservation Board, P.O. Box 13286, Austin, Texas 78701.

The amendments are proposed under Texas Government Code, Chapter 443.007(b).

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

§111.14. Events in the Capitol and Capitol Extension.

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

(d) Scheduling Events in the Capitol and Capitol Extension.

(1) (No change.)

(2) A written request to schedule an event must be received by the office of the State Preservation Board no later than one week [~~three weeks~~] before the date requested. [~~Those requesting to schedule~~

~~an event will be notified of the status of their request within one week following the receipt of the request.~~]

(e) (No change.)

§111.25. Memorials/Monuments on the Capitol Complex.

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

(c) Procedures for approval of memorials/monuments in the Capitol complex.

(1) No additional memorials and/or monuments shall be placed on historic Capitol grounds except as authorized by Government Code §448.034.

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

(4) Using the master plan, the office of the State Preservation Board shall submit the proposal and recommended site selection for the proposed monument [~~to the Permanent Advisory Committee for review and recommendation, and~~] to the State Preservation Board for preliminary site approval.

(5) - (9) (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 August 20, 2001.

TRD-200104913
Richard L. Crawford
Executive Director
State Preservation Board
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 463-5495

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.97

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

The Texas Racing Commission proposes a repeal of §303.97, relating to Appaloosa horse rules. The repeal is necessary because the Appaloosa Horse Club expressed that it had no further interest in pari-mutuel racing. Consequently, it is no longer necessary to adopt their rules by reference.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule is in effect there are no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Kennison has also determined that for each of the first five years the rule is in effect the public benefit anticipated will be increased accuracy and therefore, increased reliance, in terminology within the Rules. There will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the rule as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposed repeal may be submitted on or before September 27, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing;§6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse races; and §11.011, which authorizes the Commission to adopt rules to implement pari-mutuel wagering on simulcasting races.

The repeal implements Texas Civil Statutes, Article 179e.

§303.97. Appaloosa Horse Rules.

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 August 14, 2001.

TRD-200104670
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 833-6699

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CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 3. OPERATIONS

16 TAC §309.167

The Texas Racing Commission proposes amendment to §309.167 relating to organizational charts of racetracks. The amendment would be amended to conform it to current practice, which requires submission of an organizational chart only once a year, as part of the executive secretary's track inspection. The amendment also clarifies the types of employee changes that will require submission of a revised chart. The need for this amendment is to eliminate repetitive and unnecessary information submitted to the Commission from the racetracks.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule is in effect there are no fiscal implications for state or local government as a result of enforcing the proposals.

Ms. Kennison has also determined that for each of the first five years the rule is in effect the anticipated public benefit is increased efficiency and a reduction in duplication. Because the amendment reduces the requirements for the racetracks, there will be a slight benefit for small or micro-businesses in terms of a reduction of administrative efforts. There is no anticipated economic cost to an individual required to comply with the rule as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before September 27, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §3.021 which authorizes the Commission to regulate all aspects of greyhound and horse racing in the State; and §6.06 which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.167. Organizational Chart.

(a) On request by the executive secretary [~~Not later than 30 days before the first day of a race meeting~~], an association shall provide to the executive secretary an organizational chart which indicates the lines of authority, responsibility, and control for each operation of the association. The chart must include the name and title of key managers , including the head of each of department, [~~and supervisory personnel and their assistants~~] and a brief description of their responsibility and authority.

(b) The association shall provide to the executive secretary a revised organizational chart immediately on the termination or resignation of a person named on the chart provided under Subsection (a) of this section[~~an individual~~] or the reorganization of responsibilities, authority, or control.

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 August 14, 2001.

TRD-200104671
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 833-6699

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SUBCHAPTER C. HORSE RACETRACKS
DIVISION 1. RACETRACKS

16 TAC §309.213

The Texas Racing Commission proposes an amendment to § 309.213, relating to starting gates. The proposed amendment would require an alternate starting gate for class 1 and class 2 horse racetracks only, not for Class 3 and Class 4 horse racetracks. It was determined that this rule added an unnecessary financial hardship for horse racetracks with a minimal live race schedule. Consequently, this proposal will remove the requirement of the additional equipment. This amendment will in no way alter any safety requirement.

Judith L. Kennison, General Counsel for the Texas Racing Commission, determined that for the first five-year period the rule is in effect will be no fiscal implications for state or local government as a result of enforcing the proposals. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Ms. Kennison has also determined that the anticipated public benefit for each of the first five years the rule will be an added savings to non-profit racetracks and thereby adding to available funding for the prescribed charities and administrative costs. There will be a slight fiscal benefit to small and micro-business in that a class 3 or class 4 horse racetrack will not be required to expend funds on an alternate starting gate. There is no anticipated economic cost to an individual required to comply with the rule as proposed.

Comments on the proposal may be submitted on or before September 27, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.213. Starting Gates.

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

(c) A class 1 or class 2 [~~An~~] association shall maintain at least two operable starting gates during racing hours.

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

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

Filed with the Office of the Secretary of State, on August 14, 2001.

TRD-200104672
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 833-6699

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DIVISION 4. OPERATIONS

16 TAC §309.296

The Texas Racing Commission proposes an amendment to § 309.296, relating to the official program. The proposed amendment would delete all references to the brand name "Lasix" for

furosemide because the manufacturer of this brand name has renamed the medication, "Salix".

Judith L. Kennison, General Counsel for the Texas Racing Commission, determined that for the first five-year period the rule is in effect will be no fiscal implications for state or local government as a result of enforcing the proposals. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Ms. Kennison has also determined that the anticipated public benefit for each of the first five years the rule will be is increased reliability in the accuracy of the Rules. Because the amendment modifies language only and not the requirements for the racetracks, there will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the rule as proposed.

Comments on the proposal may be submitted on or before September 27, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.296. Official Program.

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

(c) Except as otherwise provided by this subsection, for each horse that is racing with furosemide [~~(Lasix)~~] the official program shall indicate that fact by including the symbol "L" after the horse's name. For each horse that is racing with furosemide [~~(Lasix)~~] for the first time or for each horse racing with furosemide that last raced without furosemide, the official program shall indicate that fact by including the symbol "L1" after the horse's name. For each horse that is racing without furosemide [~~(Lasix)~~] for the first time after having been admitted to the furosemide [~~(Lasix)~~] program in this state and for each horse that is racing without furosemide [~~(Lasix)~~] in this state whose most recent start was with furosemide [~~(Lasix)~~] in another racing jurisdiction, the official program shall indicate that fact by including the symbol "Lx" after the horse's name.

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 August 14, 2001.

TRD-200104673
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.3

The Texas Racing Commission proposes an amendment to § 319.3, relating to restricted medication. The proposed amendment would delete all references to the brand name "Lasix" for furosemide because the manufacturer of this brand name has renamed the medication, "Salix".

Judith L. Kennison, General Counsel for the Texas Racing Commission, determined that for the first five-year period the rule is in effect will be no fiscal implications for state or local government as a result of enforcing the proposals. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Ms. Kennison has also determined that the anticipated public benefit for each of the first five years the rule will be is increased reliability in the accuracy of the Rules. Because the amendment modifies language only and not the requirements for the racetracks, there will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the rule as proposed.

Comments on the proposal may be submitted on or before September 27, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.3. Medication Restricted.

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

(c) Furosemide [~~(Lasix)~~] at or below the approved tolerance level in a horse that has been admitted to the furosemide [~~(Lasix)~~] program is permissible. The approved tolerance level shall be published on the list of therapeutic drugs posted under subsection (d) of this section.

(d) - (f) (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 August 14, 2001.

TRD-200104674
Judith L. Kennison
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.111

The Texas Racing Commission proposes an amendment to § 319.111, relating to bleeders and the furosemide program. The amendment will serve multiple purposes. First, the amendment would delete all references to the brand name "Lasix" for furosemide because the manufacturer of this brand name has renamed the medication, "Salix". Next, the amendment clarifies how a horse is determined to be a bleeder. Next, the amendment also provides a provision to allow a TxRC licensed veterinarian to add a horse to the program. Additionally, the amendment deletes requirements for additional documentation of an EIPH event which is no longer requested. Next, submission of the required report from a veterinarian has been delegated from the commission veterinarian to the test barn supervisor. Finally, the amendment addresses the issue of when a horse's "down time" or rest period should commence. These clarifications are necessary to increase the understanding of all affected parties of the Commission's current implementation of the furosemide program.

Judith L. Kennison, General Counsel for the Texas Racing Commission, determined that for the first five-year period the rule is in effect will be no fiscal implications for state or local government as a result of enforcing the proposals. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Ms. Kennison has also determined that the anticipated public benefit for each of the first five years the rule will be is increased reliability in the accuracy of the Rules. Because the amendment modifies language only and not the requirements for the racetracks, there will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the rule as proposed.

Comments on the proposal may be submitted on or before September 27, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.111. Bleeders and Furosemide [~~(Lasix)~~] Program.

(a) Diagnosis of EIPH. A bleeder is a horse that experiences Exercise Induced Pulmonary Hemorrhage (EIPH). Except as otherwise provided by this subsection, the medical diagnosis of EIPH may be made only by a commission veterinarian[~~,~~]or a [~~practicing~~] veterinarian currently licensed by [~~holding a current license from~~] the Commission. If the first EIPH event experienced by a horse in another pari-mutuel racing jurisdiction, certification of the horse as a bleeder by that foreign jurisdiction [~~A certification as a bleeder by any pari-mutuel racing jurisdiction~~] will also constitute a first report of a diagnosed EIPH event [~~a medical diagnosis~~] for purposes of this section. A veterinarian who diagnoses an EIPH event in a horse participating in pari-mutuel racing in this state shall report the event to the commission veterinarian in a format prescribed by the executive secretary [~~Commission~~]. On receipt of the first report of a diagnosed EIPH event for a horse, the commission veterinarian shall certify the horse as a bleeder.

(b) Admission to Furosemide [~~(Lasix)~~]Program.

(1) A horse that has been certified as a bleeder in this state may be admitted to the furosemide [~~(Lasix)~~] program. To be admitted to the furosemide [~~(Lasix)~~] program, the trainer of the horse or a veterinarian currently licensed by the Commission, on the trainer's behalf, must file a request for the horse's admission to the program before the horse starts [~~is entered~~] in its next race. [~~The stewards may authorize a late filing if they determine it is in the best interest of the patrons and the horse.~~]

(2) A [~~The trainer of a~~] horse that [~~was certified as a bleeder in another pari-mutuel racing jurisdiction and who~~] competed with furosemide [~~(Lasix)~~] in its most recent start out-of-state must compete on furosemide in Texas unless withdrawn from [~~is required to request the horse's admission to~~] the furosemide [~~(Lasix)~~] program at time of entry . [~~The trainer must provide documentation satisfactory to the commission veterinarian that the horse was certified as a bleeder in another jurisdiction. The request that the horse be admitted to the furosemide (Lasix) program must be filed before the horse is entered in its next race. The stewards may authorize a late filing if they determine it is in the best interest of the patrons and the horse.~~]

(c) Administration of Furosemide [~~(Lasix)~~]. Furosemide [~~(Lasix)~~] shall be administered to a horse in the furosemide [~~(Lasix)~~] program not later than four hours before the published post time for the race the horse is entered to run. The furosemide [~~(Lasix)~~] must be administered intravenously by a veterinarian licensed by the Commission [~~commission~~]. The executive secretary shall periodically publish the permissible blood levels of furosemide [~~(Lasix)~~] in post-race specimens and shall post the levels at each licensed racetrack.

(d) Requirement to Use Furosemide [~~(Lasix)~~]. A horse in the furosemide [~~(Lasix)~~] program in Texas must compete with furosemide [~~(Lasix)~~] until withdrawn from the program.

(e) Withdrawal from Furosemide [~~(Lasix)~~] Program.

(1) To withdraw a horse from the furosemide [~~(Lasix)~~] program, the trainer must apply to the commission veterinarian. The commission veterinarian may require a signed medical statement from the trainer's regular practicing veterinarian that it is in the horse's best interest to be withdrawn from the furosemide [~~(Lasix)~~] program. The commission veterinarian may also request any other additional information the commission veterinarian needs to justify removal of the horse from the furosemide [~~(Lasix)~~] program. A withdrawal request and all accompanying information must be reviewed and a decision rendered by the commission veterinarian as soon as practicable.

(2) A horse in the furosemide [~~(Lasix)~~] program may not compete without furosemide [~~(Lasix)~~] until its withdrawal from the program has been approved by the commission veterinarians. Withdrawal from the furosemide [~~(Lasix)~~] program does not prohibit a horse from subsequent readmission to the program in accordance with this section.

(f) Readmission to the Furosemide Program. A horse may be readmitted to the furosemide program if the horse has another EIPH event or competed with furosemide in its most recent start in another pari-mutuel jurisdiction.

(g) [~~(f)~~] Bleeders List.

(1) The commission veterinarian shall maintain a list of horses that have been certified as bleeders and a list of horses that have been admitted to the furosemide [~~(Lasix)~~] program.

(2) On receipt of a report of a diagnosed EIPH event, the commission veterinarian shall place the horse on the veterinarian's list. For the first diagnosed EIPH event , a horse shall be placed on the veterinarian's list and is ineligible to start in a race before the 12th

day after the date of the EIPH event. [~~the horse is placed on the list.~~] For the second diagnosed EIPH event, a horse shall be placed on the veterinarian's list and is ineligible to start in a race before the 30th day after the date of the second EIPH event. [~~the horse is placed on the list.~~] For the third diagnosed EIPH event, a horse shall be placed on the veterinarian's list and is ineligible to start in a race before the 180th day after the date of the third EIPH event. [~~the horse is placed on the list.~~] For the fourth diagnosed EIPH event, a horse is barred from pari-mutuel racing in this state. A horse that has not had a diagnosed EIPH event for a period of 365 consecutive days is considered a non-bleeder for purposes of this paragraph. The report of a diagnosed EIPH event from any pari-mutuel jurisdiction which officially records EIPH events will be recognized as an EIPH event by the Commission.

(3) Notwithstanding the foregoing, if after reviewing a report of a diagnosed EIPH event the commission veterinarian determines additional days on the veterinarian's list are essential to the health and safety of the horse, the commission veterinarian may extend the number of days the horse is on the veterinarian's list. The commission veterinarian shall record the medical reasons for the additional days.

(h) [~~(g)~~] Report by Veterinarian. A veterinarian who administers furosemide [~~(Lasix)~~] to a horse that has been admitted to the furosemide [~~(Lasix)~~] program shall report the administration on a form prescribed by the Commission [~~commission~~]. A report made under this subsection must be filed with the test barn supervisor [~~commission veterinarian~~] not later than one hour before post time for the first race of that day.

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 August 14, 2001.

TRD-200104675
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER C. ADOPTIONS BY REFERENCE

19 TAC §109.41

The Texas Education Agency (TEA) proposes an amendment to §109.41, concerning the "Financial Accountability System Resource Guide." The section adopts by reference the "Financial Accountability System Resource Guide" as the TEA's official rule. The "Resource Guide" describes rules for financial accounting such as financial reporting, budgeting, purchasing, auditing, site-based decision making, data collection and reporting, and management. Public school districts use the "Resource Guide" to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code (TEC) and other state statutes relating to public school finance. The "Resource Guide" is available at www.tea.state.tx.us/school.finance/ on the TEA website.

The proposed amendment to §109.41 changes the date from "July 2001" to "November 2001" to reflect the effective date of the proposed amendments to the "Resource Guide." Under §109.41(b), the commissioner of education shall amend the "Resource Guide," adopting it by reference, as needed. The proposed amendments to the "Resource Guide" include changes to auditing and financial accounting and reporting guidelines for management of public funds by school districts and charter schools and other minor edits.

Thomas D. Canby, Jr., managing director for school financial audits, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Canby and Criss Cloudt, associate commissioner for accountability reporting and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improving financial accountability for educational programs in the Texas school system and keeping financial management practices current with changes in state law and federal rules and regulations. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Education Code, §§7.055, 44.001, 44.007, and 44.008, which authorizes the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

The proposed amendment implements the Texas Education Code, §§7.055, 44.001, 44.007, and 44.008.

§109.41. Financial Accountability System Resource Guide.

(a) The rules for financial accounting are described in the official Texas Education Agency publication, Financial Accountability System Resource Guide, as amended November 2001 [~~July 2001~~], which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) The commissioner of education shall amend the Financial Accountability System Resource Guide and this section adopting it by reference, as needed. The commissioner shall inform the State Board of Education of the intent to amend the Resource Guide and of the effect of proposed amendments before submitting them to the Office of the Secretary of State as proposed rule changes.

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 August 17, 2001.

TRD-200104803
Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATIONS

22 TAC §§371.1 - 371.6, 371.8, 371.11, 371.13

The Texas State Board of Podiatric Medical Examiners proposes amendments to §§371.1 - 371.6, 371.8, 371.11 and 371.13, concerning Examinations. The amendments are being proposed to make the necessary changes needed to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes and to change the rules for the administration of the examination to be changed from an oral to a jurisprudence exam.

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

Mr. Hymans has also determined that for each year for the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that the candidates will not have to wait for six months to take the test and therefore will be able to get a license and serve the public more quickly. There will be no cost to the public, small, large or micro businesses as a result of enforcing or administering these sections.

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

The amendments are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendments implement Texas Occupations Code, §202.254.

§371.1. Definitions.

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

(1) *Act*--The Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et seq [~~Texas Civil Statutes, Article 4567, et seq~~].

(2) (No change.)

(3) *Board*--The Texas State Board of Podiatric Medical Examiners as established and authorized by the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202.001, et seq [~~Texas Civil Statutes, Article 4567, et seq~~].

(4) - (5) (No change.)

(6) *Examinee*--A person who has been admitted to take the examination given by or at the direction of the Texas State Board of Podiatric Medical [~~Podiatry~~] Examiners as a requirement for licensing to practice podiatry in the State of Texas.

(7) - (8) (No change.)

(9) *President*--The president of the State Board of Podiatric Medical [~~Podiatry~~] Examiners.

(10) *Secretary-treasurer*--The secretary-treasurer of the State Board of Podiatric Medical [~~Podiatry~~] Examiners.

§371.2. Applicant for License.

(a) Any person who wishes to practice podiatric medicine in this state, who is not otherwise licensed under law, must successfully pass an examination given at the Board's direction pursuant to §371.11 of this title (relating to Scoring and Reporting), and complete the graduate podiatric medical education requirements as set forth herein, §371.3(f) of this title (relating to Qualifications of Applicants). One who successfully completes all the requirements for licensing as set forth in these rules and who has made payment of all applicable fees shall be awarded a valid license to practice podiatric medicine in the State of Texas for the term lawfully stipulated by and under the conditions set forth in these Rules, and the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202, Subchapter F [~~Texas Civil Statutes, Article 4567B, et seq~~].

(b) Any person who wishes to sit [~~set~~] for the examination, shall submit a written application on a form provided by the Board. The applicant shall verify by affidavit the information in the application. The Board may refuse to admit to the examination or grant a license to any applicant who knowingly submits false information to the Board.

(c) - (f) (No change.)

(g) Temporary License.

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

(5) All temporary licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Podiatric Medical [~~medical~~]Practice Act of Texas, Texas Occupations Code, §202 et seq. [~~Article 4567 et seq.~~], and subsequent amendments, including §202.153 [~~Article 4574~~] of said Act, and Chapter 376 of this title (relating to Violations and Penalties), except that temporary licensees are not subject to any Board rules concerning continuing medical education.

(6) (No change.)

(h) - (j) (No change.)

§371.3. Qualification of Applicants.

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

(c) All applicants shall have completed the number of college courses required by the Texas Occupations Code, §202.252(b)(3), [~~Texas Civil Statutes, Article 4570(b)(3),~~] and graduated from an

accredited college of Podiatric Medicine in the United States. The applicant's entire course of instruction must be from such an approved college, and the college must have been so approved during the entire course of the applicant's course of instruction.

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

(f) If §371.6(d) of this title (relating to Administration of Examination [~~Time, Place and Scope of Examinations~~]) applies, all applicants must meet the overall minimum cut score for the jurisprudence [~~criterion referenced~~] exam. Each applicant shall cause their test scores from such exam to be sent directly from the testing entity to the Board.

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

§371.4. Qualifications of Candidates.

(a) A candidate, to be eligible to take the examination given by the Board, must not only meet the requirements of §371.3 of this title (relating to Qualifications of Applicants) but must also be prepared to demonstrate to the Board that such candidate is not disqualified from taking the examination for any of the reasons set forth in Texas Occupations Code, §202.253(a)(1) - (18). [~~Texas Civil Statutes, Article 4570(d)(1)- (18).~~]

(b) If any board member has sufficient reason to believe that a candidate does not meet the requirements of Texas Occupations Code, §202.252 and §202.253 [~~Texas Civil Statutes, Article 4570~~], then the board member may request the president to call a hearing to determine whether the candidate is qualified to take the examination.

(c) The full Board or one or more board members appointed by the president may conduct such hearing, as provided by §377.7(b) of this title (relating to Conduct and Decorum).

§371.5. Approved Colleges of Podiatric Medicine in the United States.

The Board shall annually approve colleges of podiatric medicine in the United States whose graduates are candidates for examination or licensing under the provisions of Texas Occupations Code, §202.252 [~~Texas Civil Statutes, Article 4570~~]. The Board approves and adopts by reference the standards for accrediting colleges of podiatric medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association. The standards are available from the Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216. The Board considers any college of podiatric medicine accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association as a college approved by the Board.

§371.6. Administration of Examination. [~~Time, Place and Scope of Examinations~~]

(a) Examinations administered by the board for licensure - To be eligible for licensure an applicant must sit for and pass the Texas Podiatric medical jurisprudence examination administered by the board. The board shall administer the Texas Podiatric medical jurisprudence examination at times and places as designated by the board. [~~The examination may consist of sections, including written, practical, and oral, or any combination of such.~~]

(b) All candidates shall be provided a candidates handbook that shall explain detailed information about the examination process prior to exam administration.

(c) [~~(b)~~] Candidates shall not be permitted to bring any source [~~medical books, notes, medical journals, or other~~] help into the examination room, or to communicate by word or sign with another examinee while an examination is in progress without permission of the presiding examiner and within the hearing of a designated representative of the Board; nor shall the examinee leave the examination room except when permitted by the presiding examiners and accompanied by a member or an employee of the Board.

(d) [~~(c)~~] A license shall not be issued to any person who has been detected in a deceptive, dishonest or fraudulent act while taking an examination required by the Board.

(e) [~~(d)~~] At the option and in the complete discretion of the Board, the examination may be conducted, in whole or in part, upon a vote of a majority of the Board, by any school, institute, or organization that is deemed by the same majority of the Board to provide adequate and fair examinations of sufficient high standards as to continue to insure high quality practitioners in the State of Texas. The manner of examination, the time of examination and the scheduling of the examination, as well as fee requirements and grading operations may then be delegated by the Board to such an entity, provided, however, that examination results, grades and copies of the examination are made available to the Board and are sent directly from the delegated entity to the Board, and the Board is to maintain a record of the examination results.

§371.8. Exam Development Committee.

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

(c) The Exam Development Committee shall construct examinations from the committee's test specifications which reflects [~~the~~] knowledge of the boards rules which govern the practice of podiatric medicine in Texas [~~and skills necessary for competent performance from the perspective of public protection~~].

§371.11. Scoring [~~and Reporting~~].

[~~(a)~~] The passing score for the examination shall be determined by the Board using accepted criterion-referenced methods.

[~~(b) The Board shall notify each candidate within 30 days from the examination date of the examination results.~~]

§371.13. Examination Disqualification.

(a) Applicants who wish to take the examination but who may be disqualified for reasons set out in Texas Occupations Code, §202.253 [~~Texas Civil Statutes, Article 4570~~], shall be entitled to a hearing before the Board or a subcommittee of the Board, but such hearing may be informal and need not be held in accordance with Chapter 377 of this title (relating to Procedure Governing Grievances, Hearings, and Appeals).

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

(d) Any applicant who is refused admittance to an examination has the right to appeal such decision in accordance with §377.43 of this title (relating to Procedure Governing Grievances, Hearings, and Appeals), and Texas Occupations Code §202.258 [~~Texas Civil Statutes, Articles 4570~~], and Government Code, §§2001.001 et. seq.

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 August 20, 2001.

TRD-200104849
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 305-7002

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22 TAC §371.9, §371.10

(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 State Board of Podiatric Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Podiatric Medical Examiners proposed the repeal of §371.9 and §371.10, concerning Administration of Examination and Skill Examiners. The repeal is being proposed to delete rules that will no longer be needed when the new Jurisprudence examination begins.

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

Mr. Hymans has also determined that for each year for the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that it will be to eliminate rules that are no longer needed. There will be no cost to the public, small, large or micro businesses as a result of enforcing or administering the repeal.

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

The repeals are proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric mMedical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed repeals have no other implications.

§371.9. Administration of Examination.

§371.10. Skill Examiners.

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 August 20, 2001.

TRD-200104848
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 305-7002

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CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.2, §376.21

The Texas State Board of Podiatric Medical Examiners proposes amendments to §376.2 concerning Administrative Penalties and a new §376.21 regarding Definitions. The amendments are being proposed to make the necessary changes needed to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes and to add a definition for investigator to include the new podiatric medical reviewers.

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

Mr. Hymans has also determined that for each year for the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be more timely investigation of complaints filed with the board. There will be no cost to the public, small, large or micro businesses as a result of enforcing or administering these sections.

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

The amendments and new section are proposed under Texas Occupations Code, §202.251, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendments and new section implement Texas Occupations Code, §202.204 and affects all of Chapter 376 regarding Violations and Penalties.

§376.2. Administrative Penalties.

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

(f) If the final order of the Board [~~board~~] imposes an administrative penalty against a licensee, the licensee may pay the amount of the penalty, pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, or the licensee may, without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both pursuant to Texas Occupations Code Subchapter L, §§202.551 - 202.561 [~~Article 4567e~~] .

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

§376.21. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: *Investigator*--Person designated by the board to conduct investigations on behalf of the board. The term includes Podiatric Medical Reviewers.

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 August 20, 2001.

TRD-200104850
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 305-7002

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CHAPTER 379. FEES AND LICENSE RENEWAL

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §379.1, concerning Fees. The board must adopt this on an emergency basis due to the fact that they must raise the renewal fee to cover costs mandated by the 2002 - 2003 Appropriations Bill. The bill states that we must raise additional revenue above and beyond what we already collect in order to receive the funding.

Allen M. Hymans, Executive Director, has determined that for each year of the first five years the section is in effect there will be fiscal implications as a result of enforcing or administering this section.

Mr. Hymans has also determined that for each year for the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow the agency to recover sufficient revenue to cover its costs in providing licensure for podiatric physicians and in servicing requests for information to its licensees and the public. The additional cost will be $90.00 for each podiatric physician each year. There will be no cost to the public, small, large or micro businesses as a result of enforcing or administering this section.

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

The amendments are proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendments implement the Texas Occupations Code §202.153.

§379.1. Fees.

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

(b) Fees are as follows:

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

(7) Renewal--$425 [~~$335~~]

(8) Renewal Penalty--as specified in Texas Occupations Code, Chapter 202, §301(d) [~~Texas Civil Statutes, Article 4571, §1(e)-(h)~~].

(9) - (15) (No change.)

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

Filed with the Office of the Secretary of State, on August 20, 2001.

TRD-200104852
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 305-7002

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PART 25. STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.7

The Structural Pest Control Board proposes amendments of §593.7, concerning fees. The proposal increases licensing fees for businesses, certified applicators and technicians.

Dale Burnett, Executive Director has determined that there will be fiscal implications as a result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost, however, there will be an estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated loss or increase in revenue on local government for the first five-year period the rule will be in effect. The cost of compliance with the rule for small businesses will be an increase of $31.00, from $144.00 to $175.00 for business license. Additional cost will depend upon the number of employees and the category of licensing of each employee. The cost comparison per employee is indeterminate for small or large businesses affected by the rule. There will be no cost comparison per hour of labor or cost per $100 of sales for small or large businesses affected by the rule.

Dale Burnett, 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 as proposed will be to meet revenue requirements as set forth in the 77th edition of the Texas Legislature. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

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 Vernon's Tex.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 proposal.

§593.7. Fees.

(a) Applicants, licensees and continuing education providers will be charged the following fees:

(1) $175[~~$144~~] for an original or renewal of business license;

(2) $80[~~$72~~] for an original or renewal of a certified applicators license;

(3) $60[~~$45~~] for an original or renewal of a technician license;

(4) $30 for duplicate business license, certified applicator license or technician license when the original has been lost or destroyed;

(5) $30 for reissuing a business license, certified applicators license or technician license due to a name change in the license;

(6) $40 for administering exams in each category;

(7) $37.50 for late renewal fee for up to thirty (30) days late;

(8) $75 for late renewal fee for thirty one (31)-sixty (60) days late;

(9) $40 for continuing education course.

(b) The following fees are based on increments of six (6) months.

(1) Business License Fees

(A) Issued/Renewed for 1-6 months $87.50[~~$72.00~~]

(B) Issued/Renewed for 7-12 months $175.00 [~~$144.00~~]

(C) Issued/Renewed for 13-18 months $262.50[~~$216.00~~]

(2) Certified Applicator License Fees

(A) Issued/Renewed for 1-6 months $40.00[~~$36.00~~]

(B) Issued/Renewed for 7-12 months $80.00[~~$72.00~~]

(C) Issued/Renewed for 13-18 months $120.00[~~$108.00~~]

(3) Technician License Fees

(A) Issued/Renewed for 1-6 months $30.00 [~~$22.50~~]

(B) Issued/Renewed for 7-12 months $60.00[~~$45.00~~]

(C) Issued/Renewed for 13-18 months $90.00[~~$67.50~~]

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 August 16, 2001.

TRD-200104802
Dale Burnett
Executive Director
Structural Pest Control Board
Proposed date of adoption: October 8, 2001
For further information, please call: (512) 451-7200

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 14. COUNTY INDIGENT HEALTH CARE PROGRAM

The Texas Department of Health (department) proposes amendments to §§14.1, 14.2, 14.102, 14.103, 14.104, 14.105, 14.107, 14.201, 14.202, 14.203, 14.204 and new §14.109 concerning the County Indigent Health Care Program (CIHCP).

The proposed amendment to §14.1 will comply with state law, simplify program administration, and make minor clarifications. To comply with state law, §14.1 clarifies the distribution of state assistance funds to eligible counties based on a maximum annual allocation. To simplify program administration, word changes have been made concerning a county's submission of their General Revenue Tax Levy (GRTL) report and the loss of eligibility for state assistance funds if their GRTL report is not received timely by the State Property Tax Board.

Proposed §14.2 simplifies program administration concerning eligibility disputes.

The proposed amendments to §§14.102, 14.103, 14.104, and 14.105 will comply with state law, be analogous with the Temporary Assistance for Needy Families (TANF) program, and correct minor spelling, grammar, and punctuation errors. Specifically, the proposed amendment to §14.104, which is a result of House Bill 2602 passed by the 77th Legislature, 2001, maintains the current net monthly income limit of 21% of the Federal Poverty Income Limit (FPIL). The proposed amendment to §14.105 makes wording changes concerning the resource value of prepaid burial insurance policies and real property to be analogous with the TANF program.

In §14.107, changes have been proposed to simplify program administration concerning appeal hearings and fraud hearings.

The proposed amendment to §14.201, which is a result of House Bill 2446, passed by the 77th Legislature, 2001, allows counties to choose emergency medical services as an optional service.

Proposed amendments to §§14.202, 14.203, and 14.204 include wording changes and minor punctuation, capitalization, and acronym changes to make minor clarifications.

The department proposes new §14.109 concerning employment services. These rules are proposed to comply with state law. Specifically the new section covers the county option to implement an employment services program, guidelines to be used if a county implements an employment services program, the allowable exemptions, and the disqualification periods for non-compliance.

Neva Klotz, Budget Director, has determined that for each year of the first five-year period the sections are in effect, there will be no fiscal implications on state or local government as a result of enforcing or administering the sections as proposed.

Ms. Klotz has also determined that for the first five years the sections are in effect, the public benefit anticipated will be simplified administration of the program and compliance with state law. There will be no impact on small businesses or micro-businesses to comply with these sections as described. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the rules as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

A public hearing on the proposed sections will be held at 10:00 a.m. on September 21, 2001, in the Public Hearing Room, Texas Department of Health, 12555 Riata Vista Circle, Austin, Texas to accept comments on the proposal.

Comments on the proposed sections may be submitted to Kathy McCormick, Program Specialist, Indigent Health Care Division, Texas Department of Health, Mail Code Y-990, 1100 West 49th Street, Austin, Texas 78756-6405, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. COUNTY PROGRAM ADMINISTRATION

25 TAC §14.1, §14.2

The sections are proposed under Health and Safety Code Chapter 61 and Human Resources Code Chapters 22 and 32. The department has rule making authority for CIHCP under Health and Safety Code Chapter 61.

The proposed sections affect the Health and Safety Code, Chapter 61, Human Resources Code Chapters 22 and 32.

§14.1. County Program Administration.

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

(c) General administrative requirements. Each county required to administer a program must:

(1) provide public notice and make a reasonable effort to notify the public, not later than [~~at~~] the beginning of the state's fiscal year, of the county's eligibility standards, and the county's application, documentation, and verification procedures and the verification and documentation procedures that applicants must comply with to establish eligibility;

(2) - (13) (No change.)

(d) (No change.)

(e) State assistance fund.

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

(4) The department distributes funds to eligible counties based on a maximum annual allocation [~~for each county potentially eligible for state assistance~~], subject to funding. [~~The maximum annual allocation for each county will be based on such factors as spending history, population, and the number of residents living below the Federal Poverty Income Limit. The maximum annual allocation will be recomputed at least every six months. The minimum annual allocation, subject to funding, will be no less than the average of what a county would have received in state fiscal years 1997, 1998, 1999 at the 8.0% GRTL threshold with a 90% state match. At the end of the state fiscal year the department may reallocate the distribution of money to eligible counties.~~]

(A) The maximum annual allocations will be based on such factors as spending history, population, and the number of residents living below the Federal Poverty Income Limit.

(B) The maximum annual allocations will be recomputed at least every six months.

(C) 85% of the state assistance fund will be allocated to the counties that actually were eligible and received state assistance funds the prior state fiscal year.

(D) The remaining amount will be held in reserve for other potentially eligible counties.

(E) The department may reallocate the reserve of money to eligible counties.

(F) No county can be approved for more than 40% of available state assistance funds within a state fiscal year.

(G) No county can be approved for more than 5.0% of the available state assistance funds in any given month.

(f) Eligibility requirements for counties applying for state assistance.

(1) Each county that plans to credit expenditures toward [~~towards~~] eligibility for the state assistance fund must:

(A) - (I) (No change.)

(J) report the county's GRTL, as shown in county records on July 31 of each year, to the State Property Tax Board not [~~no~~] later than October 1 of the same year. If part of the county is served by a hospital district, request the county appraisal district to determine the GRTL of county property located [~~propertylocated~~] outside the area served by a hospital district. If this report is not received by the State Property Tax Board by December 1 of the same year, a county may not be eligible for state assistance funds that state fiscal year.

(2) Counties may not credit payments for the following toward [~~towards~~] eligibility for the state assistance fund:

(A) - (F) (No change.)

(3) Counties may also credit toward eligibility for the state assistance fund the value of health care services credited or paid in a state fiscal year and provided to county residents eligible under the eligibility and payment standards established by the department in Subchapters B, C, and D of this chapter (relating to Determining Eligibility, Providing Services, and Case [~~Care~~] Management) under the following types of contracts:

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

(g) Determining county eligibility for state assistance.

(1) Within 30 days from the date the department receives written notification that the county expended 6.0% of its GRTL for basic and department approved optional services for eligible residents, the department must:

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

(C) provide information relevant to a department audit of the county's [~~country's~~] financial accounting system.

(2) (No change.)

(h) (No change.)

(i) The department administration of state assistance funds. The following procedures are established to assist the department in its administration of state assistance funds and to assist counties in the management of their programs.

(1) (No change.)

(2) After a county reaches the 8.0% expenditure level, the county must contact the department by telephone to encumber available state assistance funds to match expenditures that the commissioners court will be asked to authorize.

(A) (No change.)

(B) The county must complete the State of Texas purchase voucher form, enter "For reimbursement from the state assistance fund provided under the County Indigent Health Care Program (the Health and Safety Code, Chapter 61). The payee agrees to repay any funds paid in error and acknowledges the state's authority to collect any funds paid in error." and the approval code number for the encumbered funds on the voucher, and submit the voucher to the department

within 30 days after the commissioner's court authorizes the expenditures. The county judge must sign and date the purchase voucher and enter his or her telephone number. If the county does not submit the purchase voucher within the 30-day period, the encumbered state assistance funds become unencumbered and are reallocated to the remaining counties.

(3) The department prepares a weekly report on the status of the state assistance fund after 75%[~~50%~~] of the fund is expended, and the department sends the report to counties that reported reaching the 6.0% expenditure level.

(4) - (5) (No change.)

§14.2. Eligibility Disputes [~~and Fraud~~].

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

~~[(f) If a county discovers that a household intentionally misrepresented information to receive benefits, the county may recover the funds through household restitution or court action. Counties may consult with the county attorney to develop a procedure for administering suspected fraud cases.]~~

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 August 20, 2001.

TRD-200104843
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 458-7236

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SUBCHAPTER B. DETERMINING ELIGIBILITY

25 TAC §§14.102 - 14.105, 14.107, 14.109

The sections are proposed under Health and Safety Code Chapter 61 and Human Resources Code Chapters 22 and 32. The department has rule making authority for CIHCP under Health and Safety Code Chapter 61.

The proposed sections affect the Health and Safety Code, Chapter 61, Human Resources Code Chapters 22 and 32.

§14.102. Residency.

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

(e) A person cannot qualify for county health care assistance from more than one county simultaneously [~~imultaneously~~].

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

§14.103. Household Determinations.

(a) (No change.)

(b) An inmate in a county jail or a non-TANF [~~non-AFDC~~] foster care child qualifies as a household if the inmate or the child meets all other eligibility criteria. A foster child in the managing conservatorship of a licensed privately funded 24-hour child care facility does not qualify for county health care assistance.

(c) - (k) (No change.)

§14.104. Income.

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

(c) Types of Income. Eligibility staff must count or exempt types of income as follows:

(1) Temporary Assistance to Needy Families (TANF) benefits. These benefits are exempt [~~exempted~~].

(2) (No change.)

(3) Cash contributions. Cash contributions are counted as unearned income, but are exempt [~~exempted~~] if they are irregular and unpredictable.

(4) (No change.)

(5) Child's earned income. A child's earned income is exempt [~~exempted~~] if the child is a full-time student or a part-time student employed less than 30 hours a week.

(6) - (7) (No change.)

(8) Disqualified household member's earned and unearned income. This income is exempt [~~exempted~~].

(9) (No change.)

(10) Educational assistance. This assistance is exempt [~~exempted~~]. These payments include aid from the United States Office of Education for undergraduate, vocational, or education courses. Some examples of the most common forms of educational assistance are Pell grants, Stafford Loan Program, Parent Loans for Students, Supplemental Educational Opportunity Grants, College Work Study, and Carl D. Perkins Loans. Exempt educational assistance including loans (regardless of the source).

(11) Energy assistance. Energy assistance from federally-funded [~~federally funded~~], state-administered programs (HEAP), weatherization, energy crisis intervention) is exempt [~~exempted~~]. Utility supplement payments from the Department of Housing and Urban Development (HUD) or local housing authorities, whether they are in the form of vendor payments, in-kind income, or cash payments, are exempt [~~exempted~~]. Energy assistance from private, nonprofit, or government agencies that make payments based on need is exempt [~~exempted~~]. If an energy assistance payment is combined with other payments, only the energy assistance portion of the payment is exempt [~~exempted~~].

(12) Foster care payments. These payments are exempt [~~exempted~~].

(13) (No change.)

(14) In-kind income. In-kind income (any gain or benefit that is not in the form of money payable directly to the household) is exempt [~~exempted~~].

(15) (No change.)

(16) Job training. Payments made under the Workforce Investment Act (WIA) are exempt [~~exempted~~], except On The Job (OJT) payments funded under Title II, Section 204(#) of the WIA are earned income and counted for adults. OJT payments are exempt if received by a child who is under 19 and under parental control of another household member.

(17) - (19) (No change.)

(20) Other supplemental job training and training allowance payments. Job training and training allowance payments from agencies that are for training-related expenses are exempt [~~exempted~~].

(21) - (24) (No change.)

(25) Supplemental Security Income [~~security income~~] (SSI) payments. These payments are exempt [~~exempted~~].

(26) - (27) (No change.)

(28) Third-party payments. These payments are exempt [~~exempted~~] if the money is intended and used for the maintenance of a nonmember. If a single payment is received for more than one beneficiary, the amount actually used for the nonmember up to the nonmember's identifiable portion or prorated portion, if the portion is not identifiable, is excluded.

(29) - (30) (No change.)

(31) Vendor payments. These payments are exempt [~~exempted~~] if made by a person or organization outside the household directly to the household's creditor or person providing the service.

(32) Veterans Administration (VA) benefits. These benefits are counted as unearned income. Benefits that meet a special need are exempt [~~exempted~~].

(33) - (34) (No change.)

(35) Unusual types of benefits/payments. Benefits/payments from the following programs are exempt [~~exempted~~]:

(A) - (I) (No change.)

(d) Net income test and deductions. The net income test is used to determine eligibility.

(1) Net income test. Net monthly income is gross monthly income minus allowable deductions. A household is eligible if its net monthly income, after rounding down cents, is not more than [~~17% FPIL until 12-31-2000,~~] 21% FPIL [~~1-1-2001 until 12-31-2001, and 25% FPIL beginning 1-1-2002~~] for the household's size. All households must pass the net income test.

(2) (No change.)

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

§14.105. Resources.

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

(d) Types of resources. The following resources are countable or exempt. Eligibility staff must count the equity value of any resource not specifically exempt [~~exempted~~] in this subsection.

(1) Burial plots are exempt [~~exempted~~].

(2) A household's homestead is exempt [~~exempted~~]. A homestead is the household's usual residence and surrounding property which is not separated by property owned by others. The exemption remains in effect if the surrounding property is separated from the home by public rights of way. If the household intends to return, eligibility staff must exempt a homestead temporarily unoccupied because of employment, training or future employment, illness, casualty, or natural disaster. Real property outside of Texas cannot be claimed as a homestead. Households which currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, receive an exemption for the lot and, if partially completed, for the home. Eligibility staff must count money remaining from the sale of a homestead as a resource.

(3) Inaccessible resources are exempt [~~exempted~~].

(4) Jointly-owned [~~Jointly owned~~] property is exempt [~~exempted~~] if the property is jointly owned by the household and other owners and the household provides proof that:

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

(5) Trust funds are exempt [~~exempted~~].

(6) - (7) (No change.)

(8) Keogh plans are counted as a resource. If there is a penalty for early withdrawal, eligibility staff must deduct the early withdrawal penalty and count the remainder as a resource. Exception: Do not count Keogh [~~keogh~~] plans as resources if there is a contractual withdrawal agreement with other people who are not household members and who share the same fund. This type of Keogh [~~keogh~~] plan is considered an inaccessible resource.

(9) Life insurance is exempt [~~exempted~~].

(10) - (11) (No change.)

(12) Personal possessions are exempt [~~exempted~~].

(13) Up to $1,500 cash value of a prepaid [~~Prepaid~~] burial insurance policy [~~policies~~], funeral plan [~~plans~~], or funeral agreement [~~agreements up to $1,500 (one per~~] for each certified member[~~member)~~] is exempt [~~are exempted~~].

(14) Exempt real property if the household is making a good faith effort to sell it. [~~Real property is counted unless the household is making a good faith effort to sell it. At the county's option, eligibility staff may exempt the household's real property if the household agrees to a legally enforceable obligation to reimburse the county for all or part of the services received. The county and household must negotiate the terms of the obligation.~~]

(15) - (18) (No change.)

(19) Resources of disqualified persons are exempt [~~exempted~~].

(20) (No change.)

(e)-(g) (No change.)

§14.107. Appeal and Fraud Hearings. [~~Notification and Appeals.~~]

(a) Appeal Hearing.

(1) [~~(a)~~] Individuals have the right to appeal denial of their application or eligibility.

(2) Counties shall establish written procedures for appeal hearings, which shall provide for appropriate due process.

(b) Fraud Hearing.

(1) Counties shall establish written procedures for fraud hearings, which shall provide for appropriate due process.

(2) If it is determined that the household intentionally misrepresented information to receive benefits, counties may impose fraud disqualifications as contained in the county's written procedures.

[~~(b) Counties may adapt, for use in their program, the Texas Department of Health (department) fair hearings and notifications procedures contained in the department's Fair Hearings, Fraud, and Civil Rights Handbook, or develop their own rules and procedures for fair hearings and notifications.~~]

§14.109. Employment Services.

(a) Employment Services. Counties have the option of implementing an employment services program.

(b) The following are guidelines to be used if a county implements an employment services program.

(1) Notify all CIHCP eligible residents and those with pending applications of the program requirements at least 30 days before the program begins.

(2) Allow an exemption from employment services if applicants or CIHCP eligible residents meet one of the following criteria:

(A) receive food stamp benefits;

(B) receive unemployoment insurance benefits or have applied but not yet been notified of eligibility (both food stamp and unemployment insurance benefits require recipients to register for work with the Texas Workforce Commission (TWC) and report for job interviews and accept suitable offers of employment);

(C) physically or mentally unfit for employment. The county may require proof, such as a doctor's statement, before allowing this exemption;

(D) undocumented alien (because an undocumented alien cannot legally register for work with TWC);

(E) distance from the applicant's or CIHCP eligible resident's home to available employment or training resources is too remote. Too remote means that the distance from the applicant's or CIHCP eligible resident's home to the job or training requires commuting time of more than two hours a day (not including taking a child to and from a child care facility); or prohibits walking, and transportation is not available;

(F) age 15 or younger;

(G) age 16, 17, or 18 and attending elementary, secondary, vocational, or technical school full time;

(H) age 60 or older;

(I) a parent or other household member who personally provides care for a child under age 6 or a disabled person of any age living with the CIHCP household;

(J) employed or self employed at least 30 hours per week, or receive earnings equal to 30 hours per week multiplied by the federal minimum wage;

(K) migrant or seasonal farm worker under contract or similar agreement with employer or crew chief to begin work within 30 days;

(L) full-time volunteer for the Volunteers In Service To America (VISTA) program; or

(M) pregnant.

(3) An applicant or CIHCP eligible resident is considered non-exempt if he or she does not meet one of the above-listed exemptions. A non-exempt applicant or CIHCP eligible resident must register for work with TWC and may be required to report for job interviews and accept an offer of suitable employment. In order to track job search activities (reporting for interviews and accepting an offer of suitable employment), individual contracts or agreements may be necessary between the local TWC office and the county.

(4) If a non-exempt applicant or CIHCP eligible resident fails without good cause to comply with employment services requirements, disqualify him or her from CIHCP benefits:

(A) for one month or until her or she agrees to comply, whichever is later, for the first non-compliance;

(B) for three consecutive months or until he or she agrees to comply,whichever is later, for the second non-compliance;

(C) for six consecutive months or until he or she agrees to comply, whichever is later, for the third or subsequent non-compliance;

(5) Counties, who wish to set up an optional employment services program, should contact their local TWC office to determine how to set up their program and negotiate what type of information can be provided.

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

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TRD-200104844
Susan Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER C. PROVIDING SERVICES

25 TAC §§14.201 - 14.204

The sections are proposed under Health and Safety Code Chapter 61 and Human Resources Code Chapters 22 and 32. The department has rule making authority for CIHCP under Health and Safety Code Chapter 61.

The proposed sections affect the Health and Safety Code, Chapter 61, Human Resources Code Chapters 22 and 32.

§14.201. Required and Optional Services, and Their Definitions.

(a) (No change.)

(b) The following services are optional services. A county must notify the department of the county's intent to provide any of the following services prior to the beginning of a state fiscal year. If the services are approved by the department or if the department fails to notify the county of the department's disapproval before the 31st day after the date the department receives the county's request, the county may credit the services toward eligibility for state assistance for the state fiscal year following the date of the request. A county must notify the department in writing if they decide to discontinue providing any of the optional services that were department approved. (For state fiscal year 2000 only, a county must notify the department of the county's intent to provide any of the following services within 45 days of the final adoption of these rules. If approved by the department, the county may credit these services toward eligibility for state assistance the month following the date of the approval.)

(1) - (13) (No change.)

(14) Emergency Medical Services. When the client's condition is life-threatening and requires the use of special equipment, life support systems, and close monitoring by trained attendants while en route to the nearest appropriate facility, ground ambulance transport is an emergency service.

§14.202. Exclusions and Limitations.

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

(c) Specific exclusions. The following specific services or supplies are excluded from basic and department approved optional services:

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

(6) prosthetic or orthotic [~~orthodontic~~] devices;

(7) - (15) (No change.)

(16) hearing aids;[.]

(17) chiropractors.

(d) - (g) (No change.)

§14.203. Payments for Basic and Department Approved Optional Services.

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

(c) The payment standards for the individual basic and department approved optional services are as follows:

(1) (No change.)

(2) Physician, family planning, laboratory, and x-ray services. The payment standard for the procedures the department identifies as the most-commonly [~~most commonly~~] performed procedures in the Medicaid program is the Texas Medicaid payment for the procedure.

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

(3) Prescribed drugs. The reimbursement rate is the Redbook [~~redbook~~] wholesale price minus 10%, plus the basic dispensing fee established by the department in accordance with Human Resources Code Chapter 32.

[~~(4) Family planning clinic services. The reimbursement rate is the fee established by the department for the Medicaid Family Planning Program.~~]

(4) [~~(5)~~] Skilled nursing facility care. The reimbursement rate is the skilled facility daily rate established by the department for the Medicaid program.

(5) [~~(6)~~] Rural health clinic (RHC) services. The reimbursement rate is the fee established by the department for the Medicaid program.

(6) [~~(7)~~] Payments for department approved optional services will be based on Texas Medicaid Program rates.

(d) (No change.)

§14.204. Services and Payment Liability, Limitations, and Options.

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

(h) Only counties not fully served by a public hospital or hospital district may submit claims for Texas Medicaid or Vendor Drug Program reimbursement to the department for basic and department approved optional services provided to an otherwise eligible SSI/SSDI appellant if the services are furnished by a Title XIX-enrolled provider; if the SSI/SSDI appellant is later determined to be retroactively eligible for SSI/Medicaid; and the appellant and the provider assign reimbursement rights by completing the appellant/provider assignment form.

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

(3) The county determines the Medicaid eligibility status of all eligible residents who are also SSI/SSDI appellants by using the [~~National Heritage Insurance Company (NHIC)~~] automated inquiry system established by the state [~~(NAIS)~~] at least once a month.

(A) To use the automated inquiry system [~~NAIS~~], the county requests a telephone access code number from the department in writing. Upon receipt of the county's written request, the department sends the county the access code number and instructions for using the automated inquiry system[~~NAIS~~] toll-free number from a touch-tone telephone.

(B) The automated inquiry system[~~NAIS~~] provides the county with information about the SSI/SSDI appellant's current Medicaid eligibility.

(C) The county must follow all procedures established by the department for CIHCP counties accessing the automated inquiry system[~~NAIS~~].

(4) - (5) (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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Susan Steeg
General Counsel
Texas Department of Health
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CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.63

The Texas Department of Health (department) proposes an amendment to §97.63, concerning immunization requirements for Texas child-care facilities, elementary and secondary schools and institutions of higher education. Specifically, this amendment requires hepatitis A vaccination for children in child-care facilities, pre-kindergarten, kindergarten and first grade in geographic areas when the incidence rate of hepatitis A during a representative period of time of no less than 180 days has reached a rate at least twice the national average, as recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices.

Linda S. Linville, M.S., R.N., Chief, Bureau Immunization and Pharmacy Support, has determined that the department requires greater flexibility to respond to increased incidence rates of hepatitis A disease in geographic areas specified by the department as those rates increase to a minimum of twice the national average, as recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. In addition, Senate Bill 1 General Appropriations Act, Article II, Rider 49, titled "Hepatitis A Immunization in Counties of High Incidence" was enacted by the 77th Legislature mandating Hepatitis A vaccination in the following high incidence counties: Bailey, Bee, Bexar, Brown, Cochran, Comal, Dallam, Dallas, Dawson, Deaf Smith, Ector, Gaines, Glasscock, Grayson, Hale, Harris, Hidalgo, Hood, Karnes, Knox, Lamb, Maverick, Medina, Moore, Nueces, Oldham, Potter, Roberts, Runnels, Terry, Travis, Upton, Ward, and Yoakum.

Ms. Linville has determined that for the first five-year period that the section will be in effect there will be fiscal implications as a result of enforcing and administering the section as proposed.

The total cost to state government of immunizing the cohort of children susceptible to hepatitis A who are expected to attend child-care facilities and schools in counties that currently qualify under the proposed requirement will be approximately $400,000 per fiscal year. Currently there are at least 34 counties at or near the threshold for incidence rates that would require vaccination. Much of the cost of vaccinating children against hepatitis A in many of the qualifying counties is already being expended in voluntary local vaccination programs. Cost to local government should not be substantial, with most new costs originating in the increased operating expenses required to serve a larger number of children. School districts and private schools will be required to monitor their student populations for compliance with the new requirement without absorbing any significant fiscal impact.

Ms. Linville has also determined that for each year of the first five years that the section is in effect the public benefits anticipated as a result of enforcing and administering the section as proposed will emerge as fewer outbreaks of hepatitis A occur. Public benefits will continue to accrue since greater protection levels translate into lower incidence rates for hepatitis A and reduced treatment costs for hepatitis A infection. No costs to small business or micro-business are expected. No impact on local employment is expected. Health benefit plans will be affected by this proposed rule, which increases the number of vaccines and vaccinations for which they are required to provide first-dollar coverage. Health-care providers who administer uncompensated vaccination and private-pay parents will experience increased costs for vaccine and vaccine administration. These visits are estimated to cost $90 on average.

Comments on the proposal may be submitted to Janie Garcia, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7284, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

This amendment is proposed under Health and Safety Code §81.023, which requires the Board of Health (board) to develop immunization requirements for children; Education Code §38.001, which allows the board to develop immunization requirements for admission to any elementary or secondary school; Education Code §51.933, which allows the board to develop immunization requirements for students at any institution of higher education who are pursuing a course of study in a health profession; Texas Human Resources Code, §42.043, which requires the department to make rules regarding the immunization of children admitted to child-care facilities; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

This section affects Health and Safety Code §81.023; Texas Education Code, §§38.001, 51.933; and Human Resources Code §42.043.

§97.63. Required Immunizations

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

(c) The following immunizations are required in the respective age groupings. A child or student must meet all the immunization requirements specific to an age group upon first entering the age group. Implementation of requirements for hepatitis B vaccine for adolescents and varicella vaccine and hepatitis A for all ages is contingent upon the appropriation of funds to the department for these purposes. By July 1 of each odd-numbered year, the department will publish a statement on whether or not these vaccines have been funded and are required as specified.

(1) Children less than five years of age: polio vaccine; diphtheria-tetanus-pertussis (DTP) or diphtheria-tetanus-acellular pertussis (DTaP) vaccine; measles, mumps, and rubella vaccine (MMR); Haemophilus influenzae type b conjugate vaccine (HibCV), hepatitis A, and varicella vaccine.

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

(F) Children 15 months of age, but not yet five years of age (15 months through four years of age):

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

(vi) no later then August 1, 2000, children subject to these requirements as described in §97.61 (relating to Children and Students Included in Requirements) must comply with the following requirement for hepatitis A vaccine if the facility, school or institution attended is located in any of the following counties: Brewster, Brooks, Cameron, Crockett, Culberson, Dimmitt, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Maverick, McMullen, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. In addition to the above hepatitis A vaccine requirements, the Texas Department of Health (department) pursuant to the requirements of Health and Safety Code §81.023 shall require hepatitis A vaccine for children residing in other geographic areas specified by the department when the incidence rate of hepatitis A during a representative period of time of no less than 180 days has reached the rate at least twice the national average, as recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. For further information, see §97.67 of this title. Doses of hepatitis A vaccine are required as follows:

(I) -(II) (No change.)

(2) Children and students five years of age or older.

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

(H) Hepatitis A. Effective August 1, 1999, children subject to these requirements as described in §97.61 of this title (relating to Children and Students Included in Requirements) must comply with the following requirement for hepatitis A vaccine if the facility, school or institution attended is located in any of the following counties: Brewster, Brooks, Cameron, Crockett, Culberson, Dimmitt, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Maverick, McMullen, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. In addition to the above hepatitis A vaccine requirements, the department pursuant to the requirements of Health and Safety Code §81.023 shall require hepatitis A vaccine for children residing in other geographic areas specified by the department when the incidence rate of hepatitis A during a representative period of time of no less than 180 days has reached the rate at least twice the national average, as recommended by the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. For further information, see §97.67 of this title. Children and students born on or after September 2, 1992, will be required to have received two doses of hepatitis A vaccine administered on or after their second birthday.

(3) (No change.)

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

Filed with the Office of the Secretary of State, on August 17, 2001.

TRD-200104833
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 458-7236

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES

SUBCHAPTER C. USE AND MAINTENANCE OF TDMHMR DRUG FORMULARY

25 TAC §§415.101 - 415.114

(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 §§415.101 - 415.114 of Chapter 415, Subchapter C, concerning use and maintenance of *TDMHMR Drug Formulary*. New §§415.101 - 415.114 of Chapter 415, Subchapter C, concerning the same, 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 sections governing the same matters.

The subchapter is proposed for repeal as part of the reorganization of the TDMHMR rule base to reflect current operational and organizational relationships. The contemporaneous adoption and repeal of these subchapters 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 repeals are in effect, the proposed repeals do not have foreseeable significant implications relating to cost or revenue of the state or local governments.

Steven Shon, M.D., medical director, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected as a result of the adoption of the new rules is the ability to continue specific drug treatment from inpatient to outpatient settings as well as the assurance that individuals receiving community-based mental health and mental retardation services funded by TDMHMR have access to the same drug treatment as individuals receiving services in TDMHMR facilities. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

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

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or micro businesses because new rules, which would not significantly alter requirements for small business or micro businesses, are proposed to replace the repealed rules.

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

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority, and §534.052, which requires the board to adopt rules it considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority.

These proposed sections would affect the Texas Health and Safety Code, §532.015(a) and §534.052.

§415.101. Purpose.
§415.102. Application.
§415.103. Definitions.
§415.104. General Requirements.
§415.105. Organization of TDMHMR Drug Formulary.
§415.106. Executive Formulary Committee.
§415.107. Responsibilities of the Executive Formulary Committee.
§415.108. Applying to Have a Drug Added to the Formulary.
§415.109. Changing the TDMHMR Drug Formulary.
§415.110. Prescribing Non-formulary Drugs.
§415.111. Adverse Drug Reactions.
§415.112. Exhibit.
§415.113. References.
§415.114. 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 August 20, 2001.

TRD-200104891
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 206-5216

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25 TAC §§415.101 - 415.114

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§415.101 - 415.114 of Chapter 415, Subchapter C, concerning use and maintenance of *TDMHMR Drug Formulary*. Existing §§415.101 - 415.114 of Chapter 415,

Subchapter C, concerning the same, which the new sections would replace, are contemporaneously proposed for repeal in this issue of the *Texas Register*.

The proposed new rules would describe the policies and procedures governing the use and maintenance of the *TDMHMR Drug Formulary* in TDMHMR facilities and in community settings for mental health and mental retardation services that are funded by TDMHMR.

The new subchapter is proposed as part of the reorganization of the TDMHMR rule base to reflect current operational and organizational relationships. The contemporaneous repeal and adoption of these subchapters 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 new rules are in effect, enforcing or administering the rules does not have foreseeable significant implications relating to cost or revenue of the state or local governments because the proposed new rules are not significantly different from the rules proposed for repeal.

Steven Shon, M.D., medical director, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit expected is the ability to continue specific drug treatment from inpatient to outpatient settings as well as the assurance that individuals receiving community-based mental health and mental retardation services funded by TDMHMR have access to the same drug treatment as individuals receiving services in TDMHMR facilities. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed new rules because the rules do not impose any more requirements on such persons than those contained in the rules proposed for repeal.

It is anticipated that the proposed new rules will not affect a local economy because the rules do not alter the requirements contained in the rules proposed for repeal.

It is anticipated that the proposed new rules will not have an adverse economic effect on small businesses or microbusinesses because the new rules do not significantly alter the requirements contained in the rules proposed for repeal.

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

These sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority, and §534.052, which requires the board to adopt rules it considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority.

These proposed sections would affect the Texas Health and Safety Code, §532.015(a) and §534.052.

§415.101. Purpose.

The purpose of this subchapter is to provide policies and procedures governing the use and maintenance of the *TDMHMR Drug Formulary*.

§415.102. Application.

(a) This subchapter applies to TDMHMR facilities, Central Office, local authorities, and their respective contractors for mental health and mental retardation services funded by the Texas Department of Mental Health and Mental Retardation. (The *TDMHMR Drug Formulary* in its entirety applies to all TDMHMR facilities in all circumstances except when an individual receives acute care services of limited duration in a general hospital.)

(b) TDMHMR facilities, Central Office, and local authorities are responsible for amending the contracts of their contractors that provide TDMHMR-funded mental health and mental retardation services to ensure their compliance with this subchapter.

§415.103. Definitions.

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

(1) Adverse drug reaction--Any adverse symptom or sign that is an unexpected reaction to medication and that is noxious, unintended, and occurs at doses normally used in humans for the prophylaxis, diagnosis, or therapy of disease, or for the modification of physiological function.

(2) Contractor--An entity that provides TDMHMR-funded mental health or mental retardation services pursuant to a contract with a service system component or TDMHMR.

(3) Drug entity--A specific chemical compound and all of its pharmaceutically equivalent salt forms which are used in the treatment or mitigation of disease.

(4) Emergency--A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others because of threat, attempts, or other acts the individual overtly or continually makes or commits.

(5) Individual--Any person receiving services from a service system component or contractor.

(6) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(7) Practitioner--A person who acts within the scope of a professional license to prescribe, distribute, administer, or dispense a prescription drug or device, (e.g., a physician, nurse, nurse practitioner, pharmacist, dentist).

(8) Pharmacy and therapeutics committee--A TDMHMR facility committee composed of physicians, pharmacists, registered nurses, and others as appointed by the facility CEO that recommends drug-related policy to the facility's clinical/medical director and CEO.

(9) Reserve drug--A formulary drug with specific guidelines for use as described in the formulary.

(10) Service system component--A TDMHMR facility or local authority.

(11) State mental health facility--A state hospital or a state center with an inpatient component that is operated by TDMHMR.

(12) State mental retardation facility--A state school or a state center with a mental retardation residential component that is operated by TDMHMR.

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

(14) *TDMHMR Drug Formulary* or formulary--A continually revised printed listing by nonproprietary name of all drugs approved for use by service system components and their contractors.

(15) TDMHMR facility--A state mental health facility or a state mental retardation facility.

§415.104. General Requirements.

(a) The Texas Department of Mental Health and Mental Retardation maintains a closed formulary (*TDMHMR Drug Formulary*) that lists drugs approved by the Executive Formulary Committee for use by service system components and their contractors.

(b) A drug is not available for general use by service system components or their contractors unless it is approved by the Executive Formulary Committee. Drugs not listed in the *TDMHMR Drug Formulary* or the *Interim Formulary Update* may not be used except under the limited circumstances described in §415.110 of this title (relating to Prescribing Non-formulary Drugs).

(c) The use of formulary drugs in unusual clinical situations or the use of unusual drug combinations must be accompanied by written justification in the individual's medical record. Additional clinical consultation in these situations should occur as deemed necessary by the prescribing physician.

(d) Reserve drugs, as defined in §415.103 of this title (relating to Definitions), may be prescribed for use outside the guidelines described in the formulary if the prescription is justified in the individual's medical record and reviewed in routine audits of reserve drug use conducted by the service system component.

(e) Drug research conducted at a TDMHMR facility is governed by Chapter 414, Subchapter P of this title (concerning Research at TDMHMR Facilities). Local authorities conducting drug research must comply with all applicable state and federal laws, rules, and regulations, including Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), as required by §412.309(f) of this title (relating to Rights and Responsibilities) of Chapter 412, Subchapter G of this title (concerning Mental Health Community Services Standards).

§415.105. Organization of TDMHMR Drug Formulary.

Drugs are listed in the *TDMHMR Drug Formulary* by nonproprietary name. The list is based on a modified format of the *American Hospital Formulary Service Drug Information* and includes an alphabetical index. Proprietary names may follow in parentheses for information only; the listing of proprietary names is not an endorsement. Cost comparisons and prescribing information are provided as determined necessary by the Executive Formulary Committee. The *American Hospital Formulary Service Drug Information* serves as a standard reference in addition to the approved Food and Drug Administration product labeling. The *TDMHMR Drug Formulary* notes limitations recommended by the Executive Formulary Committee regarding the use of a drug, including specific limitations or guidelines for the use of a reserve drug.

§415.106. Executive Formulary Committee.

(a) Composition.

(1) The chairperson is a physician appointed by the TDMHMR medical director.

(2) The TDMHMR pharmacy discipline head serves as the permanent secretary of the committee and is responsible for preparing the agenda and minutes of committee meetings.

(b) Membership. Members of the Executive Formulary Committee are appointed by the TDMHMR medical director, which consists of:

(1) two state mental health facility physicians;

(2) two state mental retardation facility physicians;

(3) four local authority practitioners;

(4) two TDMHMR facility pharmacy directors;

(5) one TDMHMR facility clinical pharmacologist;

(6) one TDMHMR facility director of nursing;

(7) one TDMHMR facility registered nurse;

(8) the TDMHMR pharmacy discipline head;

(9) the following ex officio members:

(A) the TDMHMR medical director;

(B) the TDMHMR associate medical director for mental retardation/ developmental disability;

(C) the TDMHMR associate medical director for mental health;

(D) the TDMHMR director, state mental health facilities;

(E) the TDMHMR director, state mental retardation facilities;

(F) the TDMHMR deputy commissioner, community programs; and

(G) the TDMHMR director, central contracting and procurement support; and

(10) other persons as appointed by the TDMHMR medical director.

(c) Term of service. With the exception of the TDMHMR pharmacy discipline head, which is a standing membership position, members serve staggered three-year terms and may be reappointed to one additional term. Ex officio members may be reappointed as specified by the TDMHMR medical director.

(d) Meetings. The Executive Formulary Committee meets at least quarterly.

(e) Administrative support. The TDMHMR medical director's office provides administrative support to the Executive Formulary Committee.

§415.107. Responsibilities of the Executive Formulary Committee.

(a) The Executive Formulary Committee maintains and updates the *TDMHMR Drug Formulary* by:

(1) recommending standards of drug use that discourage unnecessary duplication of therapeutic alternatives and encourage the highest standards of medical and pharmacy practice;

(2) periodically reviewing the drugs listed in the formulary to ensure consistency with need, effectiveness, risk, and cost;

(3) consulting with experts in clinical pharmacy, pharmacology, and other medical specialties as necessary to objectively assess drugs under consideration; and

(4) considering the applications submitted in accordance with §415.108 of this title (relating to Applying to Have a Drug Added to the Formulary) or as:

(A) presented by committee members; or

(B) submitted by other qualified persons at the invitation of the Executive Formulary Committee chairperson.

(b) The Executive Formulary Committee makes other recommendations concerning drug use and policy as requested by the TDMHMR medical director.

(c) Approval of a drug entity for inclusion in the *TDMHMR Drug Formulary* does not imply approval of all formulations for that drug. The Executive Formulary Committee designates the formulations that are allowed for general use by service system components and their contractors.

(d) Approval of a drug formulation constitutes approval of all brands of the product that have been proven to be bioequivalent as listed in the *Approved Drug Products with Therapeutic Equivalence Evaluations*.

(e) For a drug entity that has known bioequivalency problems, the Executive Formulary Committee may limit its use to a specific brand based on objective clinical pharmacokinetics data.

§415.108. Applying to Have a Drug Added to the Formulary.

(a) Any member of the Executive Formulary Committee, any service system component practitioner, or any contract practitioner may apply to have a drug added to the *TDMHMR Drug Formulary* by completing the New Drug Application Form DF-1, referenced as Exhibit A in §415.112 of this title (relating to Exhibits) and including:

(1) published articles in biomedical literature that substantiate the efficacy and safety of the proposed drug;

(2) information on the advantages of the proposed drug compared with similar formulary drugs;

(3) a list of formulary drugs that the proposed drug would replace or supplement; and

(4) cost effectiveness data.

(b) Submitting the application.

(1) If the person submitting the application is a TDMHMR facility practitioner or a TDMHMR facility contract practitioner, then that practitioner submits the application to the facility's pharmacy and therapeutics committee for approval. If the committee approves the application, then it forwards the application to the Executive Formulary Committee.

(2) If the person submitting the application is a non-facility service system component practitioner or a non-facility service system component contract practitioner, then that practitioner submits the application to the component's clinical/medical director or designee who determines if the application is appropriate and complete, and if so, forwards the application to the Executive Formulary Committee.

(3) If the person completing the application is a member of the Executive Formulary Committee, then that person submits the application directly to Executive Formulary Committee.

(c) The Executive Formulary Committee considers the drug application and recommends:

(1) approving the proposed drug's inclusion and, if appropriate, approving audit criteria and recommending dosage guidelines;

(2) approving the proposed drug on a trial basis for a specified period of time;

(3) approving the proposed drug as a reserve drug, with guidelines;

(4) postponing the decision until a later meeting; or

(5) denying the proposed drug's inclusion.

§415.109. Changing the TDMHMR Drug Formulary.

(a) Changes to the *TDMHMR Drug Formulary* are based on need, effectiveness, risk, and cost as contained in current and unbiased biomedical literature.

(b) Recommendations by the Executive Formulary Committee for changes to the *TDMHMR Drug Formulary*, as reflected in the meeting's minutes, are submitted to the TDMHMR medical director.

(c) If the TDMHMR medical director or designee approves the recommendations, then the recommendations must be:

(1) identified as approved in writing before implementation; and

(2) listed in the *Interim Formulary Update* and distributed to the CEOs, clinical/medical directors, and pharmacy directors of all service system components, and to members of the Executive Formulary Committee.

§415.110. Prescribing Non-formulary Drugs.

(a) Non-formulary drugs may be prescribed:

(1) if no formulary drug exists that is as safe or effective in the specified situation;

(2) if a limited trial of the drug appears to be safer or more effective than any drug listed in the formulary and the prescribing practitioner anticipates applying to have the drug added to the formulary;

(3) if the course of therapy established prior to the individual's admission would be interrupted; or

(4) in an emergency, as defined in §415.103 of this title (relating to Definitions).

(b) Each local authority shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non-formulary drugs by its practitioners and its contract practitioners.

(c) TDMHMR shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non-formulary drugs by TDMHMR facility practitioners and facility contract practitioners. The written policies and procedures are contained in TDMHMR's Pharmacy Management Operating Instruction.

§415.111. Adverse Drug Reactions.

(a) Each local authority shall develop written policies and procedures for reporting adverse drug reactions to the Food and Drug Administration.

(b) TDMHMR shall develop written policies and procedures for TDMHMR facilities when reporting adverse drug reactions to the Food and Drug Administration. The written policies and procedures are contained in TDMHMR's Pharmacy Management Operating Instruction.

§415.112. Exhibit.

Exhibit A, the New Drug Application Form DF-1, referenced in this subchapter, may be obtained by contacting the Office of Policy Development, TDMHMR, P.O. Box 12668, Austin, TX 78711-2668, (512) 206-4516.

§415.113. References.

The following rules and policies, and federal statutes are referenced in this subchapter:

(1) Chapter 412, Subchapter G of this title (concerning Mental Health Community Services Standards);

(2) Chapter 414, Subchapter P of this title (concerning to Research in TDMHMR Facilities);

(3) Pharmacy Management Operating Instruction; and

(4) Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects).

§415.114. Distribution.

(a) This subchapter is distributed to:

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

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

(3) CEO's of all TDMHMR facilities and local authorities; and

(4) advocacy organizations.

(b) The CEO of each service system component shall disseminate the information contained in this subchapter to all appropriate staff and contractors.

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

Filed with the Office of the Secretary of State, on August 20, 2001.

TRD-200104890
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 206-5216

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TITLE 28. INSURANCE

PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §§126.5 - 126.7

The Texas Workers' Compensation Commission (the commission) proposes amendments to §§126.5 - 126.7, concerning Required Medical Examinations. The amendments are proposed to implement changes required by House Bill 2600 (HB-2600) passed by the Texas Legislature during its 2001 session.

HB-2600 amended §408.004 (a) and (c), of the Texas Labor Code. Furthermore, the bill amended Chapter 408, Subchapter A by adding §408.0041, Designated Doctor Examination and making amendments to other sections of the chapter relating to the use of designated doctors. In essence, the bill limits the use of an insurance carrier (carrier) selected doctor for a Required Medical Examination (RME) to only the resolution of issues regarding the appropriateness of the health care received by an injured employee (employee), and similar issues. Carriers, however, are permitted to have an RME doctor evaluate Maximum Medical Improvement (MMI) and permanent whole body impairment only after a designated doctor examination for those issues has taken place. Thus, it was necessary to review and amend existing rules to ensure consistent and clear application of the mandate. The commission's medical advisor has consulted on and provided recommendations regarding these rules.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Proposed Amendment to §126.5--Procedure for Requesting Required Medical Examinations (proposed to be re-titled "Entitlement and Procedure for Requesting Required Medical Examinations")

Proposed subsection (a) adds references to §408.151 and new §408.0041 to make it clear that the commission may authorize RMEs for reasons consistent with those subsections as well as §408.004. In addition, language was added relating to consequences of an RME report which was not obtained in accordance with the subsection. If a carrier does not comply with the requirements for requesting and scheduling examinations (including those that the employee agrees to), the carrier and the commission are not allowed to act with respect to benefits, based on the RME doctor's opinion. This approach is proposed because it eliminates any incentive for not complying with the rule.

The proposal deletes language currently contained in subsections (b) - (f) and replaces it with new language that incorporates most of the same concepts (with modifications as necessitated by HB-2600), in a structure that is easier to follow.

Proposed new subsection (b) establishes the carrier's entitlement to have a doctor of its choice examine the employee at different points in the claim. Currently the entitlement is explained in subsections (b) - (f).

Proposed new subsection (b)(1) applies to RMEs prior to the employee reaching the 2nd anniversary of entitlement to supplemental income benefits (SIBs) and does not apply to RMEs for the evaluation of MMI or impairment. The concepts in this subsection are contained in current subsections (b) - (e) and are identical to the entitlements in the current rule (with the exception of MMI and impairment).

Proposed new subsection (b)(2) applies to RMEs for the purpose of evaluating MMI and/or impairment. It states that the carrier is entitled to an RME for this purpose only after there has been a designated doctor examination for the same purpose.

Proposed new subsection (b)(3) contains the concepts contained in current subsection (f). Though the wording is different, the effect is the same.

Proposed new subsection (c) includes the requirement that a doctor performing an RME be on the commission's Approved Doctor List (ADL) with Level 2 Certification as provided in proposed §180.20 and §180.23 of this title (relating to Application for Registration/Commission Approved Doctor List and Commission Required Training for Doctors/Certification Levels, respectively), unless a specific exception is granted by the commission. This requirement is effective on or after August 1, 2003. This is based upon the requirements of HB-2600 and is fully discussed in the

proposal preamble to §180.21 and §180.23 contained elsewhere in this issue of the *Texas Register*.

Proposed new subsection (d) addresses employees attendance at examinations requested by a carrier. This subsection replaces language currently in subsection (b). The subsection provides more detail regarding the process for several reasons. The current language specifies that the commission shall not require an employee to attend an examination at the carrier's request without the carrier first attempting to obtain the agreement of the employee to agree to attend. However, the current language doesn't really explain what this means or how it is documented and this has led to conflict between system participants about what "attempting to obtain agreement" means. In addition, some employees have suggested that they don't understand what they are being asked to agree to and don't have time to think about it. The fact that the current rule requires that the carrier send the request for RME and the RME order to the employee at the same time as it is filed with the commission has caused confusion and/or redundancy to the requirement to first attempt to obtain the agreement of the employee prior to the commission requiring the employee to attend the examination.

The proposal requires the request to be made in writing through a copy of the request form that the carrier intends to file with the commission. This will help ensure that the employee knows what is being asked. The rule further would require that the carrier wait 10 days before filing the request with the commission (10 days after the date it is sent to the employee) unless the carrier receives the employee's response prior to that date. Following this, the carrier can file the request with the commission but does not have to submit a second copy to the employee as this would be redundant and because the commission will send a copy of the approved or denied request to the employee when it has been processed.

The proposal includes one exception to the requirement that an attempt be made to obtain the employee's agreement prior to the commission ordering an examination. This exception occurs when the carrier is seeking an RME for an evaluation of MMI and/or impairment after a designated doctor examination for the same issues has occurred. In this case, the statute makes it clear that the carrier is fully entitled to an RME. Further, the addition of a waiting period of up to 10 days unnecessarily delays the resolution of a dispute.

Current subsection (g) is proposed to be redesignated as subsection (e) and references to other subsections revised to correctly cite the appropriate subsection.

Current subsection (h) is likewise proposed to be redesignated as subsection (f) and changed to correctly reference other subsections.

Current subsection (i) is proposed to be redesignated as subsection (g) and changed to correctly reference other subsections.

Current subsection (j) is proposed to be redesignated as subsection (h).

Proposed Amendment to §126.6--Order for Required Medical Examinations

Proposed subsection (a) references the fact that the employee or the employee's representative can request an RME. It is also proposed to amend current language to clarify that an agreement between the parties for an RME, has the same effect as the commission's order only if the carrier has a right for the examination under §126.5. Currently, carriers are obtaining the employee's agreement to attend an examination by the carrier's choice of doctor and not reporting these examinations to the commission as required by current §126.5. Their justification is that this is not a "required medical examination" but rather is an "independent medical examination" (or IME). This activity is a violation of the current rule. In addition, failing to report RME's to the commission prevents the commission from monitoring RME requests as required by the Texas Labor Code. Therefore, an agreement for an examination that the carrier is not entitled to does not have the effect of an order and the carrier is thus not entitled to suspend benefits if the employee fails to attend the examination.

Proposed subsection (b) changes the current requirement that the examination be scheduled "as soon as possible" to require that it be scheduled within 30 days of receipt of the order. This is designed to reduce disputes or allegations that the examination was not scheduled quickly enough. In addition, current language regarding rescheduling appointments is proposed to be replaced with language that is clearer and that allows the commission to grant an exception to the rescheduling requirements.

Proposed subsection (c) addresses an employee's treating doctor's attendance at an RME. The proposed amendment prohibits treating doctors from advising the employee not to cooperate with the examination. The current rule prohibits impeding the examination and the proposed language is designed to clarify the term "impede."

Proposed subsection (e) changes the RME doctor's reporting requirements relating to MMI and/or impairment. Because HB-2600 only provides for a RME for this purpose after a designated doctor examination for the same purpose, this subsection is amended to apply only in that situation. In addition, the RME doctor is to explain why the designated doctor's opinion regarding MMI was incorrect or is no longer valid if the RME doctor disagrees with the designated doctor. This is intended to simplify dispute resolution.

Proposed subsection (g) adds the reference to Texas Labor Code §408.0041 and deletes the reference to §408.026 (spinal surgery second opinion) as a result of HB-2600 changes.

Proposed amendment to §126.6(h) adds language to clarify the employee's duty to contact the RME doctor's office to reschedule an examination. This clarification was necessary because employees often found that RME doctors would refuse to reschedule the examination. The RME doctor's refusal to reschedule an examination allowed the carrier to suspend benefits and made it hard for the employee to get them reinitiated.

The proposed amendment also adds a timeframe for the carrier to reinitiate benefits when the employee submits to the RME. Currently, there is some confusion regarding when the carrier has to reinitiate the benefits. Proposed §126.6 clarifies that reinitiation shall occur within seven days of the employee attending the examination or within seven days of the date the carrier finds out that the employee attended the examination whichever is later. The proposed timeframe is based upon the carrier's knowledge of attendance because it was the employee's noncompliance that caused the benefits to be suspended and thus the carrier should not have to go to extra effort to restart them. The employee is the one who will want their benefits reinitiated and therefore the employee will have an incentive to call the carrier and either tell the adjuster or leave a message. Carriers would also learn the employee attended upon receipt of the RME doctor's report. The RME order specifies that TIBs can be

suspended for failure to attend an RME and thus the employee should be aware of the consequences of their actions.

Proposed subsection (j) adds language to clarify that the commission has the discretion to order a RME more than 75 miles from the employee's residence. Although this is likely to be a relatively rare situation, the current rule does not make it clear that the commission has that discretion.

Proposed Amendment to §126.7--Suspension of Temporary Income Benefits Based On the Opinion of a Carrier-Selected Required Medical Examination Doctor.

Proposed subsection (b) adds language regarding applicability of the section based on the carrier's intent to suspend or reduce temporary income benefits (TIBs). The subsection further provides conditions under which a carrier may not suspend TIBs. The intent of the amendments to this subsection is to further ensure that carriers do not have RME doctors evaluate employees for MMI and/or impairment prior to a designated doctor examination for the same purpose. The amendments are also intended to ensure the carriers have an additional motivation to comply with §126.5 relating to setting up the RME appointments.

The other proposed amendment to this subsection is designed to prevent repeated disputes. When an employee returns to an RME doctor for an examination, the doctor may refuse to change his opinion from the prior examination, even if the designated doctor disagreed with the prior opinion and the designated doctor's opinion had resolved the dispute. In these cases, the employee must re-dispute an opinion that was already held to be invalid. Therefore, the amended subsection contains language to state that the rule does not apply in this situation.

Proposed subsection (c) is amended to change the process for filing the notice of intent to suspend benefits. The current rule has one process for filing the notice of intent regardless of whether the RME doctor's opinion was for MMI or for return to work. Now that there is a designated doctor involved in the claim prior to the RME doctor, and because it will be the designated doctor's opinion that the RME doctor is disagreeing with, the process has been modified to require a copy of the notice of intent and the RME doctor's report be forwarded to the designated doctor to evaluate.

Proposed subsections (d), (g), (h), and (k) again modify the rule to bring the designated doctor into the process when the RME doctor has disagreed with the designated doctor. Proposed subsection (d) also includes language allowing the carrier to act based upon either the treating or designated doctor's agreement with the RME doctor's opinion.

Brent Hatch, Director of Customer Services, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule. Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Hatch has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be compliance with and implementation of legislative directives and consistency in the rules under which all Texas Workers' Compensation system participants function.

Most of the changes in these rules are supportive of and consistent with changes being made to other rules as a result of HB-2600 and those changes are the larger driver of benefits and costs to be experienced.

Employees should benefit because carrier RMEs will be more clearly regulated and there is additional clarification in the process. The number of examinations they must attend will be fewer as will the number of disputes and the delay in resolving disputes. Employees should experience no additional costs.

Insurance carriers should benefit from the rules as proposed because they should help resolve disputes faster, which should reduce the potential for overpayments (thus reducing costs). In addition, the companion changes being made to Chapter 180 and Chapter 130 regarding training of doctors, certification of MMI/assignment of impairment ratings, and easier access to designated doctors should reduce costs through fewer examinations and fewer disputes. Carriers should also benefit from the added clarification that should ensure that employees submit to RMEs when applicable, but only when applicable.

Employers should benefit to the extent that the reductions in costs may translate to savings in premiums, and from timely return to work.

Health care providers should benefit from the clarification in the rules but otherwise are not likely to be affected by them. They may experience increased training costs associated with the legislative changes, these proposed rules, and the Chapter 180 rules concurrently proposed.

Both carriers and employees will benefit from the requirements and prohibitions on initiating and terminating income benefits.

There will be no adverse economic impact on small businesses or micro-businesses. There will be no differences in the cost of compliance for small businesses as compared to large businesses because the same basic processes and procedures apply to all entities regardless of size.

Comments on the proposal must be received by 5:00 p.m., October 1, 2001. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by e-mailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on October 2, 2001, at the Austin home office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in

attending the public hearing should contact the commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us.*

The amendments are proposed under: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010, that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code, §408.004 as amended by the 77th Texas Legislature, which provides for Required Medical Examinations; Texas Labor Code §408.0041 as adopted by the 77th Texas Legislature, which provides for the commission assignment of a designated doctor; the Texas Labor Code §408.023, as amended by the 77th Texas Legislature, which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231, which provides the commission with the responsibility for maintenance of the list; the Texas Labor Code, §408.025, which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; the Texas Labor Code §408.122, as amended by the 77th Texas Legislature, which requires that designated doctors meet specific qualifications; the Texas Labor Code §408.123, which requires a doctor certifying maximum medical improvement to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; the Texas Labor Code §408.124, which provides the commission the authority to by rule adopt the fourth edition of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association to determine the existence and degree of an injured employee's impairment; the Texas Labor Code §408.125, as amended by the 77th Texas Legislature, which provides the process for disputing impairment ratings; the Texas Labor Code §408.151, which provides for required medical examinations for supplemental income benefits; and the Texas Labor Code §415.0035, as passed by the 77th Texas Legislature, that establishes administrative violations for repeated administrative violations or for a provider failing to submit required medical reports.

The proposed amendments affect the following statutes: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010, that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code, §408.004 as amended by the 77th Texas Legislature, which provides for Required Medical Examinations; Texas Labor Code §408.0041 as adopted by the 77th Texas Legislature, which provides for the commission assignment of a designated doctor; the Texas Labor Code §408.023, as amended by the 77th Texas Legislature, which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231, which provides the commission with the responsibility for maintenance of the list; the Texas Labor Code, §408.025, which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; the Texas Labor Code §408.122, as amended by the 77th Texas Legislature, which requires that designated doctors meet specific qualifications; the Texas Labor Code §408.123, which requires a doctor certifying maximum medical improvement to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; the Texas Labor Code §408.124, which provides the commission the authority to by rule adopt the fourth edition of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association to determine the existence and degree of an injured employee's impairment; the Texas Labor Code §408.125, as amended by the 77th Texas Legislature, which provides the process for disputing impairment ratings; the Texas Labor Code §408.151, which provides for required medical examinations for supplemental income benefits; and the Texas Labor Code §415.0035, as passed by the 77th Texas Legislature, that establishes administrative violations for repeated administrative violations or for a provider failing to submit required medical reports.

§126.5. Entitlement and Procedure for Requesting Required Medical Examinations.

(a) The commission [~~Commission~~] may authorize a required medical examination (RME) for any reason set forth in the Texas Workers' Compensation Act (the Act), Texas Labor Code, §§408.004, 408.0041, or 408.151 at the request of the insurance carrier (carrier), the commission's medical advisor, or a division of the commission [~~Commission~~]. The request shall be made in the form and manner prescribed by the commission [~~Commission~~]. A carrier is not entitled to take action with respect to benefits based on, and the commission shall not consider, a report of an RME doctor that was not approved or obtained in accordance with this section.

(b) Carriers are entitled to RMEs by a doctor of their choice in accordance with this subsection as follows: [~~The Commission shall not require an injured employee (employee) to submit to a medical examination at the carrier's request until the carrier has made an attempt to obtain the agreement of the employee for the examination. The carrier shall notify the Commission in the form and manner prescribed by the Commission of any agreement or non-agreement by the employee regarding the requested examination. If an agreement is secured for RME beyond that which the carrier is entitled to require the employee to attend as provided in subsections (c), (d), (e), and (f) of this section, the written notification must also include an explanation of why good cause exists for the additional RME. A carrier's request for a medical examination order shall be delivered to the Commission and be sent to~~

the employee, and the employee's representative on the same day in the manner prescribed by subsection (i) of this section.]

(1) Pursuant to Texas Labor Code §408.004, once every 180 days, to resolve any questions about the appropriateness of the health care received by the injured employee (employee), or similar issues. A subsequent examination must be performed by the same doctor unless otherwise approved by the commission. For dates of injury on or after September 1, 1997, the commission may approve no more than 3 additional RMEs at the carrier's request before the expiration of 180 days in the event that a medical opinion is needed to determine if:

(A) there has been a change in the employee's condition;

(B) there is a need to change the employee's diagnosis;

(C) the treatment should be extended to another body part or system, or if the extent of injury has changed;

(D) the compensable injury is a producing cause of additional problems or conditions;

(E) disability exists, because of newly discovered information; or

(F) a proposed surgery is necessary to treat the compensable injury.

(2) Pursuant to Texas Labor Code §408.0041, for the purpose of evaluating a designated doctor's determination on maximum medical improvement (MMI) and/or permanent whole body impairment rating. A carrier is entitled to an examination under this subsection only upon receipt of a Report of Medical Evaluation from a Designated Doctor under §130.6 of this title (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Rating).

(3) Pursuant to Texas Labor Code §408.151, to determine if the employee's medical condition is a direct result of the impairment resulting from a compensable injury. For the purposes of this subsection, the carrier may not require an employee to submit to an RME more than once per year if:

(A) an employee is receiving supplemental income benefits on or after the second anniversary of the date of the employee's initial entitlement to supplemental income benefits, and

(B) in the preceding year, the employee's medical condition resulting from the compensable injury had not improved sufficiently to allow the employee to return to work during that year.

(c) On or after August 1, 2003, the doctor selected to perform an RME must be on the commission's approved doctors list with Level 2 Certification as provided by §180.20 and §180.23 of this title (relating to Application for Registration/commission Approved Doctor List and commission Required Training for Doctors/Certification Levels, respectively), unless a specific exception is granted by the commission. [A carrier is entitled to only one RME, as allowed by the Act, §408.004, every 180 days, except as provided in subsections (d), (e), and (f) of this section.]

(d) Except for an examination under subsection (b)(2) of this section, the commission shall not require an employee to submit to a medical examination at the carrier's request until the carrier has made an attempt to obtain the agreement of the employee for the examination. The carrier shall notify the commission in the form and manner prescribed by the commission of any agreement or non-agreement by the employee regarding the requested examination. An examination of an employee by a doctor selected by the carrier shall be requested as follows: [For dates of injury on or after September 1, 1997, the Commission may approve additional RMEs at the carrier's request before the expiration of 180 days in the event that a medical opinion is needed to determine if:]

(1) Prior to requesting an RME from the commission, the carrier shall send a copy of the request to the employee and the employee's representative, if any, in the manner prescribed by subsection (g) of this section in an attempt to obtain the employee's agreement to the examination.

(2) The carrier shall give the employee ten days to agree to the examination. The ten day period begins from the date the carrier sends the request to the employee and the employee's representative, if any. Though the employee has ten days to respond to the request, the carrier is not prohibited from contacting the employee by telephone to discuss the request with the employee and obtain the employee's response.

(3) The carrier shall send the request to the commission after either obtaining the employee's answer to the request or when the employee fails to respond after the ten day period.

[(1) there has been a change in the employee's condition;]

[(2) there is a need to change the employee's diagnosis;]

[(3) the treatment should be extended to another body part or system, or if the extent of injury has changed;]

[(4) the compensable injury is a producing cause of additional problems or conditions;]

[(5) disability exists, because of newly discovered information;]

[(6) proposed surgery, other than spinal surgery, is necessary to treat the compensable injury; or]

[(7) the employee has reached maximum medical improvement and to determine the impairment rating when the examination relates to a body part or system that is outside the expertise of the carrier's required medical examination doctor selected under subsection (c) of this section.]

[(e) Except for the reason listed in subsection (d)(7) of this section, any request by a carrier for an additional RME shall be submitted only after the carrier has previously had an examination under subsection (c) of this section. Unless good cause exists, a request for an additional RME under subsection (d) of this section will not be approved during a 180 day period for the same reason or rationale and the employee shall not be required to submit to more than three RMEs at the request of the carrier under this section within any 180 day period.]

[(f) Notwithstanding subsections (c) and (d) of this section, a carrier may only require an employee to submit to an RME once per year and the purpose of that examination is limited to determining whether the employee's medical condition is a direct result of impairment resulting from a compensable injury, if, on or after the second anniversary of the date of the employee's initial entitlement to supplemental income benefits:]

[(1) the employee is receiving supplemental income benefits; and]

[(2) if, in the preceding year, the employee's medical condition resulting from the compensable injury had not improved sufficiently to allow the employee to return to work during that year.]

(e) [(g)] The commission [Commission] shall monitor all carrier requests for medical examinations that are requested before the expiration of the 180-day period under subsection (b)(1) [subsections (d)

~~and (e)~~] of this section through statistical analysis, audits, or other appropriate means.

(f) [~~(h)~~] An unreasonable request for an additional medical examination under subsection (b) [~~subsections (d), (e), and (f)~~] of this section includes:

(1) a request for an additional examination for a reason which does not comply with this section;

(2) a request for a different doctor without sufficient grounds;

(3) a request which would result in a violation of subsection (b) [~~(f)~~] of this section; and

(4) a request which provides false, incomplete, or misleading information.

(g) [~~(i)~~] The carrier shall send a copy of the request for a medical examination order required by subsection (d) [~~(c)~~] of this section to the employee and the employee's representative by facsimile or electronic transmission if carrier has been provided with a facsimile number or email address for the recipient, otherwise, the carrier shall send the request by other verifiable means.

(h) [~~(j)~~] The carrier shall maintain copies of the request for a medical examination order and shall also maintain verifiable proof of successful transmission of the information. For these purposes, verifiable proof includes, but is not limited to, a facsimile confirmation sheet, certified mail return receipt, delivery confirmation from the postal or delivery service, or a copy of the electronic transmission.

§126.6. Order for Required Medical Examinations.

(a) When a request is made by the insurance carrier (carrier), the injured employee (employee), the employee's representative, or a division of the commission [~~Commission~~], for a medical examination, the commission [~~Commission~~] shall determine if an examination should be ordered. The commission [~~Commission~~] shall issue an order granting or denying the request within seven days of the date the request is received by the commission [~~Commission~~]. A copy of the order shall be sent to the [~~injured~~] employee [~~(employee)~~], the employee's representative, and the carrier. The order shall explain the potential loss of benefits and penalty exposure for failing to attend the examination as well as the need to reschedule a missed examination. An agreement between the parties for an examination under §126.5 of this title (relating to Entitlement and Procedure for Requesting Required Medical Examinations) that the carrier has a right to, has the same effect as the commission's [~~Commission's~~] formal order.

(b) All examinations ordered must be scheduled within 30 days after receipt of order [~~as soon as possible,~~] with at least 10 days notice to the employee and the employee's representative. If a scheduling conflict exists, the employee and the doctor shall contact each other. The doctor or the employee who has the scheduling conflict must make contact at least 24 hours prior to the appointment. The 24 hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency).The rescheduled examination shall be set for a date within seven days of the originally scheduled examination, unless an extension is granted by the commission's field office. [~~the employee shall contact the doctor prior to the examination to re-schedule the examination to a time within seven days of the date the examination was originally scheduled to occur.~~] In this event, the examining doctor shall notify the carrier and the 10 days [~~day~~] notice requirement does not apply to a rescheduled examination.

(c) The employee's treating doctor, chosen under the Texas Workers' Compensation Act (the Act), Texas Labor Code, §408.022, may be present at an examination scheduled with a doctor selected by the carrier. The employee's treating doctor may observe the conduct of the examination, and may consult with the examining doctor about the course of the employee's treatment. The employee's treating doctor shall not otherwise participate in, [~~or~~] impede, or advise the employee not to cooperate with the examination. In initially scheduling the examination, a reasonable attempt shall be made to accommodate the schedule of the treating doctor if the employee wants the treating doctor to attend the examination and the treating doctor is willing to do so. However, once an examination is scheduled based on the treating doctor's availability, the examination shall not be delayed, canceled, or rescheduled due to the treating doctor's scheduling conflicts unless:

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

(d) (No change.)

(e) An RME doctor who, subsequent to a designated doctor's examination, determines the employee has reached maximum medical improvement or who assigns an impairment rating, shall complete and file the report as required by §130.1 and §130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment [~~Reports of Medical Evaluation; Maximum Medical Improvement~~] and Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by Doctor Other than Treating Doctor [~~or Designated Doctor~~]). Otherwise, the RME doctor shall not certify MMI or assign an impairment rating. If the RME doctor disagrees with the designated doctor's opinion regarding MMI, the RME doctor's report shall explain why the RME doctor believes the designated doctor was mistaken or why the designated doctor's opinion is no longer valid. Other reports shall be completed according to applicable rules for consultant medical reports as described in §133.104 of this title (relating to Consultant Medical Reports) and shall be sent to the carrier, employee, the treating doctor, and commission [~~Commission~~] no later than 10 days after the examination.

(f) (No change.)

(g) A doctor who conducts an examination solely under the authority of an order issued according to this rule shall not be considered a designated doctor under the Texas Labor Code §408.0041, [~~the Act,~~] §408.122 or §408.125. Examinations with a designated doctor [~~or a second opinion spinal surgery doctor under the Act, §408.026,~~] are not subject to any limitations under the provisions for RMEs [~~required medical examinations~~].

(h) A carrier may suspend temporary income benefits (TIBs) if an employee, without good cause, fails to attend an RME, including a designated doctor examination[~~, without good cause~~].

(1) In the absence of a finding by the commission to the contrary, a carrier may presume that the employee did not have good cause to fail to attend the examination if:

(A) by the day the examination was originally scheduled to occur the employee has both:

(i) (No change.)

(ii) failed to contact the RME doctor's office to reschedule the examination to occur no later than the later of the seventh day after the originally scheduled examination date or the doctor's first available appointment date; or

(B) (No change.)

(2) If, after the carrier suspends TIBs pursuant to this section, the employee submits to the required medical examination, the

carrier shall reinitiate temporary income benefits as of the date the employee submitted to the examination. The re-initiation shall occur no later than the seventh day following the latter of:

(A) the date the carrier was notified that the employee had attended the examination; or

(B) the date that the carrier was notified that the commission found that the employee had good cause for not attending the examination.

(3) An employee is not entitled to TIBs for a period during which the carrier suspended benefits pursuant to this section unless the employee later submits to the examination and the commission [~~Commission~~] finds or the carrier determines that the employee had good cause to fail to attend the appointment.

(i) (No change.)

(j) The commission [~~Commission~~] shall order examinations requiring travel of up to 75 miles from the employee's residence, unless the treating doctor certifies that such travel may be harmful to the employee's recovery. Travel over 75 miles may be authorized if good cause exists to support such travel. The carrier shall pay reasonable travel expenses incurred by the employee in submitting to any required medical examination, as specified by §134.6 of this title (relating to Travel Expenses).

§126.7. Suspension of Temporary Income Benefits Based On the Opinion of a Carrier-Selected Required Medical Examination Doctor.

(a) (No change.)

(b) This subsection provides for the applicability of this section.

(1) This section only applies to a carrier's intent to suspend or reduce temporary income benefits (TIBs) solely because:

(A) the RME doctor finds that the injured employee (employee) can return to work without restrictions and/or

(B) the RME doctor has certified maximum medical improvement (MMI) and assigned an impairment rating after a designated doctor previously evaluated the employee for MMI and permanent whole body impairment.

(2) A carrier may not suspend or reduce TIBs or otherwise apply the process described in this section based solely on a RME doctor's opinion if:

(A) the RME doctor certified MMI and/or assigned an impairment if the carrier was not entitled to the examination under the Texas Labor Code §408.0041 and §126.5 of this title (relating to Entitlement to and Procedure for Requesting Required Medical Examinations);

(B) the RME doctor's opinion was otherwise obtained in violation of §126.5 of this title; or

(C) the opinion upholds or otherwise matches a prior opinion by the RME doctor which was previously considered under this section.

(3) [~~(b) Nothing in this section prevents a carrier from suspending or reducing temporary income benefits (TIBs) if the injured employee (employee) no longer has disability based on factors or conditions other than the RME doctor's opinion regarding ability to return to work or maximum medical improvement (MMI). If a carrier suspends or reduces income benefits for reasons other than the RME doctor's opinion, this section does not apply.~~] The effect of an RME doctor's opinion that the employee can return work with restrictions is governed by §129.6 of this title (relating to Bona Fide Offers of Employment).

(c) If a carrier intends to suspend or reduce TIBs based on the opinion of an RME doctor the carrier shall send the notice of intent and a copy of the RME doctor's report by facsimile or electronic transmission as provided by this subsection. If the carrier has not been provided with a facsimile number or email address for the employee or the employee's representative, the report and notice shall be sent by other verifiable means. The notice of intent will contain language prescribed by the commission. The notice of intent shall not be sent to the commission except as permitted by subsection (e) of this section.

(1) If the RME doctor found that the employee is able to return to work without restriction immediately, the notice and [~~or has reached MMI, the carrier shall send by facsimile or electronic transmission, a copy of the RME doctor's~~] report shall be sent to the treating doctor, the employee and the employee's representative (if any) [~~along with a notice of intent and shall not file it with the Commission except as permitted in subsection (e) of this section. If the carrier has not been provided with a facsimile number or of email address for the employee or the employee's representative, the report and notice shall be sent by other verifiable means. The notice of intent will contain language prescribed by the Commission~~].

(2) If the RME doctor found that the employee has reached MMI, the notice and report shall be sent to the treating doctor, the designated doctor, the employee and the employee's representative (if any). For the purposes of this section, the designated doctor's response shall have presumptive weight unless the great weight of other medical evidence is to the contrary.

(d) The carrier is permitted to suspend or reduce TIBs under this subsection if:

(1) [~~(d) If~~] the treating doctor indicates agreement [~~with the RME doctor's certification of MMI and the impairment rating or~~] with the RME doctor's release to return to work without restrictions (in which case[~~,~~] the carrier shall maintain documentation of the treating doctor's agreement and shall pay income benefits in accordance with [~~the treating doctor's opinion as provided in~~] this title and the rest of this section does not apply); or[~~.~~]

(2) either the treating doctor or the designated doctor indicates agreement with the RME doctor's certification of MMI (in which case the carrier shall maintain documentation of the agreement and shall pay income benefits in accordance with this title and the rest of this section does not apply).

(e) If subsection (d) of this section does not apply, the [~~The~~] carrier may file the notice of intent with the commission [~~Commission~~] on [~~the earlier of:~~]

[~~(1) receiving the treating doctor's or employee's disagreement with the certification of MMI or the RME doctor's release to return to work without restriction; or~~]

[~~(2)~~] the eighth day after transmitting the RME doctor's report and notice of intent as required by subsection (c) of this section.

(f) The carrier may suspend or reduce TIBs in accordance with the RME doctor's opinion on the 14th day after the date [~~day~~] the carrier filed the notice of intent with the commission [~~Commission~~] as permitted by subsection (e) of this section, unless an interlocutory order is entered in accordance with Chapter 140 of this title (relating to Dispute Resolution) or is automatically entered pursuant to subsection (h) of this section. For the purpose of this subsection, filed means received.

(g) Upon receipt of a notice of intent filed as permitted by subsection (e) of this section, the commission [~~Commission~~] shall:

(1) review the notice and its [~~the~~] potential for an unrecoupable overpayment;

(2) attempt to obtain the treating doctor's and the designated doctor's opinion (if the RME doctor certified MMI) regarding the RME doctor's opinion; and

(3) schedule the issue for a benefit review conference (BRC) as needed to determine whether an interlocutory order should be issued to require the carrier to continue to pay TIBs. A BRC under this subsection[~~, and which~~] is not subject to the notification requirements provided in Chapter 141 of this title (relating to Benefit Review Conference).[~~; and~~]

~~[(4) consider a dispute to exist as provided by Texas Labor Code, Chapter 408, Subchapter G (Impairment Income Benefits), and assign a designated doctor as provided in Chapter 130 of this title (relating to Impairment and Supplemental Income Benefits) pending resolution of the dispute by the commission if the RME doctor indicated that the employee reached MMI and]~~

~~[(A) the employee or the treating doctor disagrees with the certification or the assigned impairment rating; or]~~

~~[(B) the treating doctor fails to indicate agreement or disagreement with the RME doctor's certification or the assigned impairment rating.]~~

(h) If a carrier files with the commission [~~Commission~~] a notice of intent [~~based on an RME doctor's certification of MMI~~] as permitted by subsection (e) of this section and a BRC is not held within 14 days of the commission [~~Commission~~] receiving the carrier's notice, an interlocutory order will be automatically entered which requires the carrier to continue to pay TIBs in accordance with Chapter 129 of this title (relating to Temporary Income Benefits) and which expires upon the earlier of:

(1) the date the commission [~~Commission~~] holds a BRC;

(2) the date the carrier receives [~~a report from~~] the designated doctor's response to the RME doctor's report if one was not previously received[~~doctor, if a designated doctor was assigned~~];

(3) the date otherwise indicated on the order;

(4) the date the carrier is permitted to suspend payment of TIBs based on the employee's failure to attend a subsequent RME (including a [~~the~~] designated doctor examination) as outlined in §126.6(h) of this title (relating to Order for Required Medical Examinations), if a subsequent examination is ordered; or

(5) the date the employee reaches MMI based on 104 weeks elapsing from the date that income benefits accrued or the employee reaches MMI as extended by the commission [~~Commission~~] due to spinal surgery considerations as provided by Texas Labor Code, §408.104.

(i) A carrier that suspends TIBs pursuant to this section based on the RME doctor's certification of MMI, shall initiate impairment income benefits (IIBs) in accordance with the Act and this title.

(j) A carrier that [~~which~~] makes an unrecoupable overpayment pursuant to an interlocutory order may be eligible for reimbursement from the subsequent injury fund. An unrecoupable overpayment for the purpose of reimbursement from the subsequent injury fund includes only [~~includes~~] those benefits that were overpaid by the carrier pursuant to an interlocutory order which were not owed to the employee and which were not recoverable or convertible to IIBs.

(k) The carrier shall maintain copies of the notice of intent and report sent to the treating doctor, designated doctor, employee, employee's representative, and commission [~~Commission~~] and shall also maintain verifiable proof of successful transmission of the information. For these purposes, verifiable proof includes, but is not limited to, a facsimile confirmation sheet, certified mail return receipt, [~~delivery confirmation from the postal or delivery service,~~]or a copy of the electronic transmission.

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 August 20, 2001.

TRD-200104894
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §126.8 (relating to Commission Approved Doctor List) and repeal of §126.10 (relating to Commission Approved List of Designated Doctors).

The *Texas Register* published text shows the proposed amended language and should be read to determine all proposed amendments.

House Bill 2600 (HB-2600), passed by the 77th Texas Legislature in its 2001 session, made numerous amendments to the Texas Labor Code. Many of these changes related to regulating medical benefit delivery by: changing the commission's approved doctor list (ADL) and application process (including mandated training); changing the grounds under which the commission can issue sanctions (as well as expanding the sanctions); adding a medical advisor to the commission staff and Medical Quality Review Panel (QRP), and providing for expanded financial disclosure and prohibiting inappropriate referral fees, kickbacks, or other financial incentives.

To implement these changes, the commission examined its existing rules and found that most of the provisions relating to general regulation of doctors and health care are spread out among several chapters (126, 133, and 134 in particular). Given the scope of changes to be made and to simplify usage, the commission is proposing to move these provisions to Chapter 180. The commission's medical advisor provided recommendations regarding these rules.

The amendments and additions proposed for Chapter 180 are based upon legislative changes provided in Articles 1 and 6 of HB-2600. Chief among the changes is that admission to the ADL now requires a doctor to apply and meet specified criteria. Prior to this change admission to the ADL was automatic upon receiving a license. Now doctors will be required to take training and register to be on the list. In addition, the Commission has been

given the authority to deny or restrict admission based upon factors such as practice restrictions. Approved doctors will be issued certificates of registration that expire if re-training requirements are not met.

Another major change is that HB-2600 now mandates that doctors serving any role in the Texas workers' compensation system be on the ADL. In the past only treating doctors were required to be on the ADL. Doctors who are not on the ADL will be prohibited from performing services or receiving reimbursement in the Texas workers' compensation system (except in an emergency or for immediate post-injury medical care).

HB-2600 also mandates that the commission set up modified training and registration requirements for certain types of doctors such as those who do not participate in the Texas workers' compensation system at a high volume or those who only perform peer reviews and utilization review (UR). Doctors from other states are permitted to be on the ADL. However, out of state doctors who review health care services (such as though utilization review or peer reviews) are required to be supervised by a doctor licensed in Texas.

HB-2600 requires that the commission collect information about treating doctors regarding return to work outcomes, patient satisfaction, and cost and utilization of health care in order to promote quality of care and best practices. The commission previously collected information on cost and utilization of care but this was based upon the person providing the care and who was not necessarily the treating doctor for the claim. This information will be important over time because HB-2600 makes major changes to the way the commission regulates doctors on the ADL.

As a simplification, HB-2600 now mandates that the executive director remove doctors from the list who fail to register with the commission, who are deceased, whose license to practice has been revoked, suspended, or not renewed by the appropriate licensing authority, or who requests to be removed. Previously, removal under these circumstances required commissioner approval.

The commission's authority to address activities not in full compliance with the law or not representative of quality care has been greatly expanded. Both the grounds for taking action and the actions the commission is authorized to take are broader than under the previous statute.

To help evaluate behavior by doctors and carriers (as relates to medical benefit delivery), HB-2600 created an official medical advisor position which is imbued with specific authority and responsibilities. Also created was the QRP which functions to support the medical advisor in reviewing the conduct of doctors and carriers relating to medical benefit delivery.

Proposed Amendment to §126.8 -- Commission Approved Doctor List

Current §126.8 has been the rule that covers all issues associated with the ADL. The commission is proposing to move all of the requirements for the ADL from current §126.8 to proposed new §180.20 (relating to Application for Registration / Commission Approved Doctor List) which sets out the requirements for being admitted to the ADL. However, subsections (a) and (b) of §126.8 will continue to be effective until August 1, 2003 which is the date that the doctors must fully comply with the new requirements of §180.20 if they wish to be added to or remain on the ADL. A new subsection (c) is proposed to "sunset" these provisions.

The commission proposes the deletion of subsections (d) through (h) which address deleting a doctor from the ADL, the doctor's opportunity for appeal, the doctor's ability to request reinstatement, and the way such a request will be handled because these processes are proposed to be replaced by §180.26 (relating to Doctor and Insurance Carrier Sanctions) and §180.27 (relating to Sanctions Process/Appeals/Restoration/Reinstatement). The reason the commission is not proposing to leave these provisions active in the current rule is that, although the new ADL requirements will not be mandatory until August 1, 2003, the legislative provisions relating to sanctions were effective immediately.

Proposed Repeal of §126.10 -- Commission Approved List of Designated Doctors

The commission proposes repeal of current §126.10 because proposed new §180.21, §180.26, and §180.27 will replace it. The differences between the proposed new rules and the current rule are outlined in the proposal preamble to chapter 180 (located elsewhere in this issue of the *Texas Register)* and were primarily driven by the requirements of HB-2600.

Dr. Bill Nemeth, the commission's medical advisor, has determined the following with respect to fiscal impact for the first five-year period the proposed amended and new rules are in effect.

With regard to enforcement and administration of the rules by state or local governments there will be no significant impact on local governments. However, there are significant fiscal implications to the commission because of the need to develop or modify automated systems, review thousands of applications for the ADL, and train and monitor doctors and carriers, and train commission staff. However, it is difficult to quantify these costs. The ability of the executive director to administratively remove some doctors from the ADL should decrease some costs for the commission.

Local government and state government, as covered regulated entities, will be impacted in the same manner as persons required to comply with the rules as proposed.

Dr. Nemeth has determined that for each year of the first five years the rules as proposed are in effect, the public benefits or costs will result from new and amended rules in proposed Chapter 180. The following public benefit/cost note applies to the Chapter 180 rules proposal.

The public benefits anticipated as a result of enforcing the rules will be better access to higher quality medical care, reduced medical and indemnity claims costs (which will eventually result in reduced premiums), and more timely returns to work. However these benefits will increase over time and may not be significant in the first two years as the requirements of the rules will not be fully implemented by then.

Employees

Employees will benefit in a number of ways. The intent of HB-2600, and these rules is to ensure that employees have access to doctors who will provide timely quality care that is designed to cure or relieve the effects naturally resulting from the compensable injury, promote recovery, and/or enhance the ability of the employee to return to or retain employment. The commission expects that employees will see improvements in these areas as a result of the new rules. The exceptions provided for some out-of-state and low-volume doctors should help ensure employee access to quality health care.

The training relating to MMI and impairment should provide a number of benefits. Employees should receive more accurate impairment ratings and this will ensure that they get the benefits they are entitled to. More accurate impairment ratings should also reduce disputes and this should reduce the number of employee exams required and reduce delays in employees receiving their benefits. Disputes relating to MMI date should also be reduced because doctors will be better educated on how to certify MMI.

Studies have shown that employees who remain off work longer are less likely to ever return to work at wages approaching those they were earning while injured. The emphasis on timely return to work in the training that doctors will receive should result in fewer employees remaining off work longer than medically appropriate. As a result, the long-term impact of injuries on employees should be lessened.

Currently carriers utilizing the medical opinions of doctors who are not fully trained in Texas workers' compensation law often interrupt employees' medical care. By educating peer review and utilization review doctors, disputes that affect benefit delivery may be avoided. Reductions in disputes should improve medical benefit delivery, lower frustration, and speed recovery. Education and training of designated doctors should result in faster resolution of disputes.

Employees are not expected to see an increase in costs as a result of these rules. Employees who are currently kept off work longer than is appropriate might receive fewer benefits under the new rules but this is offset by the benefit of returning to work.

Health Care Providers

Doctors will similarly benefit from these rules in a number of ways. First, as noted, carrier-selected doctors will be better trained and this should reduce unnecessary disputes (both prospective and retrospective). With costs currently very high and rising, action by some carriers designed to address non-compliant doctors may be affecting some doctors who are compliant. To the extent that the commission is able to reduce the number of non-compliant doctors (e. g. by changing behavior or removing the doctors who won't change), the remaining doctors should experience increased efficiencies in the handling of their claims. In addition, these doctors are likely to see an increase in their worker's compensation business.

Currently some doctors offer improper inducements to employees in order to get the employees to change doctors. Often the doctors who are doing this are the doctors who keep employees off work longer than medically necessary and otherwise add to system costs by overutilizing care. The prohibition of improper inducements and the efforts to remove non-compliant doctors, should also increase workers' compensation business for those who comply with system rules and regulations.

Another benefit to providers is that the commission's ability to sanction carriers for quality of care issues is expanded by these rules. The increased ability to hold carriers responsible for their actions and inactions should result in improved compliance and, as a result, payments of medical bills may be more timely and accurate while disputes may be reduced.

Some doctors may see a slight increase in costs associated with obtaining email access and with having to take periodic training. However these increases are expected to be nominal and the statute requires that the commission establish some training requirements. Doctors already have continuing education requirements which are required for them to keep their licenses in good standing. Since the required training will be certified for continuing education credit, doctors will be able to fulfill two requirements at once. Treating doctors may also experience some costs associated with reporting outcome information to the commission. However, this requirement is mandated by the Legislature.

The expanded financial disclosure requirements may also increase some costs to providers, however, these requirements were also mandated by the Legislature.

Insurance carriers

Insurance carriers will benefit from the lower costs that will come as the system transitions from using an open list of approved doctors to using a controlled list of doctors specially trained in Texas workers' compensation. Prior to HB-2600, the commission's ability to exclude or otherwise limit doctors from participation in the system was limited. The system has seen workers' compensation costs (both indemnity and medical costs) rise significantly, especially when compared to costs in other states. To the extent that the commission is able to change utilization and return to work patterns (e.g. by changing behavior or by removing doctors who won't change behavior), costs shall be reduced.

In addition, with full financial disclosure, carriers will be able to give extra scrutiny to medical services provided through a self-referral by the doctor. Though these services may be reasonable and necessary, doctors who self-refer have an additional incentive to make the referral and thus additional scrutiny may be appropriate.

Similarly, prohibitions against improper inducements should ensure that only those benefits that the employee is truly entitled to are delivered.

The commission's expanded ability to remove doctors from the system should help increase compliance with the Statute and Rules. This should reduce claim costs by reducing overpayments caused by late reports by doctors.

Employers

Because insurance premiums are driven by claim costs, employers will see benefits to the extent that the commission is able to successfully implement HB-2600. Employers should benefit because the new rules should promote earlier returns to work. The earlier returns to work should also reduce the loss of productivity that an injury can cause. Employers should not see an increase in costs associated with these rules.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed rule amendments. There will be only a proportionate difference in the cost of compliance for small businesses and micro-businesses as compared to the largest businesses, including state and local government entities. The same basic processes and procedures apply, regardless of the size or volume of the business. The business size cost difference will be in direct proportion to the volume of business that falls under the purview of these proposed rules.

Comments on the proposal must be received by 5:00 p.m., October 1, 2001. You may comment via the Internet by accessing the commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments. You may also email your comments to *RuleComments@twcc.state.tx.us* or mail or deliver your comments to Nell Cheslock at the Office of the General

Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific subsection and paragraph commented upon. The commission may not be able to respond to comments which cannot be linked to a particular proposed subsection. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations. Unspecified comments submitted will not be addressed.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect with reference to specifics in the proposed rule amendments.

A public hearing on this proposal will be held on October 2, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*.

28 TAC §126.8

The amended section is proposed under the following statutes: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of medical advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. Section 414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

The amended rule affects the following statutes: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the

commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of medical advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. Section 414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

§126.8. Commission Approved Doctor List.

(a) On or after January 1, 1993, except in emergency situations, injured employees must receive medical treatment from a doctor on the commission approved doctor list (the list). This list initially includes all doctors licensed in Texas on or after January 1, 1993, and doctors licensed in other jurisdictions who have been added to the list by the commission.

(b) Doctors licensed in other jurisdictions may ask to be added to the list by submitting a written request containing information prescribed by the commission. Unless the doctor has been deleted from the list by the commission, a carrier shall not withhold reimbursement to doctors licensed in other jurisdictions when the only reason for nonpayment is that the doctor is not presently on the list.

(c) This section is no longer effective on or after August 1, 2003. [~~Each month, the division of medical review (the division) will provide insurance carriers, through designated Austin representatives, with the names of:~~]

[~~(1) doctors deleted from the list;~~]

[~~(2) doctors reinstated to the list; and~~]

[~~(3) doctors added to the list from other jurisdictions.~~]

[~~(d) Doctors may be deleted from the list for the following:~~]

[~~(1) sanctions imposed by the commission against the doctor for violations of the Act, commission rules, or commission orders;~~]

[~~(2) sanctions by Medicare or Medicaid for substandard medical care, overcharging, or overutilization of medical services;~~]

[~~(3) substantial differences between the doctor's charges, fees, diagnoses, or treatments and those the commission finds to be fair and reasonable;~~]

[~~(4) revocation or suspension of a doctor's license by the appropriate licensing authority;~~]

[~~(5) limitations or restrictions on the professional license or disciplinary actions taken by the appropriate licensing authority;~~]

[~~(6) criminal conviction which indicates an unwillingness or inability to provide quality treatment or to abide by the Act, commission rules, or commission orders; or~~]

[~~(7) other activities which warrant deletion.~~]

[~~(e) The division shall notify a doctor by certified mail, return receipt requested, of the division's intent to recommend to the commissioners that the doctor be deleted from the list. Within 20 days after receiving the notice, a doctor may request a hearing as provided by §408.023 of the Texas Labor Code (relating to List of Approved Doctors), §2001.051 of the Texas Government Code (relating to Opportunity for Hearing and Participation), and Chapter 148 of this title (relating to Hearings Conducted by the State Office of Administrative Hearings). If a request for hearing is received, the commission shall hold a hearing as provided in Chapter 148 of this title. If no response for hearing is filed within the time allowed, the division's recommendation will be reviewed by the commissioners at a public meeting and a decision made to either delete or maintain the doctor on the list.~~]

[~~(f) As described in Texas Labor Code §402.072 (relating to Sanctions) and Chapter 148 of this title, only the commissioners may delete a doctor from the list. The commission shall notify the doctor by issuing an order of deletion which describes the effects of the deletion on the doctor and the doctor's patients subject to workers' compensation. This order shall be delivered to the doctor by certified mail, return receipt requested, with a copy to the licensing authority and copies to those injured employees the commission is aware are being treated by that doctor. After receipt, the doctor shall also inform any injured employees, seeking treatment under the Act, of the doctor's deletion from the list and that the injured employee may not, except in an emergency, receive care. Failure to inform the injured employees in the form and~~

~~format prescribed by the commission may subject the doctor to administrative penalties of up to $10,000 and other sanctions as provided by the Act.]~~

~~[(g) To be reinstated, a doctor deleted from the list must apply for reinstatement in the form and manner prescribed by the commission through the Medical Review Division in Austin. If, in the division's opinion, the doctor has all the appropriate unrestricted licenses to practice at the time of reinstatement, has overcome the conditions which resulted in deletion, and should be reinstated, the division shall recommend that the commissioners reinstate the doctor to the list.]~~

~~[(h) If, in the division's opinion, the doctor has not met the requirements for reinstatement, or for other reasons should not be reinstated, the division shall notify the doctor by certified mail, return receipt requested, of the division's intent to recommend to the commissioners that the doctor not be reinstated. Within 20 days after receiving the notice, a doctor may request a hearing as provided in subsection (e) of 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.

Filed with the Office of the Secretary of State, on August 20, 2001.

TRD-200104892
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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28 TAC §126.10

(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 Workers' Compensation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the following statutes: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code§ 413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of medical advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. §414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

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

§126.10. Commission Approved List of Designated Doctors.
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 August 20, 2001.

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
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For further information, please call: (512) 804-4287

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CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

The Texas Worker's Compensation Commission (commission) proposes amendments to §§130.1-130.4, §130.6, §130.110, and new §130.5 concerning Impairment and Supplemental Income Benefits. The commission also proposes the simultaneous repeal of current §130.5. The amendments and new rule are proposed to implement changes made by House Bill 2600 (HB-2600) passed by the 77th Texas Legislature in its 2001 session. The commission's Medical Advisor has consulted on and provided recommendations regarding these proposed rules.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes and additions.

HB-2600 made numerous amendments to the Texas Workers' Compensation Act (the Statute) affecting the commission's approved doctor List (ADL); the commission's designated doctor list (DDL); entitlement to and purpose of required medical examinations (RMEs); and designated doctor examinations. The amendments relating to the ADL and DDL were amendments to the Texas Labor Code §408.023 and the addition of §408.0231. Taken together, these subsections now give the commission additional authority to regulate the participation of doctors in the Texas workers' compensation system. Among the more important changes are the requirement that all doctors involved in the system now be on the ADL, and an expansion of the commission's ability to mandate specific training requirements. In the past, only treating and designated doctors were required be on the ADL and training was limited to the designated doctor. The proposed rules allow only doctors with specific training to certify maximum medical improvement (MMI) status and assign impairment ratings (unless granted a specific exception by the commission). In addition to this proposal, the commission has proposed changes and additions to rules in chapter 180 of this title relating to Compliance and Practices (which appear elsewhere in this issue of the *Texas Register)*. These proposed rules address the changes to the ADL and DDL as well as set out the various roles and responsibilities of different types of doctors in the system, including the training that is required to be certified at a given level and the authorizations that are granted depending on certification levels.

The remaining proposed changes to the rules in chapter 130 implement the changes that HB-2600 made to the designated doctor and RME provisions of the Statute. HB-2600 changes the insurance carrier's (carrier) right to have an RME for the purpose of evaluating MMI and whole body impairment. As amended, the Statute now limits the use of a RME by a carrier-selected doctor to resolve issues regarding the appropriateness of the health care received by an employee and similar issues. After January 1, 2002, carriers will be entitled to an RME for determination of MMI and/or impairment only after the employee has had a designated doctor evaluation for the same issues.

These changes were made through amendment to the Texas Labor Code §408.004, §408.122, and §408.125 and the addition of §408.0041.

The 77th Legislature recently passed SB-1264 which clarified that a physician assistant is the agent of that physician assistant's supervising physician for any medical services that are delegated by the physician and that are within the physician assistant's scope of practice and are delineated by protocols, practice guidelines, or practice directives established by the supervising physician.

Therefore, a physician assistant is permitted to perform services in the Texas workers' compensation system (as directed by a supervising physician). However, when a physician assistant does so, it remains the doctor who retains the responsibility under the Statute and rules. The doctor will be held responsible for an action or inaction of their physician assistant that violates the Statute or rules.

Holding the doctor responsible under these circumstances is not a change from current commission practice of holding the employing entity responsible for their agent's violations (for example, carriers are issued penalty when their third party administrator fails to timely issue benefit payments). Further, though the Statute requires the commission to monitor and regulate health care providers, it puts greater emphasis on the commission regulating doctors.

At this time, the commission is not proposing a specific rule to regulate the involvement of a physician assistant in a claim any more than such a rule exists for third party administrators. Though a physician assistant may perform an evaluation or provide other service on behalf of a supervising doctor (as directed by the doctor), bills for the services must be in the name and license number of the supervising doctor. When signing a report, a physician assistant will likewise be required to sign for the doctor. For example, if Joe Assistant is working for Dr. Bob Supervisor and needs to sign a report, the physician assistant shall sign "Joe Assistant for Dr. Bob Supervisor." All identification and licensing information on reports and bills must also be the supervising doctor's. This will allow the commission and carrier to know under whose direction the physician assistant is acting and be able to contact that doctor should a question or problem arise. It will also allow the commission to monitor doctor performance as required by HB-2600.

Proposed Amendment of §130.1 - Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment

Proposed amendments to subsection (a) add the concept of "authorized doctor" to the existing concept of "certifying doctor." As noted, the changes in HB-2600 grant the commission additional authority to regulate doctors in the system including mandating training for the various roles that doctors can play in the system. Proposed rules in chapter 180 require doctors to have training on MMI/impairment or to obtain specific, one-time authorization by exception to certify MMI or assign an impairment rating. The proposed language in this subsection is reflective of these requirements.

Another change proposed in chapter 180 and reflected in subsection (a) of proposed §130.1, is that only treating doctors, designated doctors, or RME doctors (after a designated doctor examination) are permitted to be certifying doctors on a claim. The only exception to this occurs when the treating doctor chooses or is required to have another doctor perform an evaluation to certify MMI and assign an impairment rating in the treating doctor's stead.

The treating doctor's examination is clearly necessary. A designated doctor's evaluation is necessary when there is a question or dispute, and a carrier is entitled to an RME examination after the designated doctor's evaluation. These three doctors' opinions are generally all that are needed for the determination of MMI/impairment. Proposed §130.1(a) also prohibits non-authorized doctors from certifying MMI and/or assigning impairment ratings, provides that their opinions are invalid, and provides that an unauthorized doctor shall not be paid for evaluations or reports.

Proposed amendments to subsection (c) of §130.1 specify that if the certifying doctor chooses to use another health care practitioner to perform the testing required by the AMA Guides for an impairment rating, the other health care provider is required to have training in the evaluation of MMI and impairment equal to the training of the doctor. Testing performed by an untrained health care provider is invalid and is not reimbursable.

Because the proposed amendments require that all certifying doctors be trained, it is only logical to extend the training requirements to those who conduct the testing upon which the ratings will be based. This concept currently applies to designated doctor examinations. The proposed rule extends the requirement to all evaluations of impairment.

Proposed Amendments to §130.2 - Certification of Maximum Medical Improvement by the Treating Doctor (proposed to be re-titled as Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor)

Proposed amendments to subsection (a) of §130.2 clarify a treating doctor's responsibilities regarding certification of MMI and assignment of impairment rating. As discussed previously, if the treating doctor is not authorized to certify MMI or assign impairment ratings, the doctor shall make a referral to a doctor who is authorized. A treating doctor is also permitted to make such a referral even if the treating doctor is authorized to do MMI and impairment evaluations. However, if the treating doctor does so, then the referral doctor's evaluation becomes the treating doctor's evaluation.

Another proposed amendment to this subsection relates to certifying MMI and assigning impairment ratings in claims where the injury was extremely minor. In the past, the rules required a treating doctor to certify MMI and evaluate the employee for permanent whole body impairment -- even if the employee's injury was so minor as to not require treatment. These minor injuries are commonly referred to as "treat and release" cases by the medical community.

There is little reason to require an employee who has already returned to work in this type of situation to attend an additional appointment with the doctor. However, an employee who wishes to have an examination should not be denied one.

Proposed amendment to subsection (b) is merely a clean up and requires that certification of MMI and assignment of impairment rating be conducted in accordance with the requirements of §130.1. Proposed §130.1 is the main rule for certifications and other rules such as §130.2 add requirements applicable to specific circumstances.

Proposed amendments to subsection (c) update the citation to the Workers' Compensation Act.

The proposed addition of subsection (d) adds language regarding the treating doctor's responsibility to conduct an examination upon receipt of the commission's notice from subsection (c). This was implied by the current rule, but the additional language is proposed for clarification.

Proposed subsection (e) provides that a carrier may suspend TIBs if a report of medical evaluation has not been received by the date of statutory MMI. It also allows for a carrier to make a reasonable assessment, and if so, to initiate impairment income benefits (IIBs) within five days of making the assessment. The carrier shall continue to pay IIBs until the assessment is paid in full or is superseded by an impairment rating assigned in accordance with §130.1. This is an important clarification because, by statute, an employee is no longer entitled to receive TIBs upon reaching MMI. However, there are often cases where the employee reaches statutory MMI, but there has been no impairment rating assigned. An impairment rating is necessary to determine entitlement to, and the amount that should be paid.

Proposed Amendments to §130.3 - Certification Of Maximum Medical Improvement By A Doctor Other Than The Treating Or Designated Doctor (proposed to be re-titled as Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor Other than the Treating Doctor) The current rule governs the duties of a doctor other than the treating doctor or the designated doctor when certifying MMI. In these cases, the certifying doctor was to file a copy of the report with the treating doctor and the treating doctor was to file his agreement or disagreement with the certifying doctor's report. Proposed §130.3 provides a similar process for the designated doctor's report.

Proposed subsection (a) also changes the reference to §130.1 to be consistent with its proposed title change. In addition, clarifying language is added relating to compliance with §130.1 and the subsection is expanded to apply to designated doctors.

Proposed Amendments to §130.4, concerning the Presumption that Maximum Medical Improvement has been Reached and Resolution when MMI has not been Certified

Proposed amendments to §130.4(a) provide a clear definition of statutory MMI and provide that the rule does not apply if the employee has reached statutory MMI.

Proposed amendments to §130.4(b) and (c) combine the two subsections and provide the conditions under which a carrier may presume that an employee has reached MMI and invoke the procedure outlined in the rule. The proposed changes make the requirements consistent with §130.1 as proposed in other rules in this chapter.

The proposed conditions are similar to those that exist under the current rule with differences resulting from the changes in the Statute. The proposed rule allows for the appointment of a designated doctor without a prior certification of MMI by another doctor.

Eliminated from the requirements is the statement that the employee's condition not be an occupational disease. With the

changes in the Statute, the clarification in this rule that the treating doctor shall not certify MMI without an examination of the employee, and the proposed removal of finality language from §130.5, this exception to the ability to presume MMI is not necessary.

Two additional grounds for invoking the presumption of MMI procedure are proposed. First, the carrier can invoke the procedure on or after the date that a designated doctor estimated that the employee would reach MMI (assuming that a designated doctor had made such an estimate). Second, the carrier can invoke the procedure four weeks on or after the date the employee should have been able to return to work without restriction. This proposed requirement references the commission's work release guideline to be adopted in the near future. The commission anticipates proposal of a diagnosis based work release guideline at the same time or shortly after this rule is adopted and this guideline will provide a single standard that can be used by all system participants.

Deletion of current subsection §130.4(d) is proposed because the commission no longer issues interlocutory orders to suspend benefits

Current §130.4(e) is proposed to be redesignated as §130.4(c) and amended to better tie into proposed subsection (b).

Deletion of current §130.4(f) is proposed to eliminate the requirement that the carrier come to the commission for a letter to be sent to the treating doctor.

Current §130.6 .4(g) is proposed to be redesignated as §130.4(d) and amended to require the treating doctor to evaluate the employee's condition and complete and file the medical evaluation report as required by §130.1. It also provides for the treating doctor to notify the carrier if the employee has reached MMI, and if the doctor is not authorized to assign an impairment rating, to refer the employee to a doctor who is authorized.

The current rule requires the treating doctor to complete and file a Report of Medical Evaluation within seven days of the date of the examination. The commission proposes changing the requirement in this rule to mandate conducting the examination within 14 days of receipt of the request from the carrier and filing the report within seven working days of that date. The commission is also proposing language that covers the situation where the treating doctor is not authorized to evaluate MMI or impairment.

Current §130.4(h) is proposed to be redesignated as §130.4(e) and amended to allow the assignment of a designated doctor rather than the scheduling of a benefit review conference. This change is proposed because it is ultimately the designated doctor's opinion that is needed to resolve a dispute in this area.

Deletion of current §130.4(i) through (n) is proposed because they relate to benefit review conferences and they are redundant to other rules.

Proposed Repeal of Current §130.5 - Impairment Rating Disputes and Proposed New §130.5 - Entitlement and Procedure for Requesting Designated Doctor Examinations Related to Maximum Medical Improvement and Impairment Rating

The commission proposes repeal of current §130.5 and replacing it with new §130.5 which clearly outlines entitlement to, and process for, requesting designated doctor examinations relating to MMI and impairment ratings. The current rule addresses filing of disputes of impairment ratings. However, the current language is not necessary as it is largely duplicative of statutory provisions. Further, the current provisions allow delays in dispute resolution by permitting a carrier to begin payment of IIBs based upon the carrier's reasonable assignment but allowing 21 days for the carrier to file a notice of dispute of the rating.

In addition, the current rule does not require the appointment of a designated doctor in the event the carrier makes a reasonable assessment of impairment rating. This could leave the question of the employee's permanent whole body impairment unresolved and could adversely affect the employee's benefits

The current rule provides for finality of certifications of MMI and impairment ratings. The commission believes the language in the current rule is appropriate given the statutory provisions at the time the rule was originally adopted in 1991. In particular, the commission's use of a finality provision was important because the commission held that carriers could not suspend TIBs based upon a carrier-selected doctor's certification and rating unless the employee agreed to it or the rating became final. This changed slightly as a result of legislation passed by the 76th Texas Legislature. Now, given the changes made by HB-2600 which substitute designated doctor examinations for RME examinations, and given that designated doctors' opinions regarding MMI and impairment have presumptive weight, the commission believes that the concept of finality is not as essential to the system and proposes its deletion.

Proposed new §130.5 is largely based upon provisions currently contained in §130.6. The commission is proposing splitting §130.6 in two to simplify it. Proposed §130.5 sets out the requirements for requesting a designated doctor; selecting the doctor; scheduling the examination; delivering records to the designated doctor; and disputing the report of the designated doctor. The rule essentially covers everything about the dispute and examination except for the duties of the designated doctor and the employee's duties regarding the examination itself (which are contained in §130.6).

Proposed new §130.5(a) requires the commission to order medical examinations by a designated doctor at the request of the carrier, the injured employee, the injured employee's representative, the commission's Medical Advisor, or a division of the commission and requires requests for designated doctors to be made in the form and manner prescribed by the commission.

Proposed new §130.5(b) provides the conditions under which a designated doctor will be assigned and the issues to be resolved. This rule applies only to questions relating to MMI and impairment.

Proposed new §130.5(c) provides for a certification of MMI and/or impairment to be invalid if it was assigned by a carrier-selected doctor when the carrier was not entitled to such an evaluation, or if it was not obtained in accordance with §126.5, or if it was assigned by a doctor who was not authorized to certify MMI and impairment.

Proposed new §130.5(d) provides the commission's provisions for selecting and scheduling an examination by a designated doctor as specified under new §408.0041. The subsection also lists what information shall be contained on the order. There are differences between the provisions in this rule and the current analogous provisions of §130.6. These differences are primarily driven by HB-2600, which changed the timeframes for ordering an examination and removed the provision that allowed for a designated doctor to be chosen based upon the agreement of the employee and the carrier.

Other differences are due to HB-2600's requirement that the designated doctor selected be experienced in the treatment and procedures used by the doctor treating the employee's medical condition as opposed to the current requirement that the designated doctor be of the same discipline and licensing as the treating doctor.

Another difference is the proposal for a specific timeframe for the treating doctor and carrier to send the employee's medical records to the designated doctor. Current §130.6 does not have a specific timeframe for the records to be forwarded. The current rule merely states that if the designated doctor does not have the records three days prior to the examination, the commission is to be contacted for assistance in obtaining the records. The proposed rule requires that the treating doctor and carrier provide the records to the designated doctor no later than the fifth day after receiving the order and changes the timeframe for requesting commission assistance from three days to five days to provide more time for the commission to intervene.

Provisions of the subsection that govern contact with the designated doctor are essentially the same as contained currently in §130.6.

Proposed new §130.5(e) provides the condition and timeframe for a request of a subsequent designated doctor appointment. The statute provides that such a request is limited to one per 60 days unless that is good cause. Proposed §130.4 can be used to establish good cause although it may not be the only method.

Proposed §130.5(f) provides the procedure for filing a dispute with the commission when either party is not satisfied with the designated doctor's opinion regarding MMI and/or impairment rating.

Proposed Amendments to §130.6 - Designated Doctor: General Provisions (proposed to be re-title as Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings)

Proposed §130.6 focuses on the duties of the designated doctor and the employee relating to the conduct of the examination itself. Therefore, all provisions of the current rule that address setting up the examination, choosing the doctor, forwarding the records, etc., are proposed to be deleted in this rule and replaced by similar provisions in §130.5, as previously discussed. Therefore, current subsections (a) through (f), (h), and (i) of §130.6 are proposed to be deleted.

Proposed amended §130.6(a) provides an overview section that explains the applicability of the rule and some general provisions relating to presumptive weight. The rule makes it clear that presumptive weight applies only to MMI and impairment, and only to those MMI or impairment issues that are actually in question or dispute. Thus, if the only issue in dispute is impairment, the designated doctor's opinion about MMI is not given presumptive weight. Likewise, other opinions of the designated doctor are not given presumptive weight even if the designated doctor is asked by the commission for an opinion on a matter.

The opinion of the designated doctor is given presumptive weight rather than the report of the doctor. This clarifies that if the designated doctor discovers an error in the report and amends it, the subsequent report is also given. This also allows requests for clarification when a question arises relating to the designated doctor's opinion.

Current §130.6(g) is proposed to be redesignated as §130.6(b). Proposed new §130.6(c) provides the conditions under which a carrier may suspend TIBs if an employee, without good cause, fails to attend a designated doctor examination. The language is virtually identical to provision in proposed §126.6 (relating to Order for Required Medical Examination), which is proposed elsewhere in this issue of the *Texas Register*.

Current §130.6(j) is proposed to be redesignated as §130.6(d) and amended to require the designated doctor to address the issues in question and any issues the commission may request the designated doctor to consider. It also requires the designated doctor to provide an estimated date the employee may reach MMI if the issue of MMI was in question and if the designated doctor found the employee not to be at MMI. This estimated date is very important for two reasons. The first is that it helps establish if there would be good cause to return to a designated doctor in less than 60 days. The second reason relates to the fact that for dispute resolution on MMI, the RME examination occurs after the designated doctor's examination. For example, the designated doctor could find that an employee is not at MMI and then the carrier's RME doctor could find MMI a couple of weeks later during the RME. The RME doctor would essentially argue that they agree that the employee had not reached MMI at the time of the designated doctor's examination but that the employee had reached MMI by the time of the RME. By having an estimated MMI date from the designated doctor, the commission will be better able to resolve disputes in this situation.

Another proposed change relates to disputes of MMI when the treating doctor has already certified the employee to be at MMI. Many designated doctors are unwilling to certify an employee to have reached MMI on a date prior to the designated doctor's examination of the employee. This has led to MMI being inappropriately extended in some cases. A certification of MMI requires an evaluation of the prior medical records. From that evaluation, the designated doctor should be able to determine at what point the employee's condition was no longer improving. Although additional training for doctors should improve the accuracy of MMI certifications and alleviate the problem, there may still be doctors who are unwilling to certify the employee to be at MMI prior to a date that doctor actually examined the employee. To help address this situation, the commission proposes requiring the designated doctor to provide an explanation with clinical documentation when the designated doctor finds the employee to have reached MMI on a date later than the date the treating doctor finds the employee to have reached MMI.

Another proposed change has to do with assigning impairment ratings when there are questions about the extent of injury. It is not uncommon for designated doctors to assign impairment ratings when the extent of injury is in dispute. It is also not uncommon for the designated doctor to include additional conditions in the impairment rating that the carrier was not aware of prior to the designated doctor's examination. This has caused problems in the past because the designated doctor's report currently has presumptive weight and the carrier is required to pay all accrued benefits in accordance with the designated doctor's report within five days of receiving the report. In those instances that the designated doctor turns out to have inappropriately extended the injury through the impairment rating, the carrier may overpay benefits to the employee with no recourse for reimbursement. On the other hand, sometimes the rating will not include a condition that is later determined to be part of the compensable injury. In order to get the impairment rating modified to include the additional condition, another examination by the designated

doctor would often be needed. During this time, the employee's benefits might be delayed.

The commission proposes that if there does not appear to be consensus on extent of injury (either through an active dispute or an obvious difference between what the medical reports and narratives show), the doctor will rate the impairment both ways so that when the dispute of extent of injury is resolved, there will be no delay in the provision of benefits. The carrier would be required to pay IIBs in accordance with the designated doctor's rating based upon the conditions that the carrier believes are part of the compensable injury (preventing overpayments) and then pay per the other rating if it is later determined that the compensable injury includes the disputed conditions (preventing delays). With the new provisions of HB-2600 that allow the carrier and the treating doctor to provide a narrative that describes their assessment of the employee's condition, designated doctors should have little problem determining if they need to evaluate the employee's condition in multiple ways.

Current §130.6(k) is proposed to be redesignated as §130.6(e).

Current §130.6(l) is proposed to be redesignated as §130.6(f) and language added for clarification of the existing prohibition against a provider assisting a designated doctor if the provider previously examined or treated the employee within the past 12 months (for any condition) or previously examined or treated the employee for the medical condition needing evaluation by a designated doctor.

Another proposed change provides that if the designated doctor chooses to use another health care practitioner to perform range of motion and strength testing required by the AMA Guides, doing so shall not extend the amount of time the designated doctor has to file the report required by the rule. Range of motion and strength training are basic requirements for evaluating impairment resulting from nearly every condition. Treating doctors and RME doctors often utilize other providers to provide such testing but use of other health care providers does not extend the time to file their reports.

The commission also proposes adding language that makes it clear that the designated doctor is ultimately responsible for compliance with the section regardless of whether they choose to have other health care providers assist them. This is not a change from current rules.

Current §130.6(m) is proposed to be redesignated as §130.6(g) and to clarify that (unlike subsection (f)), special testing does extend the amount of time that the designated doctor has to file the report by up to seven working days if the designated doctor needs to refer the employee to another provider to conduct these tests. This testing does not include standard range of motion and strength training. This sort of testing (and thus extensions) is expected to be infrequent.

Current §130.6(n) is proposed to be redesignated as §130.6(h) and current language relating to extension of the reporting timeframe is proposed to be deleted because of its inclusion in subsections (f) and (g).

Proposed new §130.6(i) establishes a date by which a designated doctor must respond to a commission request for clarification. It also considers the designated doctor's response to have presumptive weight as it is part of the doctor's opinion. Under the current rule, there is no specific timeframe for responding to a request for clarification. This can delay resolutions of disputes for months while the commission must re-request clarification, call the doctor's office to ask for the information, or issue orders.

Current §130.6(o) is proposed to be redesignated as §130.6(j). The subsection addresses records that the designated doctor must maintain. Proposed to be added to the required records is documentation of the date the commission was contacted when the carrier or treating doctor have not provided medical records within five days prior to the scheduled date of an examination.

The commission proposes deleting §130.6(p) because it is redundant to provisions in other rules.

Current §130.6(q) is proposed to be redesignated as §130.6(k) and clarified.

It is proposed that all provisions related to reimbursement for the designated doctor examination be deleted. These provisions are redundant of provisions in the current Medical Fee Guidelines (§134.201 of this title) and are unnecessary. Therefore, the commission proposes deleting current subsection (r).

Proposed Amendments to §130.110 - Return to Work Disputes During Supplemental Income Benefits; Designated Doctor

The commission proposes deleting §130.110(n) because it is redundant to provisions in other rules and it references rules that are being amended or deleted.

Brent Hatch, Director of Customer Services, has determined that for the first five-year period the proposed rules are in effect there will not be fiscal implications for state or local governments as a result of enforcing or administering the rules. This legislation and the rules as proposed should reduce the number of disputes the commission must handle, but the commission will also experience increased education and training costs. Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for person required to comply with the rules as proposed.

Mr. Hatch has evaluated the public benefits and anticipated costs for each year of the first five years the rule as proposed are in effect. The public benefits anticipated as a result of enforcing the rules will be compliance and implementation of legislative directives and consistency in the rules under which all Texas workers' compensation system participants function.

Employees should benefit from having more accurate impairment ratings and fewer disputes due to training and designated doctor qualification requirements, and from attending fewer examinations. Fewer examinations should be the result of limiting who can certify MMI and/or impairment, use of a designated doctor with presumptive weight before an RME, elimination of the requirement to certify MMI and/or impairment for a minor injury, requiring estimated future MMI dates, and requiring multiple ratings by a designated doctor when extent of injury is at issue. The expanded use of designated doctors and the removal of the finality concept for impairment ratings and MMI certification should help ensure employees receive all the benefits they are entitled to - no more and no less. Another expected benefit is the timely resolution of disputes because of designated doctor presumptive weight and clear time deadlines for various actions. Employees should also benefit from clarification of the role of the treating doctor and the fact that treating doctors will get copies of designated doctor reports as this will make it easier for employees to discuss the designated doctor's report with a doctor whom they know and trust. Employees are not expected to experience any costs associated with these rule.

Health care providers (particularly doctors) should benefit from the proposed changes as they clarify existing requirements and streamline processes while providing clear time deadlines. For example, under the current rule, the fact that employees and carriers can agree on designated doctors means that the commission will sometimes schedule an examination with a designated doctor only to have to cancel it because the employee and carrier later agree on a different doctor. Treating doctors should also benefit from fewer disputes and because they will have fewer certifications of MMI and impairment ratings done by other health care providers to evaluate (because of the restrictions on who will be authorized to certify MMI and assign ratings). Doctors may experience increased training costs associated with these rules and the chapter 180 rules proposed concurrently with these rules.

Insurance carriers should benefit in a number of ways. First, the rules are designed to both reduce disputes and to speed up dispute resolution. To the extent that disputes are resolved quicker, it greatly reduces the potential for overpayments. In addition, the training and other rule requirements are expected to help ensure that employees are timely and accurately certified to be at MMI (which should reduce overpayments in TIBs), as well as more accurate impairment ratings (which should reduce disputes). Carriers should see cost reduction based upon fewer disputes and fewer examinations, as discussed above. In addition, the restriction on which doctors are able to evaluate MMI and impairment should reduce the number of such examinations and reduce those costs further. Carriers and employers should benefit from the provisions regarding initiation and continued payment of IIBs based on the carrier's reasonable assessment of impairment. Carriers should also benefit for the additional grounds on which to presume MMI has been reached.

Employers will benefit from reduced system costs and timely returns to work.

There will be no adverse economic impact on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses because the same basic processes and procedures apply to all entities regardless of size.

Comments on the proposal must be received by 5:00 p.m., October 1, 2001. You may comment via the Internet by accessing the commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us or mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.*

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments which cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

A public hearing on this proposal will be held on October 2, 2001, at the central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *http://www.twcc.state.tx.us*

SUBCHAPTER A. IMPAIRMENT INCOME BENEFITS

28 TAC §§130.1 - 130.6

The amendments and new rules are proposed under: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §406.010, which authorizes the commission to adopt rules regarding claims service; the Texas Labor Code, §408.004, as amended by the 77th Texas Legislature, which provides for Required Medical Examinations; Texas Labor Code §408.0041, as adopted by the 77th Texas Legislature, which provides for the commission assignment of a designated doctor; the Texas Labor Code §408.023, as amended by the 77th Texas Legislature, which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231, which provides the commission with the responsibility for maintenance of the list, the Texas Labor Code, §408,025, which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code, §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; the Texas Labor Code, §408.122, as amended by the 77th Texas Legislature, which requires that designated doctors meet specific qualifications; the Texas Labor Code §408.123, which requires a doctor certifying maximum medical improvement to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; the Texas Labor Code, §408.124, which provides the commission the authority to by rule adopt the fourth edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association to determine the existence and degree of an injured employee's impairment; the Texas Labor Code, §408.125, as amended by the 77th Texas Legislature, which provides the process for disputing impairment ratings; the Texas Labor Code §408.151, which provides for required medical examinations for supplemental income benefits; and the Texas Labor Code §415.0035, as passed by the 77th Texas Legislature, which establishes administrative violations for repeated administrative violations or for a provider failing to submit required medical reports.

The proposed amendments and new rules affect the following statutes: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §406.010, which authorizes the commission to adopt rules regarding claims service; the Texas Labor Code, §408.004, as amended by the 77th Texas Legislature, which provides for Required Medical Examinations; Texas Labor Code §408.0041, as adopted by the 77th Texas Legislature, which provides for the commission assignment of a designated doctor; the Texas Labor Code §408.023, as amended by the 77th Texas Legislature, which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231, which provides the commission with the responsibility for maintenance of the list, the Texas Labor Code, §408,025, which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code, §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; the Texas Labor Code, §408.122, as amended by the 77th Texas Legislature, which requires that designated doctors meet specific qualifications; the Texas Labor Code §408.123, which requires a doctor certifying maximum medical improvement to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; the Texas Labor Code, §408.124, which provides the commission the authority to by rule adopt the fourth edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association to determine the existence and degree of an injured employee's impairment; the Texas Labor Code, §408.125, as amended by the 77th Texas Legislature, which provides the process for disputing impairment ratings; the Texas Labor Code §408.151, which provides for required medical examinations for supplemental income benefits; and the Texas Labor Code §415.0035, as passed by the 77th Texas Legislature, which establishes administrative violations for repeated administrative violations or for a provider failing to submit required medical reports.

§130.1. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment.

(a) Authorized [~~Certifying~~] Doctor.

(1) Maximum medical improvement (MMI) shall be [~~determined and~~] certified and an impairment rating shall be assigned in accordance with this section. Only an authorized [~~by a~~] doctor [~~as defined in section 401.011 (17) of the Texas Workers' Compensation Act~~] may certify MMI and assign an impairment rating. To be authorized the doctor must:

(A) be serving as either:

(i) the treating doctor (or a doctor to whom the treating doctor has referred the employee for evaluation of MMI and permanent whole body impairment in the place of the treating doctor);

(ii) a designated doctor; or

(iii) a required medical examination (RME) doctor selected by the carrier and approved by the commission to evaluate MMI and/or permanent whole body impairment after a designated doctor has performed such an evaluation; and

(B) after August 1, 2003, be on the commission's Approved Doctor List with Level 2 or Level 3 Certification (as described in §180.20 and §180.23 of this title (relating to Application for Registration / Commission Approved Doctor List and Commission Required Training for Doctors/Certification Levels, respectively) or have been granted authorization by specific exception from the commission.

(2) Doctors who are not authorized shall not certify MMI or assign impairment ratings and shall not be reimbursed for the examination, certification, or report if one chooses to conduct such an examination and/or make such a certification. A certification of MMI and/or impairment rating assigned by an unauthorized doctor are invalid.

(3) A doctor who is authorized under this subsection to certify MMI and assign an impairment rating and who does either, shall be referred to as the "certifying doctor."

(b) Certification of Maximum Medical Improvement.

(1) Maximum medical improvement (MMI) is:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or

(C) the date determined as provided by Texas Labor Code §408.104.

(2) MMI must be certified before an impairment rating is assigned.

(3) Certification of MMI is a finding made by an authorized doctor that an injured employee (employee) has reached MMI as defined in subsection (b)(1) of this section.

(4) To certify MMI the certifying doctor shall:

(A) review medical records;

(B) perform a complete medical examination of the employee for the explicit purpose of determining MMI (certifying examination);

(C) assign a specific date at which MMI was reached.

(i) The date of MMI may not be prospective or conditional.

(ii) The date of MMI may be retrospective to the date of the certifying exam; and

(D) complete and submit required reports and documentation.

(c) Assignment of Impairment Rating.

(1) An impairment rating is the percentage of permanent impairment of the whole body resulting from the current compensable injury. A zero percent impairment may be a valid rating.

(2) A doctor who certifies that an employee has reached MMI shall assign an impairment rating for the current compensable injury using the rating criteria contained in the appropriate edition of the

AMA Guides to the Evaluation of Permanent Impairment, published by the American Medical Association (AMA Guides).

(A) The appropriate edition of the AMA Guides to use for all certifying examinations conducted before October 15, 2001 is the third edition, second printing, dated February, 1989.

(B) The appropriate edition of the AMA Guides to use for certifying examinations conducted on or after October 15, 2001 is:

(i) the fourth edition of the AMA Guides (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the AMA prior to May 16, 2000). If a subsequent printing(s) of the fourth edition of the AMA Guides occurs, and it contains no substantive changes from the previous printing, the commission by vote at a public meeting may authorize the use of the subsequent printing(s).; or

(ii) the third edition, second printing, dated February, 1989 if, at the time of the certifying examination, there is a certification of MMI by a doctor pursuant to subsection (b) of this section made prior to October 15, 2001 which has not been previously withdrawn through agreement of the parties or previously overturned by a final decision.

(C) This subsection shall be implemented to ensure that in the event of an impairment rating dispute, only ratings using the appropriate edition of the AMA Guides shall be considered.

(3) Assignment of an impairment rating for the current compensable injury must be based on the employee's medical record and the certifying examination. The doctor assigning the impairment rating shall:

(A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;

(B) document specific laboratory or clinical findings of an impairment;

(C) analyze specific clinical and laboratory findings of an impairment;

(D) compare the results of the analysis with the impairment criteria and provide the following:

(i) A description and explanation of specific clinical findings related to each impairment, including zero percent (0%) impairment ratings, and

(ii) A description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.

(E) assign one whole body impairment rating for the current compensable injury.

(F) be responsible for referring the employee to another doctor or health care provider for testing, or evaluation, if additional medical information is required. The certifying doctor is responsible for incorporating all additional information obtained into the report required by this rule:

(i) Additional information must be documented and incorporated into the impairment rating and acknowledged in the required report.

(ii) If the additional information is not consistent with the clinical findings of the certifying doctor, then the documentation must clearly explain why the information is not being used as part of the impairment rating.

(4) After August 1, 2003, if testing required by the AMA Guides is not performed by the certifying doctor, the testing shall be performed by a health care practitioner, who within the two years prior to the date the employee is evaluated, has had the impairment rating training module required by §180.23 for a doctor with Level 2 or Level 3 Certification. It is the responsibility of the certifying doctor to ensure the requirements of this subsection are complied with.

(5) If an impairment rating is assigned in violation of subsection (c)(4), the rating is invalid and the evaluation and report are not reimbursable. A provider that is paid for an evaluation and/or report that is invalid under this subsection shall refund the payment to the carrier.

(d) Reporting.

(1) Certification of MMI and assignment of an impairment rating for the current compensable injury requires completion, signing, and submission of the Report of Medical Evaluation and a narrative report.

(A) The Report of Medical Evaluation must be signed by the certifying doctor. The certifying doctor may use a rubber stamp signature or an electronic facsimile signature of the certifying doctor's personal signature.

(B) The Report of Medical Evaluation includes an attached narrative report. The narrative report must include the following:

(i) date of the certifying examination;

(ii) date of MMI;

(iii) findings of the certifying examination, including both normal and abnormal findings related to the compensable injury and an explanation of the analysis performed to find whether MMI was reached;

(iv) narrative history of the medical condition that outlines the course of the injury and correlates the injury to the medical treatment;

(v) current clinical status;

(vi) diagnosis and clinical findings of permanent impairment as stated in subsection (c)(3); and

(vii) the edition of the AMA Guides that was used in assigning the impairment rating.

(2) A Report of Medical Evaluation under this rule shall be filed with the commission, employee, employee's representative, and the insurance carrier (carrier) no later than the seventh working day after the later of:

(A) date of the certifying examination; or

(B) the receipt of all of the medical information required by this section.

(3) The report required to be filed under this section shall be filed as follows:

(A) The Report of Medical Evaluation shall be filed with the carrier by facsimile or electronic transmission; and

(B) The Report of Medical Evaluation shall be filed with the commission, the employee and the employee's representative by facsimile or electronic transmission if the doctor has been provided the recipient's facsimile number or email address; otherwise, the report shall be filed by other verifiable means.

(e) Documentation. The certifying doctor shall maintain the original copy of the Report of Medical Evaluation and narrative as well as documentation of:

(1) the date of the examination;

(2) the date any medical records necessary to make the certification of MMI were received, and from whom the medical records were received; and

(3) the date, addressees, and means of delivery that reports required under this section were transmitted or mailed by the certifying doctor.

§130.2. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor.

(a) A treating doctor shall either examine the injured employee (employee) and certify that the [~~an~~] employee has reached maximum medical improvement (MMI) and assign an impairment rating, if any, as soon as the doctor anticipates that the employee will have no further material recovery from or lasting improvement to the work-related injury or illness, based on reasonable medical probability or have another authorized doctor do so.

(1) A treating doctor who is not authorized to certify MMI or assign impairment ratings, shall make a referral to a doctor who is authorized to do so on behalf of the treating doctor. Even if the treating doctor is authorized to certify MMI and assign an impairment rating, the doctor may chose to have another authorized doctor evaluate the employee for MMI and impairment in the place of the treating doctor. However, this evaluation shall be considered the report of the treating doctor.

(2) Other than subsections (c) and (d) of this section, nothing in this section requires a treating doctor to schedule an examination if the employee has been released from treatment and is not receiving temporary income benefits (TIBs). For example, when the patient is treated and released without further treatment for a minor injury, the treating doctor is not required to schedule and conduct an examination for MMI and permanent impairment.

(b) A certification of MMI and assignment of [~~treating doctor who certifies that the employee has reached maximum medical improvement shall assign~~] an impairment rating [~~and~~] shallbe performed and reported in accordance with the requirements of §130.1 of this title (related to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).[~~:~~]

[~~(1) complete the report required by §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment); and~~]

[~~(2) send it, no later than 7 days after the examination, to the commission, the employee, or the employee's representative, if any, and the insurance carrier.~~]

(c) The commission shall mail a notice to a treating doctor on the expiration of 98 weeks from the date the injured employee's temporary income benefits began to accrue if the employee is still receiving temporary income benefits. The commission's notice shall advise the treating doctor of the requirements chapter 408, Subchapter G of the Texas Workers' Compensation Act, [~~§ 4.26~~] and this rule, and require that an impairment rating report be mailed to the commission no later than 104 weeks from the date temporary income benefits began to accrue.

(d) Upon receipt of the commission's notice required in subsection (c) of this section, the treating doctor shall schedule and conduct an examination of the employee in accordance with §130.1 to certify a MMI date (if earlier than the statutory MMI date) and to assign an impairment rating. A treating doctor who is not authorized to certify MMI and assign impairment ratings, shall make a referral to a doctor who is authorized to do so on behalf of the treating doctor.

(e) If the carrier has not received a report of medical evaluation by the date of statutory MMI, the carrier may suspend TIBs and is not required to initiate impairment income benefits (IIBs) until such time as it receives a report of an impairment rating assigned in accordance with §130.1. A carrier, may however, make a reasonable assessment of what it believes the true impairment rating should be and, if it does so, shall initiate IIBs within five days of making the assessment. The carrier shall continue to pay IIBs until the assessment is paid in full or is superceded by an impairment rating assigned in accordance with §130.1.

§130.3. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor Other Than the Treating [~~or Designated~~] Doctor.

(a) A doctor, other than a treating [~~or designated~~] doctor, who is authorized to certify [~~certifies~~] that an employee has reached maximum medical improvement (MMI), must do so [~~shall complete a medical evaluation report (the report)~~] in accordance with §130.1 of this title (relating to Certification of [~~Reports of Medical Evaluation:~~] Maximum Medical Improvement and Evaluation of Permanent Impairment). In addition to complying with the filing requirements of §130.1, the certifying doctor shall file a copy of the Report of Medical Evaluation and the narrative with the treating doctor within the same timeframes for filing with the other persons that §130.1 requires..

(b) Upon receipt of the report identified in subsection (a) of this section, the treating doctor shall:

(1) indicate on the report either agreement or disagreement with the certification of maximum medical improvement and with the impairment rating assigned by the certifying doctor, and, in the case of a disagreement, explain the reasons for this disagreement; and

(2) within seven days of receipt, send a signed copy of the report indicating agreement or disagreement and including any required explanation to the commission, the employee and the employee's representative (if any), and the carrier.

(c) A treating doctor's agreement or disagreement under subsection (b) of this section does not require a separate examination of the employee prior to the issuance of the opinion and shall not be considered a certification as that term is used in §130.1 of this title.

(d) The reports required under this section to be filed with a doctor and carrier shall be filed by facsimile or electronic transmission. In addition, the doctor shall file the report with the employee and the employee's representative by facsimile or electronic transmission if the doctor has been provided the employer's facsimile number or email address; otherwise, the report shall be sent by other verifiable means.

(e) A doctor required to file a report under this section shall maintain the original copy of the Report of Medical Evaluation and narrative and documentation of the date, addressees, facsimile numbers/email addresses and means of delivery that the reports required under this section were transmitted or mailed including proof of successful transmission. In addition:

(1) a certifying doctor shall maintain documentation of:

(A) The date of the examination of the employee; and

(B) The date any medical records necessary to make the certification of MMI were received, and from whom the medical records were received; and

(2) a treating doctor who receives the certifying doctor's report shall maintain documentation of the date the report was received and the means by which the report was delivered to the treating doctor.

§130.4. Presumption that Maximum Medical Improvement (MMI) has been Reached and Resolution when MMI has not been Certified.

(a) This section does not apply if statutory maximum medical improvement (MMI) has been reached. Statutory MMI is the later of:

(1) the end of the 104th week after [If 104 weeks have passed since] the date that temporary income benefits (TIBs) began to accrue; or ,[maximum medical improvement has, by definition, been reached and this section does not apply.]

(2) the date to which MMI was extended by the commission through operation of Texas Labor Code §408.104.

(b) If there has not been a certification in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) [from a doctor] that an injured employee has reached MMI [maximum medical improvement ("MMI")], an insurance carrier (carrier) may follow the procedure outlined in this section to resolve whether an employee has reached MMI. The carrier shall presume, only for purposes of invoking[to invoke] this procedure, that an employee has reached MMI, if:

[(1) the compensable injury is not an occupational disease other than a repetitive trauma injury;]

[(2) the treating doctor has examined the employee at least twice for the same compensable injury;]

[(3) the number of days between the two of the examinations is greater than 60 except for laminectomy, spinal fusion and diskectomy for which the number of days between two of the exams is greater than 90;]

[(4) the two examinations referenced in subsection (b) of this section were held after the date on which temporary income benefits began to accrue; and]

[(5) the treating doctor's medical reports, as filed with the insurance carrier, for all examinations and reports conducted after the first of the two examinations indicate a lack of medical improvement in the employee's condition from the first of the two examinations.]

[(c) The insurance carrier may also follow the procedure outlined in this section if:]

(1) it appears that the employee has failed to attend two or more consecutively scheduled health care appointments and the number of days between the two examinations is greater than 60 except for laminectomy, spinal fusion or diskectomy in which case the number of days between the two examinations is greater than 90;

(2) the treating doctor has examined the employee at least twice for the same compensable injury after the date on which TIBs began to accrue, and the doctor's medical reports as filed with the insurance carrier for all examinations and reports conducted after the first of the two examinations, indicate a lack of medical improvement in the employees condition since the date of the first of the two examinations;

(3) the employee was previously found not to be at MMI by a designated doctor but the employee has reached the date the designated doctor estimated that the employee would reach MMI; or

(4) the employee is four weeks past the point that the commission's work release guideline indicates that the employee should be able to return to work without restriction.

[(d) The insurance carrier shall not suspend temporary income benefits based on this section, unless a benefit review officer issues an interlocutory order granting suspension of benefits.]

(c) [(e) An insurance] A carrier permitted by subsection (b) of this section to invoke this procedure [that identifies an apparent lack of medical improvement, as set forth in subsection (b) of this section, or an apparent failure to attend health care appointments by an employee] mayrequest [notify] the treating doctor [commission in writing, and request that a "Medical Status Request" letter be sent by the commission to the treating doctor] to provide a report on the employee's medical status as it relates to MMI.

[(f) A medical evaluation report form, described under §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), shall be provided by the commission, no later than 5 days from the insurance carrier's request, along with the medical status request letter. The letter shall notify the doctor of the requirements of the Texas Workers' Compensation Act (the Act), §1.03(32). In addition, the letter shall request the treating doctor to answer the following questions:]

[(1) whether the employee has reached maximum medical improvement; and]

[(2) whether the employee has failed to attend two or more consecutively scheduled health care appointments, and the dates of the missed appointments.]

(d) [(g)] The treating doctor shall evaluate the employee's condition within 14 days of receiving the request from the carrier under subsection (c) of this section. The evaluation shall be conducted in accordance with [complete and file the medical evaluation report as required by] §130.1 of this title and the report filed within seven working days of the date of the examination. [(relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), no later than seven days after receiving the request from the commission]. If the treating doctor is not authorized to evaluate MMI or impairment, the doctor shall refer the employee to a doctor who is so authorized and this doctor shall comply with the requirements of this section, §130.1 and §130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment and Certification of Maximum Medical Improvement by Doctor Other Than Treating Doctor).

(e) [(h)] If the treating doctor fails to respond as required by this rule, or if the treating doctor certifies that the employee has not reached MMI, the carrier may request a designated doctor under §130.5 (relating to Entitlement and Procedure for Requesting Designated Doctor Medical Examination) [benefit review conference, on the ground of the apparent lack of improvement in medical conditions or failure to attend health care appointments.]

[(i) The insurance carrier shall include with its request for a benefit review conference the following:]

[(1) a request for a required medical examination as provided under the Act, §4.16, §126.5 of this title (relating to Procedure for Requesting Required Medical Examinations) and §126.6 of this title (relating to Order for Required Medical Examinations) apply, except that the employee may not reschedule the examination except for an exceptional circumstance. The rescheduled appointment shall be within 72 hours of the originally scheduled appointment; or]

[(2) a request for a designated doctor to be appointed by the commission if an agreement with the employee is not reached. The request shall indicate whether or not an agreement has been reached with the employee for selection of the designated doctor. Section 130.6 of this title (relating to Designated Doctor: General Provisions) shall

~~apply, except that the examination by the designated doctor shall be held no later than 14 days after the doctor is agreed to by the parties or appointed by the commission, whichever is earlier. The employee may not reschedule the examination, except for an exceptional circumstance. The rescheduled appointment shall be within 72 hours of the originally scheduled appointment.]~~

~~[(3) For purposes of rescheduling an appointment, an "exceptional circumstance" includes, but is not limited to, a death in the employee's immediate family.]~~

~~[(j) An agreement on a designated doctor to resolve a dispute over MMI under this section shall also include an agreement on the same doctor for assigning an impairment rating, if any.]~~

~~[(k) The commission shall order the requested required medical examination under the Act, §4.16, or direct an examination by a designated doctor, concurrent with the scheduling of an expedited benefit review conference, if appropriate, as provided by §141.4 of this title relating to Requesting and Setting a Benefits Review Conference.]~~

~~[(l) The benefit review conference may be canceled by the commission, without prejudice, if:]~~

~~[(1) the examining doctor ordered under subsection (i) of this section certifies that the employee has not reached MMI; or]~~

~~[(2) by agreement of the parties, when a designated doctor certifies that an employee has reached MMI, in which case the designated doctor shall assign an impairment rating, if any, and complete the medical evaluation report pursuant to §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment). The carrier shall pay benefits based on the report of the designated doctor.]~~

~~[(m) If a benefit review conference is held, and there is no signed settlement or agreement on the dispute on MMI, the benefit review officer shall presume that the finding of a designated doctor is correct, unless there is information, statements, or medical reports that clearly and convincingly rebut a determination of MMI. If a doctor ordered pursuant to §4.16 finds that MMI has been reached, and this finding is disputed, the benefit review officer shall direct an examination by a designated doctor.]~~

~~[(n) The benefit review officer shall enter an interlocutory order directing the insurance carrier to suspend temporary income benefits, and begin payment of impairment income benefits, if any, if the benefits review officer's recommendations state that:]~~

~~[(1) the determination of the designated doctor has not been clearly and convincingly rebutted by information, statement, or medical reports; or]~~

~~[(2) there has been a lack of improvement in the employee's medical condition, the certification of MMI by the doctor requested under §4.16 is disputed, and a designated doctor is directed to resolve the dispute; or]~~

~~[(3) the employee has missed two or more consecutively scheduled health care appointments or has otherwise abandoned treatment without good cause.]~~

§130.5. Entitlement and Procedure for Requesting Designated Doctor Examinations related to Maximum Medical Improvement and Impairment Rating.

(a) The commission shall order a medical examination by a designated doctor at the request of the insurance carrier (carrier), an injured employee, the injured employee's representative (if any), the Medical Advisor, or a division of the commission. The request shall be made in the form and manner prescribed by the commission.

(b) This section shall be used to resolve questions about:

(1) a certification of maximum medical improvement (MMI) and/or an impairment rating (rating) assigned under §130.1 of this section (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment); and

(2) the treating doctor's failure to certify the employee to have reached MMI under §130.4 (relating to Presumption that Maximum Medical Improvement has been Reached and Resolution when MMI has not been Certified).

(c) A certification of MMI and/or impairment rating assigned by a doctor selected by a carrier when the carrier was not entitled such an evaluation, or otherwise assigned in violation of §126.5 of this title (relating to Entitlement to and Procedure for Requesting Required Medical Examinations), or assigned by a doctor who is not authorized to certify MMI or evaluate permanent whole body impairment, is invalid and this section does not apply.

(d) The following provisions apply to selection and scheduling of an examination by a designated doctor:

(1) The commission, within 10 days of receipt of a valid request, shall issue a written order assigning a designated doctor; set up a designated doctor appointment for a date no earlier than 14 days, but no later than 21 days from the date of the commission order; and notify the employee and the carrier that the designated doctor will be directed to examine the employee. The commission's written order shall also:

(A) indicate the designated doctor's name, license number, practice address and telephone number, and the date and time of the examination;

(B) explain the purpose of the designated doctor examination and that the designated doctor's report has presumptive weight with respect to MMI and/or impairment as specified in the Texas Labor Code, §§408.0041, 408.122, and 408.125;

(C) order the employee to be examined by the designated doctor on the stated date and time; and

(D) require the treating doctor and carrier to forward all medical records in compliance with subsection (d)(3) of this section.

(2) The commission shall select the next available doctor on the commission's Designated Doctor List who:

(A) has not previously treated or examined the employee within the past 12 months and has not examined or treated the employee with regard to a medical condition being evaluated in the designated doctor examination;

(B) does not have any disqualifying associations as specified in §180.21 of this title (relating to Designated Doctor List); and

(C) is trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor.

(3) The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of a dispute under this section without a signed release from the employee.

(A) Not later than the fifth day after the day the treating doctor and carrier receive the order, they shall provide to the designated doctor copies of all the employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor.

(B) The treating doctor and carrier may also send the designated doctor an analysis of the employee's medical condition, functional abilities, and return-to-work opportunities.

(C) If the designated doctor has not received the medical records at least five days prior to the examination, the doctor shall notify the commission's office that scheduled the examination. The appropriate commission staff may send an order to the treating doctor and/or carrier for the delivery of medical records to the designated doctor.

(4) To avoid undue influence on the designated doctor:

(A) only the employee or appropriate commission staff may communicate with the designated doctor about the case regarding the employee's medical condition or history prior to the examination of the employee by the designated doctor;

(B) after the examination is completed, communication with the designated doctor regarding the employee's medical condition or history may be made only through appropriate commission staff (an ombudsman is not considered appropriate staff to contact the designated doctor and should communicate with a designated doctor only through appropriate commission staff); and

(C) the designated doctor may initiate communication with any doctor who has previously treated or examined the employee for the work-related injury.

(e) The carrier is not entitled to request a subsequent designated doctor appointment relating to MMI if the designated doctor previously found the employee to have not reached MMI, until the earliest of:

(1) the 60th day after the prior designated doctor examination was held; or

(2) the date the carrier is found by the commission to have good cause such as because "the employee reached the date the designated doctor estimated the employee would reach MMI."

(f) If either party wishes to dispute the report of the designated doctor, the party shall file the dispute with the commission,

(1) If the carrier is not satisfied with the opinion rendered by a designated doctor under this section, the carrier may request the commission to order an employee to attend an examination by a doctor selected by the carrier in accordance with §126.5.

(2) Either party may ask the commission to contact the designated doctor to answer specific questions provided by the requestor regarding the designated doctor's opinion.

(3) The commission shall resolve a dispute of the opinion of a designated doctor through the dispute resolution processes outlined in chapters 140 through 147 of this title.

§130.6. Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings[: ~~General Provisions.~~]

(a) A designated doctor examination for maximum medical improvement (MMI) and/or permanent whole body impairment shall be conducted in accordance with this section.

(1) Any evaluation relating to either MMI, an impairment rating or both shall be conducted in accordance with §130.1 of this section (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).

(2) The opinion of the designated doctor is given presumptive weight regarding MMI and impairment but only on the issue(s) in question or dispute. If the report contains the doctor's opinion regarding other issues (even those the commission has requested the doctor to consider), that portion of the opinion does not have presumptive weight. [~~If the commission receives a notice from the employee or the insurance carrier that disputes maximum medical improvement; an assigned impairment rating ; or maximum medical improvement and an assigned impairment rating, the commission shall issue a written order assigning a designated doctor, setting up a designated doctor appointment for a date no earlier than 14 days from the date of the commission order and no later than 24 days from the date of the commission order, and notifying the employee and the insurance carrier that the designated doctor will be directed to examine the employee. The commission's written order shall also:~~]

[~~(1) contain the designated doctor's name, license number, practice address and telephone number, and the date and time of the examination;~~]

[~~(2) explain that the injured employee may agree with the carrier on a different designated doctor and notify the commission of the agreement as described in subsection (e) of this section;~~]

[~~(3) state that there is a dispute and that the Texas Labor Code, §408.125 requires the commission to adopt the impairment rating made by a mutually agreed upon designated doctor; ~~]

[~~(4) explain when the designated doctor's report has presumptive weight with respect to maximum medical improvement and/or impairment ratings as specified in the Texas Labor Code, §408.122 and §408.125;~~]

[~~(5) notify an unrepresented employee that commission staff are available to explain the contents of an agreement for a designated doctor and the possible effects of such an agreement on future benefits;~~]

[~~(6) order the employee to be examined by the designated doctor on the stated date and time, unless the commission is timely notified of an agreement; and~~]

[~~(7) require the treating doctor and insurance carrier to forward all medical records in compliance with subsection (h) of this section.~~]

[~~(b) In order to be a designated doctor for a dispute, the doctor shall:~~]

[~~(1) be on the Designated Doctor List as described in §126.10 of this title (relating to commission Approved List of Designated Doctors);~~]

[~~(2) not have previously treated or examined the employee within the past 12 months or with regard to the medical condition being evaluated by the designated doctor;~~]

[~~(3) not have any disqualifying association as specified in §126.10(a) of this title (relating to commission Approved List of Designated Doctors); and~~]

[~~(4) to the extent possible, be in the same discipline and licensed by the same board of examiners as the employee's doctor of choice~~].

[~~(c) After sending the order to the employee and the insurance carrier as specified in subsection (a) of this section, the commission shall allow the employee and insurance carrier to agree on a designated doctor. If at the end of the tenth day from the date of the order, the commission has not received notification from the insurance carrier or injured employee that a designated doctor has been agreed upon, the commission will presume that an agreement is not possible and the employee is required to attend the commission-selected designated doctor examination as specified in subsection (a) of this section. ~~]

[(d) If the employee and the insurance carrier agree on a designated doctor, the insurance carrier shall schedule an appointment for the designated doctor to examine the employee on a date no earlier than 14 days from the date of the commission order described in subsection (a) of this section and no later than 24 days from the date of the commission order.]

[(e) The carrier shall notify the commission field office within 10 days of the date of the commission's order as described in subsection (a) when an agreement with the injured employee on the selection of a designated doctor is made. The notice shall include:]

[(1) the commission's claim file number;]

[(2) the employee's name, address, and social security number, and if known, the employee's telephone number;]

[(3) the date of the injury; and]

[(4) the designated doctor's name, license number, practice address and telephone number, and the time and date of the examination.]

[(f) Upon timely receipt of the notification from the insurance carrier that the injured employee and the carrier have agreed on a designated doctor, the commission shall contact the employee to confirm the agreement. Upon confirmation by the employee, the commission shall send to the carrier, designated doctor and the injured employee an order confirming the agreement, canceling the commission-selected designated doctor appointment, and directing the employee to be examined by the agreed-upon doctor. The order shall remind the parties of the requirements in the Texas Labor Code, §408.122 and §408.125 as specified in subsection (a) of this section and require the treating doctor and insurance carrier to forward medical records in compliance with subsection (h) of this section. The order will supersede the initial order identifying a commission-selected designated doctor. If the commission cannot confirm the agreement with the employee, the commission will presume that an agreement was not made and the initial order directing the employee to be examined by a designated doctor selected by the commission shall remain in effect.]

(b) [(g)] The designated doctor and the injured employee (employee) shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the [injured] employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24 hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set for a date within seven days of the originally scheduled examination unless an extension is granted by the commission's field office. Within 24 hours of rescheduling, the designated doctor shall contact the commission's field office and the insurance carrier (carrier) with the time and date of the rescheduled examination.

(c) A carrier may suspend temporary income benefits (TIBs) if an employee, without good cause, fails to attend a designated doctor examination.

(1) In the absence of a finding by the commission to the contrary, a carrier may presume that the employee did not have good cause to fail to attend the examination if:

(A) by the day the examination was originally scheduled to occur the employee has both:

(i) failed to submit to the examination; and

(ii) failed to contact the designated doctor's office to reschedule the examination to occur no later than the later of the seventh day after the originally scheduled examination date or the doctor's first available appointment date; or

(B) after rescheduling the examination as provided in subsection (c)(1)(A)(ii) of this section, the employee failed to submit to the rescheduled examination.

(2) If, after the carrier suspends TIBs pursuant to this section, the employee submits to the designated doctor examination, the carrier shall reinitiate TIBs as of the date the employee submitted to the examination unless the report of the designated doctor indicates that the employee has reached MMI. The re-initiation of TIBs shall occur no later than the seventh day following the latter of:

(A) the date the carrier was notified that the employee had attended the examination; or

(B) the date that the carrier was notified that the commission found that the employee had good cause for failure to attend the examination.

(3) An employee is not entitled to TIBs for a period during which the carrier suspended benefits pursuant to this section unless the employee later submits to the examination and the commission finds or the carrier determines that the employee had good cause for failure to attend the examination.

[(h) The treating doctor and insurance carrier are both responsible for sending to the designated doctor all the employee's medical records relating to the medical condition to be evaluated by the designated doctor that are in their possession without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of maximum medical improvement and impairment rating disputes. The medical records must not contain any marks, highlights, or other alterations placed on such records for the purpose of communicating with or influencing the designated doctor. The medical records must be received by the designated doctor at least three days prior to the date of the appointment as specified in the commission order. If the medical records are marked, highlighted, altered, or unrelated to the medical condition to be evaluated by the designated doctor, the designated doctor shall notify the commission and report the noncompliance of the treating doctor and/or insurance carrier. Noncompliance with this subsection is a Class C administrative violation under the Texas Labor Code §408.125 and may be subject to an administrative penalty not to exceed $1000. If the designated doctor has not received the medical records at least three days prior to the examination, the designated doctor's office shall notify the commission at the appropriate field office and the appropriate commission staff will send an order to the treating doctor and/or insurance carrier for the delivery of medical records.]

[(i) To avoid undue influence on a person selected as a designated doctor under the Texas Labor Code, §408.125, only the employee or an appropriate member of the staff of the commission may communicate with the designated doctor about the case regarding the employee's medical condition or history prior to the examination of the employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the employee's medical condition or history may be made only through appropriate commission staff members. An ombudsman is not considered appropriate staff to contact the designated doctor and should communicate with a designated doctor only through appropriate commission personnel. The designated doctor may initiate communication with any doctor who has previously treated or examined the employee for the work-related injury. Noncompliance with this section is a Class C administrative violation under the Texas Labor Code, §408.125 and may be subject to an administrative penalty not to exceed $1000.]

(d) [(j)] The designated doctor shall address the issue(s) in question [dispute] and any issues the commission may request the designated doctor to consider and confine the report as described in subsection (h) [(n)] of this section to only those issues.

(1) When the there has been no prior certification of MMI, the designated doctor shall evaluate the employee for MMI, and if the doctor finds that the employee reached MMI, assign an impairment rating. If the designated doctor finds that the employee has not reached MMI, the doctor shall estimate the date that the employee will reach MMI.

(2) When there has been a prior certification of MMI and impairment rating and only the MMI date is in question, the designated doctor shall evaluate the date the employee reached MMI and shall not assign an impairment rating. If the certification of MMI in question was the treating doctor's certification and the designated doctor finds that the employee either was not at MMI or reached MMI on a date later than the treating doctor, the designated doctor shall provide an explanation with clinical documentation to support why the employee had not reached MMI as of the date certified by the treating doctor.

(3) When the impairment rating (rating) is the only issue in question [dispute], the doctor shall assign [assess] an impairment rating without regard to the MMI date [maximum medical improvement].

(4) When MMI [maximum medical improvement] and permanent whole body impairment [rating] are in question [dispute] and the designated doctor determines that the employee has not reached MMI, the designated doctor shall not assign an impairment rating. Otherwise, the doctor shall certify MMI and assign an impairment rating.

(5) When the extent of the injury may not be agreed upon by the parties (based upon documentation provided by the treating doctor and/or carrier or the comments of the employee regarding his/her injury), the designated doctor shall provide multiple ratings that take into account the various interpretations of the extent of the injury so that when the commission resolves the dispute, there is already an applicable certification of MMI and rating from which to pay benefits as required by the statute. [An evaluation or certification under the Guides to the Evaluation of Permanent Impairment published by the American Medical Association (appropriate AMA Guides) as required in §130.1, shall include a pysical physical examination and evaluation by the designated doctor. Although any doctor or any other provider who has successfully completed the training outlined in §126.10(b)(2) of this title (relating to commission Approved List of Designated Doctors) may compare the clinical findings on a particular patient with the criteria in the AMA Guides, the designated doctor shall conduct a physical evaluation and is responsible for the integrity of the evaluation process. This means the designated doctor must evaluate the complete clinical and non-clinical history of the medical condition(s), perform an examination of the employee, analyze the medical history with the clinical and laboratory findings and assess and certify an impairment rating according to the AMA Guides as required in §130.1.]

(e) [(k)] When performing range of motion testing, if the AMA Guides specifies that additional testing be performed because of consistency requirements, the designated doctor shall reschedule testing within seven days of the first testing unless there is no clinical basis for retesting and then the designated doctor must document this in the narrative notes with the clinical explanation for not recommending re-examination.

(f) [(l)] Range of motion, sensory, and strength testing should be performed by the designated doctor, when applicable. If this testing is not performed by the designated doctor, the health care provider performing the testing must have successfully completed commission-approved training, [as outlined in §126.10(b)(2) in the proper use of the appropriate AMA Guides,] must not have previously treated or examined the employee within the past 12 months, [or] and must not have not examined or treated the employee with regard to the medical condition being evaluated by the designated doctor[, and must complete testing within seven days of the designated doctor's physical examination of the employee]. Use of another health care provider to perform testing under this subsection shall not extend the amount of time the designated doctor has to file the report and the designated doctor is responsible for ensuring that the requirements of this chapter are complied with.

(g) [(m)] For testing other than that listed in subsection (f) [(l)] of this section, the designated doctor may perform additional testing or refer employees to other health care providers when deemed necessary to assess an impairment rating. Any additional testing required [by the appropriate AMA Guides] for the evaluation and rating, [assignment of the impairment rating] is not subject to preauthorization requirements in accordance with the Texas Labor Code, §413.014 (relating to Preauthorization) and additional testing must be completed within seven days of the designated doctor's physical examination of the employee. Use of another health care provider to perform testing under this subsection can extend the amount of time the designated doctor has to file the report by seven working days.

(h) [(n)] The designated doctor shall complete and file a Report of Medical Evaluation [the medical evaluation report] in accordance with §130.1 [of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment) unless testing must be rescheduled or the employee is referred to another health care provider as specified in subsections (k) - (m) of this section, the medical evaluation report shall be completed and filed within seven days of the rescheduled testing or referral appointment date].

(i) The designated doctor shall respond to any commission requests for clarification not later than the fifth working day after the date on which the doctor receives the commission's request. The doctor's response is considered to have presumptive weight as it is part of the doctor's opinion.

(j) [(o)] The designated doctor shall maintain accurate records to reflect:

(1) the date and time of any designated doctor appointments scheduled with employees;

(2) the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled;

(3) the date of the examination;

(4) the date medical records were received from the treating doctor or any other person or organization;

(5) the date the medical evaluation report was submitted to all parties in accordance with §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment); and

(6) the name of all referral health care providers, date of appointments and reason for referral by the designated doctor.

(7) the date the doctor contacted TWCC for assistance in obtaining medical records from the carrier or treating doctor.

[(p) The commission may:]

[(1) issue an order requiring timely submission of medical evaluation reports or narrative reports;]

[(2) assess administrative violations;]

[(3) issue an order for refund to the insurance carrier of the examination payment if an improper or incomplete examination is performed or improper or incomplete report is submitted;]

[(4) take action to remove a doctor from the Designated Doctor List as described in accordance with §126.10 of this title (relating to commission Approved List of Designated Doctors); and/or]

[(5) take action to remove a doctor from the Approved Doctor List in accordance with §126.8 of this title (relating to commission Approved Doctor List).]

(k) [(q)] The insurance carrier shall pay any accrued income benefits, and shall begin or continue to pay weekly income benefits, in accordance with the designated doctor's report for the issue(s) in dispute, no later than five days after receipt of the report or five days after receipt of an order by the commission, whichever is earlier.

[(r) The designated doctor billing and reimbursement will be as established in this subsection until the designated doctor reimbursement is specifically addressed by the Medical Fee Guideline. At such time, the Medical Fee Guideline will supersede this subsection.]

[(1) The insurance carrier is responsible for paying the reasonable cost of a designated doctor examination as set forth in the fee structure of this subsection. In addition, the carrier shall pay for the reasonable travel expenses for an injured employee to attend a designated doctor appointment.]

[(2) The reimbursement for determination of maximum medical improvement and/or impairment ratings shall be inclusive of]:

[(A) the examination;]

[(B) consultation with the employee;]

[(C) review of records and films;]

[(D) the preparation and submission of reports, calculation tables, figures, and worksheets;]

[(E) range of motion, strength, and sensory testing and measurements; and]

[(F) other tests used to validate the impairment rating].

[(3) Regardless of the maximum allowable reimbursement specified in this subsection, the designated doctor's charge for services should correlate with the actual time and level of service involved with each patient and reimbursement from the carrier shall be the lesser of the charge amount or the fees set forth as follows.]

[(A) Total reimbursement is equal to the base reimbursement plus the area(s) rated.]

[(B) The base reimbursement is inclusive of the physical examination, patient consultation and education, detailed narrative report, and factors affecting the service as a designated doctor such as ensuring availability of appointments, timeliness of reports, and responding to the need for further clarification, explanation or reconsideration. Length of time elapsed from date of injury will indicate the base reimbursement as follows.]

[(i) Greater than or equal to two years is reimbursed at $400 and indicated by using modifier L1 on the billing form.]

[(ii) Greater than or equal to one year and less than two years is reimbursed at $300 and indicated by using modifier L2 on the billing form.]

[(iii) Less than one year is reimbursed at $200 and indicated by using modifier L3 on the billing form.]

[(C) Areas that can be reimbursed when rated include body areas and specialty areas as follows.]

[(i) The reimbursement for body areas that must be rated because of the compensable injury is inclusive of testing, records reviewed, impairment rating calculations, and documentation. The designated doctor may bill for a maximum of three body areas, defined as the Spine and Pelvis; Upper Extremities and Hands; and, Lower Extremities. The reimbursement for one body area is $300 and each additional body area is $150.]

[(ii) The reimbursement for specialty areas that must be rated where referred testing is required such as psychological, audiologic and/or ophthalmologic testing, is $50 for incorporating one or more specialists' report information into the final impairment rating. This reimbursement will only be allowed once per examination. The referred specialist will be reimbursed separately from the fees outlined in this rule.]

[(D) The designated doctor must indicate the number of areas rated in the units column on the billing form with the maximum being four units/areas.]

[(E) When the outcome of the evaluation is that maximum medical improvement has not been reached, the designated doctor shall receive the base reimbursement as outlined in subparagraph (B) of this paragraph. No additional reimbursement will be allowed.]

[(F) If the employee fails to attend the examination or cancels the commission-ordered examination within 24 hours of the appointment, reimbursement shall be $100.]

[(4) If testing is performed by a health care provider other than the designated doctor as specified in subsection (l) of this section, each health care provider must bill for their respective services using the code and modifiers as prescribed by the commission. If the technical and professional components of the impairment rating are billed separately, reimbursement will be made at 20% for the technical and 80% for the professional of the total reimbursement as outlined in paragraph (3)(A) of this subsection. When the designated doctor performs all components of the service without any referred testing, the designated doctor shall bill using the code as prescribed by the commission with modifier -WP for the whole procedure].

[(5) Additional testing or referrals specified in subsection (m) of this section will be reimbursed in addition to the fees specified in paragraph (3)(A)-(C) of this subsection if the additional testing was required to perform the assignment of impairment rating and/or determination of maximum medical improvement. These services should be billed using the appropriate CPT code as specified in the Medical Fee Guideline.]

[(6) A carrier's timeframe for reimbursement to the designated doctor does not begin until a complete medical evaluation report with required attachments has been received by the insurance carrier.]

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 August 20, 2001.

TRD-200104895

Susan Cory
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Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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28 TAC §130.5

(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 Workers' Compensation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §406.010, which authorizes the commission to adopt rules regarding claims service; the Texas Labor Code, §408.004, as amended by the 77th Texas Legislature, which provides for Required Medical Examinations; Texas Labor Code §408.0041, as adopted by the 77th Texas Legislature, which provides for the commission assignment of a designated doctor; the Texas Labor Code §408.023, as amended by the 77th Texas Legislature, which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231, which provides the commission with the responsibility for maintenance of the list, the Texas Labor Code, §408,025, which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code, §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; the Texas Labor Code, §408.122, as amended by the 77th Texas Legislature, which requires that designated doctors meet specific qualifications; the Texas Labor Code §408.123, which requires a doctor certifying maximum medical improvement to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; the Texas Labor Code, §408.124, which provides the commission the authority to by rule adopt the fourth edition of the *Guides to the Evaluation of Permanent Impairment*" published by the American Medical Association to determine the existence and degree of an injured employee's impairment; the Texas Labor Code, §408.125, as amended by the 77th Texas Legislature, which provides the process for disputing impairment ratings; the Texas Labor Code §408.151, which provides for required medical examinations for supplemental income benefits; and the Texas Labor Code §415.0035, as passed by the 77th Texas Legislature, which establishes administrative violations for repeated administrative violations or for a provider failing to submit required medical reports.

No other statutes are affected by the proposed repeal.

§130.5. Impairment Rating Disputes.

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 August 20, 2001.

TRD-200104896
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS

28 TAC §130.110

The amendment is proposed under the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §406.010, which authorizes the commission to adopt rules regarding claims service; the Texas Labor Code, §408.004, as amended by the 77th Texas Legislature, which provides for Required Medical Examinations; Texas Labor Code §408.0041, as adopted by the 77th Texas Legislature, which provides for the commission assignment of a designated doctor; the Texas Labor Code §408.023, as amended by the 77th Texas Legislature, which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231, which provides the commission with the responsibility for maintenance of the list, the Texas Labor Code, §408,025, which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code, §408.102, which provides that temporary income benefits continue until the injured employee reaches maximum medical improvement; the Texas Labor Code, §408.122, as amended by the 77th Texas Legislature, which requires that designated doctors meet specific qualifications; the Texas Labor Code §408.123, which requires a doctor certifying maximum medical improvement to file a report and which requires a certification of MMI and assignment of an impairment rating by a doctor other than the treating doctor be sent to the treating doctor who must indicate either agreement or disagreement with the certification of the evaluation; the Texas Labor Code, §408.124, which provides the commission the authority to by rule adopt the fourth edition of the *Guides to the Evaluation of Permanent Impairment*" published by the American Medical Association to determine the existence and degree of an injured employee's impairment; the Texas Labor Code, §408.125, as amended by the 77th Texas Legislature, which provides the process for disputing impairment ratings; the Texas Labor Code §408.151, which provides for required medical examinations for supplemental income benefits; and the Texas Labor Code

§415.0035, as passed by the 77th Texas Legislature, which establishes administrative violations for repeated administrative violations or for a provider failing to submit required medical reports.

No other statutes are affected by the proposed amendment.

§130.110. Return to Work Disputes During Supplemental Income Benefits; Designated Doctor

(a) This section only applies to disputes regarding whether an injured employee whose medical condition prevented the injured employee from returning to work in the prior year has improved sufficiently to allow the injured employee to return to work on or after the second anniversary of the injured employee's initial entitlement to supplemental income benefits (SIBs). Upon request by the injured employee or insurance carrier, or upon its own motion, the commission shall appoint a designated doctor to resolve the dispute. The report of the designated doctor shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. The presumptive weight afforded the designated doctor's report shall begin the date the report is received by the commission and shall continue:

(1) until proven otherwise by the great weight of the other medical evidence; or

(2) until the designated doctor amends his/her report based on newly provided medical or physical evidence.

(b) A dispute exists if there is conflicting medical or physical evidence that has not been previously considered in a prior dispute under this section that indicates the injured employee's medical condition has improved sufficiently to allow the injured employee to return to work. Medical evidence consists of medical reports or records that are generated as a result of a hands-on examination of the injured employee. Physical evidence may consist of, but is not limited to, videotaped activities, evidence of wage earning capabilities (ie: payroll information), or reports from a private provider of vocational rehabilitation services or the Texas Rehabilitation Commission.

(c) A party who wishes to seek the appointment of a designated doctor to resolve the dispute shall make a request to the commission.

(d) The request for a designated doctor from an insurance carrier or an injured employee's representative must be in writing and provided to the commission in the form, format and manner prescribed by the commission. A request for a designated doctor from an unrepresented injured employee may be submitted in any manner.

(e) If a designated doctor has been appointed to resolve a prior dispute regarding maximum medical improvement and/or impairment rating, that doctor may not be appointed to resolve the dispute(s) regarding whether the injured employee's medical condition has improved sufficiently to allow the injured employee to return to work.

(f) The commission shall select the next available doctor from the commission's designated doctor list, which is, to the extent possible, in the same discipline and licensed by the same board of examiners as the injured employee's treating doctor of choice at the time of the finding of change in the injured employee's medical condition which would allow the injured employee to return to work and who has not previously treated or examined the injured employee with regard to the medical condition being evaluated by the designated doctor. A doctor selected under this section shall serve as the designated doctor for all dispute(s) raised under this section unless that doctor is unable or unwilling to act in that capacity.

(g) The designated doctor and the injured employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the injured employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set for a date within seven days of the originally scheduled examination unless an extension is granted by the field office managing the claim. Within 24 hours of rescheduling, the designated doctor shall contact the commission field office and the insurance carrier with the time and date of the rescheduled examination. If the designated doctor is not able to timely reschedule the examination, the designated doctor shall contact the commission field office and the insurance carrier within 24 hours of the refused examination. The commission shall then either grant an extension of not more than seven days or select a different designated doctor to perform the examination and resolve the dispute.

(h) The treating doctor and insurance carrier shall send to the designated doctor without the requirement of a signed release from the injured employee, all the employee's medical evidence in their possession relating to the medical condition to be evaluated by the designated doctor. Either party may submit with this medical evidence a videotape or other physical evidence it would like the designated doctor to review which may indicate the injured employee's medical condition has improved or has not improved sufficiently to allow the injured employee to return to return to work. The designated doctor is authorized to receive the employee's confidential medical and physical evidence provided by either party to assist in the resolution of whether the injured employee's medical condition has improved sufficiently to allow the injured employee to return to work. The medical evidence must not contain any marks, highlights, or other alterations placed on such records for the purpose of communicating with or influencing the designated doctor. The medical and physical evidence must be received by the designated doctor at least three days prior to the date of the appointment as specified in the commission order. If the medical evidence is marked, highlighted, altered, or unrelated to the medical condition to be evaluated by the designated doctor, the designated doctor shall notify the commission and report the noncompliance of the treating doctor and/or insurance carrier. If the designated doctor has not received the medical evidence at least three days prior to the examination, the designated doctor's office shall notify the commission at the appropriate field office and the appropriate commission staff will send an order to the treating doctor and/or insurance carrier for the delivery of medical evidence.

(i) To avoid undue influence on a person selected as a designated doctor in accordance with Texas Labor Code, §408.125, only the injured employee or an appropriate member of the staff of the commission may communicate with the designated doctor about the case regarding the employee's medical condition or history prior to the examination of the employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate commission staff members. An ombudsman and an ombudsman's assistant are not considered appropriate staff to contact the designated doctor and should communicate with a designated doctor only through appropriate commission personnel. The designated doctor may initiate communication with any doctor who has previously treated or examined the employee for the work-related injury.

(j) The designated doctor shall review all medical and physical evidence provided by the insurance carrier and treating doctor and shall perform a hands-on examination. The designated doctor shall give the evidence reviewed the weight he/she feels is appropriate. Following the examination, the designated doctor shall prepare a report, in the form

and manner prescribed by the commission, of his/her findings regarding whether the injured employee's medical condition has improved sufficiently to allow the injured employee to return to work.

(k) The designated doctor shall file the report with the commission in the form and manner required by the commission, so that it is received by the commission not later than the seventh day after the completion of the examination of the injured employee. At the same time it is filed with the commission, the designated doctor shall provide a copy of the report by facsimile or electronic transmission to the injured employee, the injured employee's representative, if any, and the insurance carrier, unless the recipient does not have a means of receiving the transmission, in which case the report shall be sent by mail or personal delivery.

(l) The designated doctor may perform additional testing or refer the injured employee to other health care providers when deemed necessary to find whether the injured employee's medical condition has improved sufficiently to allow the injured employee to return to work. Necessary additional testing is not subject to the preauthorization requirements in the Texas Labor Code, §413.014 (relating to Preauthorization) and additional testing must be completed within seven days of the designated doctor's physical examination of the employee.

(m) The designated doctor shall maintain accurate records to reflect:

(1) the date and time of any designated doctor appointments scheduled with injured employees;

(2) the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled;

(3) the date of the examination and any testing;

(4) the date medical and physical evidence was received from the treating doctor or insurance carrier or any other person or organization;

(5) the date the medical evaluation/work status report was submitted to all parties in accordance with subsection (k) of this section; and

(6) the name of all referral health care providers, dates of referral, dates of appointments and testing dates results were received, and reason(s) for referral by the designated doctor.

~~[(n) The commission may:]~~

~~[(1) issue an order requiring timely submission of medical evaluation reports or narrative reports;]~~

~~[(2) issue an order for refund to the insurance carrier of the examination payment if an improper or incomplete examination is performed or improper or incomplete report is submitted;]~~

~~[(3) take action to remove a doctor from the Designated Doctor List as described in accordance with §126.10 of this title (relating to commission Approved List of Designated Doctors); and/or]~~

~~[(4) take action to remove a doctor from the Approved Doctor List in accordance with §126.8 of this title (relating to commission Approved Doctor List).]~~

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 August 20, 2001.

TRD-200104898
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER A. GENERAL RULE FOR REQUIRED REPORTS

28 TAC §133.3, §133.4

(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 Workers' Compensation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Workers' Compensation commission (the commission) proposes the repeal of §133.3 (relating to Responsibilities of Treating Doctor) and of §133.4 (relating to Consulting and Referral Doctors).

House Bill 2600 (HB-2600), passed by the 77th Texas Legislature in its 2001 session, made numerous amendments to the Texas Labor Code. Many of these changes related to regulating medical benefit delivery by: changing the commission's approved doctor list (ADL) and application process (including mandated training); changing the grounds under which the commission can issue sanctions (as well as expanding the sanctions); adding a Medical Advisor to the commission staff and Medical Quality Review Panel (QRP), and providing for expanded financial disclosure and prohibiting inappropriate referral fees, kickbacks, or other financial incentives.

To implement these changes, the commission examined its existing rules and found that most of the provisions relating to general regulation of doctors and health care are spread out among several chapters (126, 133, and 134 in particular). Given the scope of changes to be made and to simplify usage, the commission is proposing to move these provisions to Chapter 180. The commission's Medical Advisor provided recommendations regarding these rules.

The amendments and additions proposed for Chapter 180 are based upon legislative changes provided in Articles 1 and 6 of HB-2600. Chief among the changes is that admission to the ADL now requires a doctor to apply and meet specified criteria. Prior to this change, admission to the ADL was automatic upon receiving a license. Now doctors will be required to take training and register to be on the list. In addition, the Commission has been given the authority to deny or restrict admission based upon factors such as practice restrictions. Approved doctors will be issued certificates of registration that expire if re-training requirements are not met.

Another major change is that HB-2600 now mandates that doctors serving any role in the Texas workers' compensation system be on the ADL. In the past, only treating doctors were required to be on the ADL. Doctors who are not on the ADL will be prohibited from performing services or receiving reimbursement in the

Texas workers' compensation system (except in an emergency or for immediate post-injury medical care).

HB-2600 also mandates that the commission set up modified training and registration requirements for certain types of doctors such as those who do not participate in the Texas workers' compensation system at a high volume or those who only perform peer reviews and utilization review (UR). Doctors from other states are permitted to be on the ADL. However, out of state doctors who review health care services (such as though utilization review or peer reviews) are required to be supervised by a doctor licensed in Texas.

HB-2600 requires that the commission collect information about treating doctors regarding return to work outcomes, patient satisfaction, and cost and utilization of health care in order to promote quality of care and best practices. The commission previously collected information on cost and utilization of care but this was based upon the person providing the care and who was not necessarily the treating doctor for the claim. This information will be important over time because HB-2600 makes major changes to the way the commission regulates doctors on the ADL.

As a simplification, HB-2600 now mandates that the Executive Director remove doctors from the list who fail to register with the commission, who are deceased, whose license to practice has been revoked, suspended, or not renewed by the appropriate licensing authority, or who requests to be removed. Previously, removal under these circumstances required commissioner approval.

The commission's authority to address activities not in full compliance with the law or not representative of quality care has been greatly expanded. Both the grounds for taking action and the actions the commission is authorized to take are broader than under the previous statute.

To help evaluate behavior by doctors and carriers (as relates to medical benefit delivery), HB-2600 created an official Medical Advisor position that is imbued with specific authority and responsibilities. Also created was the QRP which functions to support the Medical Advisor in reviewing the conduct of doctors and carriers relating to medical benefit delivery.

Proposed Repeal of §133.3 -- Responsibilities of Treating Doctor

Current §133.3 sets out the general responsibilities of treating doctors. As part of the commission's effort to consolidate information on the various roles that a doctor can play in the system and the responsibilities associated with these roles, the commission proposes repeal of §133.3. The provisions of §133.3 will be replaced by proposed §180.22 (relating to Health Care Provider Roles and Responsibilities).

Proposed Repeal of §133.4 -- Consulting and Referral Doctors

Current §133.4 sets out the general responsibilities of consulting and referral doctors. As part of the commission's effort to consolidate information on the various roles that a doctor can play in the system and the responsibilities associated with these roles, the commission proposes repeal of §133.4. The provisions of §133.4 will be replaced by proposed §180.22.

Dr. Bill Nemeth, the commission's medical advisor, has determined the following with respect to fiscal impact for the first five-year period the proposed amended and new rules are in effect.

With regard to enforcement and administration of the rules by state or local governments there will be no significant impact on local governments. However, there are significant fiscal implications to the commission because of the need to develop or modify automated systems, review thousands of applications for the ADL, and train and monitor doctors and carriers, and train commission staff. However, it is difficult to quantify these costs. The ability of the executive director to administratively remove some doctors from the ADL should decrease some costs for the commission.

Local government and state government as covered regulated entities, will be impacted in the same manner as persons required to comply with the rules as proposed.

Dr. Nemeth has determined that for each year of the first five years the rules as proposed are in effect, the public benefits or costs will result from new and amended rules in proposed Chapter 180. The following public benefit/cost note applies to the Chapter 180 rules proposal.

The public benefits anticipated as a result of enforcing the rules will be better access to higher quality medical care, reduced medical and indemnity claims costs (which will eventually result in reduced premiums), and more timely returns to work. However these benefits will increase over time and may not be significant in the first two years as the requirements of the rules will not be fully implemented by then.

Employees

Employees will benefit in a number of ways. The intent of HB-2600, and these rules is to ensure that employees have access to doctors who will provide timely quality care that is designed to cure or relieve the effects naturally resulting from the compensable injury, promote recovery, and/or enhance the ability of the employee to return to or retain employment. The commission expects that employees will see improvements in these areas as a result of the new rules. The exceptions provided for some out-of-state and low-volume doctors should help ensure employee access to quality health care.

The training relating to MMI and impairment should provide a number of benefits. Employees should receive more accurate impairment ratings and this will ensure that they get the benefits they are entitled to. More accurate impairment ratings should also reduce disputes and this should reduce the number of employee exams required and reduce delays in employees receiving their benefits. Disputes relating to MMI date should also be reduced because doctors will be better educated on how to certify MMI.

Studies have shown that employees who remain off of work longer are less likely to ever return to work at wages approaching those they were earning while injured. The emphasis on timely return to work in the training that doctors will receive should result in fewer employees remaining off of work longer than medically appropriate. As a result, the long-term impact of injuries on employees should be lessened.

Currently carriers utilizing the medical opinions of doctors who are not fully trained in Texas workers' compensation law often interrupt employees' medical care. By educating peer review and utilization review doctors, disputes that affect benefit delivery may be avoided. Reductions in disputes should improve medical benefit delivery, lower frustration, and speed recovery. Education and training of designated doctors should result in faster resolution of disputes.

Employees are not expected to see an increase in costs as a result of these rules. Employees who are currently kept off of work

longer than is appropriate might receive fewer benefits under the new rules but this is off set by the benefit of returning to work.

Health Care Providers

Doctors will similarly benefit from these rules in a number of ways. First, as noted, carrier-selected doctors will be better trained and this should reduce unnecessary disputes (both prospective and retrospective). With costs currently very high and rising, action by some carriers designed to address non-compliant doctors may be affecting some doctors who are compliant. To the extent that the commission is able to reduce the number of non-compliant doctors (e. g. by changing behavior or removing the doctors who won't change), the remaining doctors should experience increased efficiencies in the handling of their claims. In addition, these doctors are likely to see an increase in their worker's compensation business.

Currently some doctors offer improper inducements to employees in order to get the employees to change doctors. Often the doctors who are doing this are the doctors who keep employees off work longer than medically necessary and otherwise add to system costs by overutilizing care. The prohibition of improper inducements and the efforts to remove non-compliant doctors, should also increase workers' compensation business for those who comply with system rules and regulations.

Another benefit to providers is that the commission's ability to sanction carriers for quality of care issues is expanded by these rules. The increased ability to hold carriers responsible for their actions and inactions should result in improved compliance and, as a result, payments of medical bills may be more timely and accurate while disputes may be reduced.

Some doctors may see a slight increase in costs associated with obtaining email access and with having to take periodic training. However these increases are expected to be nominal and the statute requires that the commission establish some training requirements. Doctors already have continuing education requirements which are required for them to keep their licenses in good standing. Since the required training will be certified for continuing education credit, doctors will be able to fulfill two requirements at once. Treating doctors may also experience some costs associated with reporting outcome information to the commission. However, this requirement is mandated by the Legislature.

The expanded financial disclosure requirements may also increase some costs to providers, however, these requirements were also mandated by the Legislature.

Insurance carriers

Insurance carriers will benefit from the lower costs that will come as the system transitions from using an open list of approved doctors to using a controlled list of doctors specially trained in Texas workers' compensation. Prior to HB-2600, the commission's ability to exclude or otherwise limit doctors from participation in the system was limited. The system has seen workers' compensation costs (both indemnity and medical costs) rise significantly, especially when compared to costs in other states. To the extent that the commission is able to change utilization and return to work patterns (e.g. by changing behavior or by removing doctors who won't change behavior), costs shall be reduced.

In addition, with full financial disclosure, carriers will be able to give extra scrutiny to medical services provided through a self-referral by the doctor. Though these services may be reasonable and necessary, doctors who self-refer have an additional incentive to make the referral and thus additional scrutiny may be appropriate.

Similarly, prohibitions against improper inducements should ensure that only those benefits that the employee is truly entitled to are delivered.

The commission's expanded ability to remove doctors from the system should help increase compliance with the Statute and Rules. This should reduce claim costs by reducing overpayments caused by late reports by doctors.

Employers

Because insurance premiums are driven by claim costs, employers will see benefits to the extent that the commission is able to successfully implement HB-2600. Employers should benefit because the new rules should promote earlier returns to work. The earlier returns to work should also reduce the loss of productivity that an injury can cause. Employers should not see an increase in costs associated with these rules.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed rule amendments. There will be only a proportionate difference in the cost of compliance for small businesses and micro-businesses as compared to the largest businesses, including state and local government entities. The same basic processes and procedures apply, regardless of the size or volume of the business. The business size cost difference will be in direct proportion to the volume of business that falls under the purview of these proposed rules.

Comments on the proposal must be received by 5:00 p.m., October 1, 2001. You may comment via the Internet by accessing the commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments. You may also email your comments to *RuleComments@twcc.state.tx.us* or mail or deliver your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific subsection and paragraph commented upon. The commission may not be able to respond to comments which cannot be linked to a particular proposed subsection. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations. Unspecified comments submitted will not be addressed.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect with reference to specifics in the proposed rule amendments.

A public hearing on this proposal will be held on October 2, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal.

The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*

These repeals are proposed under: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of Medical Advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. §414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

No other statutes, articles or codes are affected by the repeal of these rules.

§133.3. Responsibilities of Treating Doctor.

§133.4. Consulting and Referral Doctors.

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 August 20, 2001.

TRD-200104899
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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CHAPTER 134. BENEFITS-GUIDELINES FOR MEDICAL SERVICES, CHARGES AND PAYMENTS

SUBCHAPTER B. DISCLOSURE BY HEALTH CARE PROVIDER OF FINANCIAL INTEREST IN REFERRED PROVIDER

28 TAC §134.100, §134.101

(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 Workers' Compensation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Workers' Compensation Commission (the commission) proposes repeal of §134.100 (relating to Provider Disclosure of Financial Interest, Submission to the commission) and §134.101 (relating to Provider Disclosure of Financial Interest, Submission to the Carrier).

House Bill 2600 (HB-2600), passed by the 77th Texas Legislature in its 2001 session, made numerous amendments to the

Texas Labor Code. Many of these changes related to regulating medical benefit delivery by: changing the commission's approved doctor list (ADL) and application process (including mandated training); changing the grounds under which the commission can issue sanctions (as well as expanding the sanctions); adding a Medical Advisor to the commission staff and Medical Quality Review Panel (QRP), and providing for expanded financial disclosure and prohibiting inappropriate referral fees, kickbacks, or other financial incentives.

To implement these changes, the commission examined its existing rules and found that most of the provisions relating to general regulation of doctors and health care are spread out among several chapters (126, 133, and 134 in particular). Given the scope of changes to be made and to simplify usage, the commission is proposing to move these provisions to Chapter 180. The commission's Medical Advisor provided recommendations regarding these rules.

The amendments and additions proposed for Chapter 180 are based upon legislative changes provided in Articles 1 and 6 of HB-2600. Chief among the changes is that admission to the ADL now requires a doctor to apply and meet specified criteria. Prior to this change, admission to the ADL was automatic upon receiving a license. Now doctors will be required to take training and register to be on the list. In addition, the commission has been given the authority to deny or restrict admission based upon factors such as practice restrictions. Approved doctors will be issued certificates of registration that expire if re-training requirements are not met.

Another major change is that HB-2600 now mandates that doctors serving any role in the Texas workers' compensation system be on the ADL. In the past, only treating doctors were required to be on the ADL. Doctors who are not on the ADL will be prohibited from performing services or receiving reimbursement in the Texas workers' compensation system (except in an emergency or for immediate post-injury medical care).

HB-2600 also mandates that the commission set up modified training and registration requirements for certain types of doctors such as those who do not participate in the Texas workers' compensation system at a high volume or those who only perform peer reviews and utilization review (UR). Doctors from other states are permitted to be on the ADL. However, out of state doctors who review health care services (such as though utilization review or peer reviews) are required to be supervised by a doctor licensed in Texas.

HB-2600 requires that the commission collect information about treating doctors regarding return to work outcomes, patient satisfaction, and cost and utilization of health care in order to promote quality of care and best practices. The commission previously collected information on cost and utilization of care but this was based upon the person providing the care and who was not necessarily the treating doctor for the claim. This information will be important over time because HB-2600 makes major changes to the way the commission regulates doctors on the ADL.

As a simplification, HB-2600 now mandates that the Executive Director remove doctors from the list who fail to register with the commission, who are deceased, whose license to practice has been revoked, suspended, or not renewed by the appropriate licensing authority, or who requests to be removed. Previously, removal under these circumstances required commissioner approval.

The commission's authority to address activities not in full compliance with the law or not representative of quality care has been greatly expanded. Both the grounds for taking action and the actions the commission is authorized to take are broader than under the previous statute.

To help evaluate behavior by doctors and carriers (as relates to medical benefit delivery), HB-2600 created an official Medical Advisor position that is imbued with specific authority and responsibilities. Also created was the QRP which functions to support the Medical Advisor in reviewing the conduct of doctors and carriers relating to medical benefit delivery.

The change made by HB2600 that motivates the proposed deletion of §134.100 and §133.101 involves the requirement for the commission to adopt guides for financial disclosure that are similar to the federal standards.

Current §134.100 lays out the general requirements for notification of financial interest to the commission. As part of the commission's effort to consolidate key rules relating to health care provider regulation the repeal of §134.100 is proposed. New §180.24 (relating to Financial Disclosure) and §180.25 (relating to Improper Inducements Influence and Threats) will replace the requirements of §134.100-134.101.

Current §134.101 lays out the general requirements for notification of financial interest to the carrier. As part of the commission's effort to consolidate key rules relating to health care provider regulation the repeal of §134.101 is proposed. New §180.24 (relating to Financial Disclosure) and §180.25 (relating to Improper Inducements Influence and Threats) will replace the requirements of §134.100-134.101.

Dr. Bill Nemeth, the commission's Medical Advisor, has determined the following with respect to fiscal impact for the first five-year period the proposed amended and new rules are in effect.

With regard to enforcement and administration of the rules by state or local governments there will be no significant impact on local governments. However, there are significant fiscal implications to the commission because of the need to develop or modify automated systems, review thousands of applications for the ADL, and train and monitor doctors and carriers, and train commission staff. However, it is difficult to quantify these costs. The ability of the Executive Director to administratively remove some doctors from the ADL should decrease some costs for the commission.

Local government and state government as covered regulated entities, will be impacted in the same manner as persons required to comply with the rules as proposed.

Dr. Nemeth has determined that for each year of the first five years the rules as proposed are in effect, the public benefits or costs will result from new and amended rules in proposed Chapter 180. The following public benefit/cost note applies to the Chapter 180 rules proposal.

The public benefits anticipated as a result of enforcing the rules will be better access to higher quality medical care, reduced medical and indemnity claims costs (which will eventually result in reduced premiums), and more timely returns to work. However these benefits will increase over time and may not be significant in the first two years as the requirements of the rules will not be fully implemented by then.

Employees

Employees will benefit in a number of ways. The intent of HB-2600, and these rules is to ensure that employees have access to doctors who will provide timely quality care that is designed to cure or relieve the effects naturally resulting from the compensable injury, promote recovery, and/or enhance the ability of the employee to return to or retain employment. The commission expects that employees will see improvements in these areas as a result of the new rules. The exceptions provided for some out-of-state and low-volume doctors should help ensure employee access to quality health care.

The training relating to MMI and impairment should provide a number of benefits. Employees should receive more accurate impairment ratings and this will ensure that they get the benefits they are entitled to. More accurate impairment ratings should also reduce disputes and this should reduce the number of employee exams required and reduce delays in employees receiving their benefits. Disputes relating to MMI date should also be reduced because doctors will be better educated on how to certify MMI.

Studies have shown that employees who remain off of work longer are less likely to ever return to work at wages approaching those they were earning while injured. The emphasis on timely return to work in the training that doctors will receive should result in fewer employees remaining off of work longer than medically appropriate. As a result, the long-term impact of injuries on employees should be lessened.

Currently carriers utilizing the medical opinions of doctors who are not fully trained in Texas workers' compensation law often interrupt employees' medical care. By educating peer review and utilization review doctors, disputes that affect benefit delivery may be avoided. Reductions in disputes should improve medical benefit delivery, lower frustration, and speed recovery. Education and training of designated doctors should result in faster resolution of disputes.

Employees are not expected to see an increase in costs as a result of these rules. Employees who are currently kept off of work longer than is appropriate might receive fewer benefits under the new rules but this is off set by the benefit of returning to work.

Health Care Providers

Doctors will similarly benefit from these rules in a number of ways. First, as noted, carrier-selected doctors will be better trained and this should reduce unnecessary disputes (both prospective and retrospective). With costs currently very high and rising, action by some carriers designed to address non-compliant doctors may be affecting some doctors who are compliant. To the extent that the commission is able to reduce the number of non-compliant doctors (e. g. by changing behavior or removing the doctors who won't change), the remaining doctors should experience increased efficiencies in the handling of their claims. In addition, these doctors are likely to see an increase in their worker's compensation business.

Currently some doctors offer improper inducements to employees in order to get the employees to change doctors. Often the doctors who are doing this are the doctors who keep employees off work longer than medically necessary and otherwise add to system costs by overutilizing care. The prohibition of improper inducements and the efforts to remove non-compliant doctors, should also increase workers' compensation business for those who comply with system rules and regulations.

Another benefit to providers is that the commission's ability to sanction carriers for quality of care issues is expanded by these rules. The increased ability to hold carriers responsible for their actions and inactions should result in improved compliance and, as a result, payments of medical bills may be more timely and accurate while disputes may be reduced.

Some doctors may see a slight increase in costs associated with obtaining email access and with having to take periodic training. However these increases are expected to be nominal and the statute requires that the commission establish some training requirements. Doctors already have continuing education requirements which are required for them to keep their licenses in good standing. Since the required training will be certified for continuing education credit, doctors will be able to fulfill two requirements at once. Treating doctors may also experience some costs associated with reporting outcome information to the commission. However, this requirement is mandated by the Legislature.

The expanded financial disclosure requirements may also increase some costs to providers, however, these requirements were also mandated by the Legislature. Insurance carriers

Insurance carriers will benefit from the lower costs that will come as the system transitions from using an open list of approved doctors to using a controlled list of doctors specially trained in Texas workers' compensation. Prior to HB-2600, the commission's ability to exclude or otherwise limit doctors from participation in the system was limited. The system has seen workers' compensation costs (both indemnity and medical costs) rise significantly, especially when compared to costs in other states. To the extent that the commission is able to change utilization and return to work patterns (e.g. by changing behavior or by removing doctors who won't change behavior), costs shall be reduced.

In addition, with full financial disclosure, carriers will be able to give extra scrutiny to medical services provided through a self-referral by the doctor. Though these services may be reasonable and necessary, doctors who self-refer have an additional incentive to make the referral and thus additional scrutiny may be appropriate.

Similarly, prohibitions against improper inducements should ensure that only those benefits that the employee is truly entitled to are delivered.

The commission's expanded ability to remove doctors from the system should help increase compliance with the Statute and Rules. This should reduce claim costs by reducing overpayments caused by late reports by doctors.

Employers

Because insurance premiums are driven by claim costs, employers will see benefits to the extent that the commission is able to successfully implement HB-2600. Employers should benefit because the new rules should promote earlier returns to work. The earlier returns to work should also reduce the loss of productivity that an injury can cause. Employers should not see an increase in costs associated with these rules.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed rule amendments. There will be only a proportionate difference in the cost of compliance for small businesses and micro-businesses as compared to the largest businesses, including state and local government entities. The same basic processes and procedures apply, regardless of the size or volume of the business. The business

size cost difference will be in direct proportion to the volume of business that falls under the purview of these proposed rules.

Comments on the proposal must be received by 5:00 p.m., October 1, 2001. You may comment via the Internet by accessing the commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments. You may also email your comments to *RuleComments@twcc.state.tx.us* or mail or deliver your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific subsection and paragraph commented upon. The commission may not be able to respond to comments which cannot be linked to a particular proposed subsection. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations. Unspecified comments submitted will not be addressed.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect with reference to specifics in the proposed rule amendments.

A public hearing on this proposal will be held on October 2, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us*

The repeals are proposed under the following statutes: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code§ 413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of Medical Advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. §414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

No other statutes, articles or codes are affected by the repeal of these rules.

§134.100. Provider Disclosure of Financial Interest, Submission to the Commission.

§134.101. Provider Disclosure of Financial Interest, Submission to the Carrier.

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 August 20, 2001.

TRD-200104900
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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SUBCHAPTER F. PHARMACEUTICAL BENEFITS

28 TAC §§134.500, 134.502 - 134.506

The Texas Workers' Compensation Commission (the commission) proposes new §134.500, and §§134.502-134.506 concerning pharmaceutical services. Section 134.501 is reserved for expansion.

These new rules are proposed to comply with statutory mandates in the Texas Labor Code. Prior to the 77th Legislative Session, 2001, §408.028 required a health care practitioner providing care to an injured employee to prescribe any necessary prescription drugs in accordance with applicable state law. It also stated that an insurance carrier may not require an employee to use pharmaceutical services designated by the carrier.

House Bill 2600 (HB-2600), adopted during the 2001 Texas Legislative Session, amended §408.028. In addition to previous requirements, the revised statute requires that physicians and doctors order over-the-counter alternatives to prescription medications when clinically appropriate and applicable, in accordance with state law. Amended §408.028 requires the commission by rule to develop an open formulary under §413.011 that requires the use of generic pharmaceutical medications and clinically appropriate over-the-counter alternatives to prescription medications as clinically appropriate and applicable in accordance with state law. Finally, amended §408.028 requires the commission to adopt rules to allow an injured employee to obtain reimbursement for over-the-counter medications prescribed or ordered, and purchased by the employee.

A May, 2000 study by the Research and Oversight Council on Workers' Compensation (the ROC) examined state agency workers' compensation pharmaceutical data and concluded that pharmaceutical costs have risen an average of 50 percent from 1997 to 1999. During the period of 1995 through 1998, the frequency of state employee workers' compensation filings decreased 20 percent. Rising utilization coupled with the fact that injured employees in Texas have a choice between brand name and generic drugs created major cost increases to the system. HB-2600 requires the use of generic medications. This requirement, stated throughout new §134.500, and §§134.502-506, is anticipated to create a system-wide savings.

Proposed new §134.500, and §§134.502-506 provide much needed structure and clarification of pharmaceutical benefits. Section 134.501 is reserved for future use. In the absence of pharmacy data, it is difficult to quantify the problems and costs relating to pharmacy issues. However, based on the anecdotal personal experiences from employees, prescribing doctors, pharmacists, and carriers involved in pharmaceutical delivery, it is believed that the proposed rules will address many of the problems in the system. The Medical Advisory Committee (MAC) provided advice and input for proposed §134.500, and §§134.502-506 through a subcommittee. The commission's Medical Advisor also provided consultation and recommendations for these rules.

§134.500. Definitions.

Proposed new §134.500 provides definitions for terms used throughout this subchapter. Adding a section of definitions clarifies the meaning of the rules and increases the ability of the parties to understand their responsibilities. The following terms are defined: "compounding," "statement of medical necessity," "nonprescription drug or over the counter medication," "open formulary," prescribing doctor," "prescription," and "prescription drug." The rule is proposed to apply to prescriptions that are prescribed on or after March 1, 2002.

§134.502. Pharmaceutical Services.

Proposed new §134.502 relates to the prescribing, billing and dispensing of medications. This section requires doctors to prescribe generics and over-the-counter alternatives when appropriate and to comply with §134.506, the Outpatient Drug Formulary. Current rules do not put any limitations on brand-name prescriptions and do not address the prescription of over-the-counter medications. HB-2600 gives the commission the authority to require the use of generic medications and to address prescribing of over-the-counter medications as alternatives to prescription drugs, and this rule does both. The rule as proposed does not allow an employee to refuse a generic prescription and opt for a brand name drug by agreeing that the employee will pay additional cost or a copayment, as allowed in some other health care systems.

This rule also introduces the statement of medical necessity and provides a framework for the contents of the statement. This tool, already informally used, will assist multiple system participants in gaining access to and in the reimbursing of medications. A statement of medical necessity will assist pharmacists in the resolution of medical necessity disputes. The statement will also assist injured employees when seeking reimbursement for out-of-pocket expenses for medications. Proposed §134.502 formalizes the statement of medical necessity by requiring the doctor to furnish it to a requesting party and giving a framework for the content of the statement or documentation.

§134.503. Reimbursement Methodology.

Proposed new §134.503 outlines the reimbursement for pharmaceutical services. The general reimbursement methodology from the 1996 Medical Fee Guideline (MFG) was carried over with some exceptions. The 1996 MFG had a dispensing fee of $7.50 for generic medications and a dispensing fee of $4.00 for brand-name medications. The higher fee for generic medications was designed to encourage the dispensing of generic medications. Proposed §134.502 requires the use of generics in most instances; therefore, it is not necessary to provide a financial incentive to dispense generic medications. The proposed rule also eliminates the separate multiplier for generic and brand name drugs, and sets the multiplier at 1.25 for both. The 1996 Medical Fee Guideline required use of two monthly publications of Medispan, while the proposed rule authorizes use of any nationally recognized pharmaceutical reimbursement system.

Proposed §134.503 instructs the pharmacist to dispense the generic when prescribed or when a prescription does not require the use of a brand name drug. The rule as proposed does not allow an employee to refuse a generic prescription and

opt for a brand name drug by agreeing that the employee will pay additional cost or a copayment, as allowed in some other health care systems.

The proposed rule sets reimbursement for over the counter drugs at reasonable retail value, excepts inpatient and parenteral drugs, and requires insurance carriers to update pricing data at least every 30 days.

§134.504. Pharmaceutical Expenses Incurred by the Injured Employee.

Proposed new §134.504 provides a process for the injured employee to obtain reimbursement for medications that have been purchased out-of-pocket. Current rules do not address injured employee reimbursement for pharmaceutical expenses, nor do they require a carrier to consider an injured employee's request for reimbursement. Under current rules, injured employees submit a variety of forms of requests to carriers seeking reimbursement. Proposed rule 134.504 establishes a standardized method for employees to seek and receive reimbursement for monies paid out-of-pocket for prescriptions.

§134.505. Chronic Pain Prescriptions. Proposed new §134.505 addresses opioids prescribed for employees with chronic, non-cancer pain. The rule requires the treating doctor to submit a written report to the carrier for treatment with opioids beyond thirty days. The proposed rule outlines what the report must contain and requires the report be submitted at least every sixty days when treating with opioids. The proposed rule also addresses payment and denial of payment for opioids.

§134.506. Outpatient Drug Formulary New §134.506 as proposed, would adopt the outpatient open drug formulary as defined in Section 134.500(a)(4). Proposed §134.506 also addresses detoxification and chemical dependency treatments, and additional information for certain prescriptions. It also gives direction to the carrier as to what to do when they have concerns about medications prescribed, and requires 15-day notice prior to discontinuing payment for one or more drugs in a routine, regularly observed regimen of prescription drugs.

Tom Hardy, Director of Medical Review, has determined that for the first five-year period the proposed rules are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rule. The added clarification provided by these rules could result in a reduction of disputes, thereby decreasing the cost of enforcement or administration by the commission. Any reduction in costs to the commission cannot be quantified.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rules as proposed.

Mr. Hardy has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rules will be an improved system for pharmaceutical delivery that will provide positive benefits to all participants in the system. The participants in the system are: injured employees, employers, insurance carriers and health care providers, including pharmacists. Use of a statement of medical necessity should reduce disputes, benefiting all system participants.

The benefits of the proposed new rules to employees are the improved access to pharmaceutical services, including an open formulary and use for off label indications. Clear guidelines will assist pharmacists in participating in the system and should reduce disputes that delay receipt of medications. Employees will also benefit from the requirement for 15-day notice in advance of discontinuing payment for drugs in a routine, regularly observed regimen of prescription drugs. In addition, the proposed new rules provide procedures for employees seeking reimbursement for out-of-pocket monies spent on medications.

The benefits of the proposed new rules to employers is the assurance that their injured employees are receiving appropriate and medically necessary medications in a timely manner for their compensable injury in anticipation of an early release-to-work as appropriate.

Insurance carriers will benefit from the proposed new rules. Clarity in the rules should give carriers the ability to process claims more quickly and pay claims more accurately. Reduction in the number of disputes because of added clarity will also benefit insurance carriers. Increased use of generic and over-the-counter medications will also reduce carrier costs.

Prescribing doctors will benefit from the proposed new rules in that they will have clear guidelines to follow when prescribing medications. Clear guidelines outlining prescribing and reimbursement will assist the prescribing doctor and pharmacist in making decisions and should result in a reduction in disputes. The proposed rules will also encourage pharmacists to provide services for injured employees.

There will be minimal anticipated economic costs to persons who are required to comply with the rules as proposed.

The fiscal impact of the reimbursement methodology and the requirements relating to use of generic drugs and over the counter medications, is difficult to quantify because the commission does not receive data on pharmacy billing and payments. The impact on a pharmacy will vary depending on that pharmacy's current practice of dispensing generics versus name brand drugs, and the pharmacy's profit margin for generics versus name brand drugs. It is anticipated that use of generics and over the counter medications will reduce insurance carrier and system medical costs. Health care providers will have some increased costs in providing statements of medical necessity and required chronic pain treatment plans, but those costs should be off-set by a reduction in the number of disputes. Insurance carriers will experience some increase in payment of medical benefits because of the requirement for 15-day notice prior to discontinuing payment for drugs in a routine, regularly observed regimen of prescription drugs, but this cost should be more than off-set by a reduction in disputes and savings from use of generic drugs and over the counter medications.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed new rules. There will be no difference in the cost of compliance for small businesses and micro-businesses as compared to large businesses because the same basic processes and procedures apply to all entities regardless of size.

Comments on the proposal must be received by 5:00 p.m., October 1, 2001. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Nell Cheslock at the Office of the General

Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect. Commenters may wish to express their opinion regarding an employee's ability to refuse a generic prescription, and include references to statutory authority supporting that opinion.

A public hearing on this proposal will be held on October 2, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 440-5690 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *www.twcc.state.tx.us.*

The proposed new rules are proposed under the following statutes: the Texas Labor Code §402.042, that authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010, that authorizes the commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; the Texas Labor Code §408.021(a), that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.025, that requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §408.028, as passed by the 77th Texas Legislature, that requires health care practitioners providing care to an employee to prescribe any necessary prescription drugs in accordance with applicable state law; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and insurance carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011, as passed by the 77th Texas Legislature, that requires the commission by rule to establish medical policies and guidelines relating to necessary treatments for injuries, and fees, designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code §413.012, that requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code §413.013 (1) (2) and (3), that require the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review under the medical policies of the commission to ensure the medical policies and guidelines are not exceeded; and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the commission; the Texas Labor Code §413.0141, as passed by the 77th Texas Legislature, regarding initial pharmaceutical coverage; the Texas Labor Code §413.017, that establishes presumption of reasonableness of medical services; the Texas Labor Code §413.031, as passed by the 77th Texas Legislature, that entitles a party, including a health care provider, to a review of a medical service for which authorization for payment has been denied or reduced; the Texas Labor Code §415.002, that establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a commission rule or to fail to comply with the Act; the Texas Labor Code §415.003, as passed by the 77th Texas Legislature, that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a commission rule, or to fail to comply with the act; and the Texas Labor Code §415.0035, that establishes an administrative violation for an insurance carrier to deny preauthorization in a manner that is not in accordance with commission rules.

The new rules affect the following statutes: Texas Labor Code §402.042, that authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010, that authorizes the commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; the Texas Labor Code §408.021(a), that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.025, that requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §408.028, as passed by the 77th Texas Legislature, that requires health care practitioners providing care to an employee to prescribe any necessary prescription drugs in accordance with applicable state law; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and insurance carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011, as passed by the 77th Texas Legislature, that requires the commission by rule to establish medical policies and guidelines relating to necessary treatments for injuries, and fees, designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code §413.012, that requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code §413.013 (1) (2) and (3), that require the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the

systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review under the medical policies of the commission to ensure the medical policies and guidelines are not exceeded; and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the commission; the Texas Labor Code §413.0141, as passed by the 77th Texas Legislature, regarding initial pharmaceutical coverage; the Texas Labor Code §413.017, that establishes presumption of reasonableness of medical services; the Texas Labor Code §413.031, as passed by the 77th Texas Legislature, that entitles a party, including a health care provider, to a review of a medical service for which authorization for payment has been denied or reduced; the Texas Labor Code §415.002, that establishes an administrative violation for an insurance carrier to: unreasonably dispute the reasonableness and necessity of health care, to violate a commission rule or to fail to comply with the Act; the Texas Labor Code §415.003, as passed by the 77th Texas Legislature, that establishes an administrative violation for a health care provider to: administer improper, unreasonable, or medically unnecessary treatment or services, to violate a commission rule, or to fail to comply with the act; and the Texas Labor Code §415.0035, that establishes an administrative violation for an insurance carrier to deny preauthorization in a manner that is not in accordance with commission rules.

§134.500. Definitions.

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

(1) Compounding- The preparation, mixing, assembling, packaging, and labeling of a drug or device.

(2) Statement of Medical Necessity- A written statement or documentation from the prescribing doctor to establish the medical necessity of a treatment or service, device, or prescription, including the medical necessity for a brand name drug, where applicable.

(3) Nonprescription drug or over the counter medication- A non-narcotic drug or delivery device that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law.

(4) Open formulary- Includes all available Food and Drug Administration (FDA) approved prescription and nonprescription drugs, but does not include drugs that lack FDA approval, or non-drug items such as nutritional supplements.

(5) Prescribing doctor- a doctor who prescribes prescription drugs or over the counter medications in accordance with the doctor's license and state and federal laws and rules.

(6) Prescription- An order from a doctor to a pharmacist for a prescription drug, medical delivery device, or nonprescription drug to be dispensed.

(7) Prescription drug-

(A) A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) A drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement, "Caution: federal law prohibits dispensing without prescription"; or,

(C) A drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a prescribing doctor only.

(b) This rule applies to all prescriptions that are prescribed on or after March 1, 2002.

§134.502. Pharmaceutical Services.

(a) A doctor providing care to an injured employee shall prescribe for the employee necessary prescription drugs and over-the-counter medication (OTC) alternatives as clinically appropriate and applicable in accordance with applicable state law and as provided by this section.

(1) It shall be indicated on the prescription that the prescription is related to a workers' compensation claim.

(2) When prescribing an OTC alternative to a prescription drug, the doctor shall indicate on the prescription the appropriate strength of the medication and the approximate quantity of the OTC medication that is reasonably required by the nature of the compensable injury.

(3) The doctor shall prescribe generic prescription drugs when available and clinically appropriate. If in the medical judgment of the prescribing doctor a brand-name drug is necessary, the doctor must specify on the prescription that brand-name drugs be dispensed in accordance with applicable state and federal law, and must maintain documentation justifying the use of the brand-name drug, in the patient's medical record.

(4) The doctor shall prescribe OTC medications in lieu of a prescription drug when clinically appropriate.

(b) When prescribing, the doctor shall comply with the formulary adopted by the commission.

(c) The pharmacist shall dispense no more than a 30-day supply of a prescription drug.

(d) Health care providers shall submit bills for pharmacy services in accordance with commission Rule 134.800 (d).

(1) Health care providers shall bill using national drug codes (NDC) when billing for prescription drugs.

(2) Compound drugs shall be billed by listing each drug included in the compound and calculating the charge for each drug separately.

(3) A pharmacy may contract with a separate person or entity to process bills and payments for a medical service; however, these entities are subject to the direction of the pharmacy and the pharmacy is responsible for the acts and omissions of the person or entity.

(4) Except as allowed by Texas Labor Code § 413.042, the injured employee shall not be billed for pharmacy services.

(e) If an insurance carrier has questions about the relatedness of a prescription to the compensable injury or the use of brand-name prescription drugs, the carrier may request a statement of medical necessity from the prescribing doctor.

(f) The doctor shall provide a statement of medical necessity no later than the 14th working day after receipt of request. The statement of medical necessity shall include the following information:

(1) Employee's name and social security number or TWCC number;

(2) Cause of injury;

(3) Employee's current condition;

(4) Treatment, service, or medication recommended;

(5) How treatment, service, or medication is related to the compensable injury;

(6) Duration of treatment, service, or medication;

(7) Expected outcome; and,

(8) Reasons for prescribing brand name prescription drug, if applicable.

§134.503. Reimbursement Methodology.

(a) The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:

(1) The provider's usual and customary charge for the same or similar service;

(2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.

(A) Brand name or Generic Pharmaceuticals: [(AWP per unit) x (number of units) x 1.25] + $4.00 dispensing fee = MAR;

(B) A compounding fee of $30 per compound shall be added for compound drugs; or,

(3) A negotiated or contract amount.

(b) When the doctor has written a prescription for a generic prescription drug or a prescription that does not require the use of a brand-name drug, in accordance with rule 134.502 (a)(3), the pharmacist shall dispense and be reimbursed for the generic pharmaceutical medication.

(c) Reimbursement for over the counter drugs shall be the reasonable retail value.

(d) This section applies to the dispensing of all drugs except inpatient drugs and parenteral drugs.

(e) The insurance carrier shall update drug and supply pricing data at least every 30 days. Upon request by the provider, the insurance carrier shall disclose the source of the AWP used.

§134.504. Pharmaceutical Expenses Incurred by the Injured Employee.

(a) It may become necessary for an injured employee to purchase prescription drugs or over-the-counter alternatives to prescription drugs prescribed or ordered by the treating doctor or referral health care provider. In such instances the injured employee may request reimbursement from the insurance carrier by submitting a request to the carrier.

(b) The injured employee shall submit to the insurance carrier a letter requesting reimbursement along with a receipt indicating amount paid and a copy of the prescription. The letter should include information to clearly identify the claimant such as the claimant's name, address, date of injury, and social security number.

(c) The insurance carrier shall make appropriate payment to the injured employee in accordance with commission Rule 134.503, or notify the injured employee of a reduction or denial of the payment within 45 days of receipt of the request for reimbursement from the injured employee. If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a full and complete explanation of the reason(s) the insurance carrier reduced or denied the payment and shall inform the injured employee of his or her right to request medical dispute resolution in accordance with §133.305 of this title (relating to Medical Dispute Resolution). The statement shall include sufficient claim-specific substantive information to enable the employee to understand the insurance carrier's position and/or action on the claim. A general statement that simply states the carrier's position with a phrase such as "not entitled to reimbursement" or a similar phrase with no further description of the factual basis does not satisfy the requirements of this section.

§134.505. Chronic Pain Prescriptions.

(a) Chronic, non-cancer pain may develop after an acute injury episode. It is defined as any pain that typically persists beyond two to four months following the injury. The carrier shall pay for opioids for the treatment of chronic, non-cancer pain caused by a compensable injury when that treatment is reasonable and medically necessary.

(b) No later than thirty days after the treating doctor begins treating the injured employee with opioids for chronic, non-cancer pain, the treating doctor shall submit a written report to the carrier in order for the carrier to pay for such treatment. The written report must include the following:

(1) A treatment plan with time-limited goals;

(2) A consideration of relevant prior medical history;

(3) A summary of conservative care rendered to the employee that focused on reactivation and return to work;

(4) A statement on why prior or alternative conservative measures may have failed or are not appropriate as sole treatment;

(5) A statement of any consultations that have been obtained, particularly those that have addressed factors that may be barriers to recovery;

(6) A statement that the treating doctor has conducted appropriate screening for factors that may significantly increase the risk of abuse or adverse outcomes (e.g., a history of alcohol or other substance abuse); and,

(7) An opioid treatment plan that has been signed by the employee and the treating doctor. This plan must be renewed every six months. The treatment plan must outline the risks and benefits of opioid use, the conditions under which opioids will be prescribed, the physician's need to document overall improvement in pain and function, and the employee's responsibilities.

(c) In addition to documentation required by the carrier, the treating doctor must submit to the carrier the following information at least every sixty days when treating with opioids:

(1) Documentation of drug screening, consultations, and all other treatment trials;

(2) Documentation of outcomes and responses, including pain intensity and functional levels; and

(3) Any modifications to the treatment plan.

(d) The carrier shall continue to pay for treatment with opioids so long as the prescribing doctor documents substantial reduction of the patient's pain intensity, and continuing substantial improvement in the patient's function. Opioid treatment for chronic, non-cancer pain past the first three months of such treatment without documentation of substantial improvement is presumed to be not reasonable or medically necessary.

(e) Payment for opioid medications shall be denied in any of the following circumstances:

(1) Absent or inadequate documentation;

(2) Non-compliance with the treatment plan; or

(3) Evidence of misuse or abuse of the opioid medication or other drugs, or noncompliance with the treating doctor's request for a drug screen.

(f) The carrier shall pay for non-opioid treatment for chronic, non-cancer pain when it is reasonable and medically necessary. For example, some drugs such as anti-convulsants, anti-depressants, and others have been demonstrated to be useful in the treatment of chronic pain and may be approved when reasonable and medically necessary.

§134.506. Outpatient Drug Formulary.

(a) The commission hereby adopts an open formulary as defined in Section 134.500(a)(4). The carrier shall pay for drugs that are reasonable and medically necessary to treat the compensable injury or occupational disease. The insurance carrier may pay for prescriptions for off label indications when used in accordance with current medical standards and prescribed in compliance with published contradictions, precautions, and warnings.

(1) Over-the-counter medications with a prescription shall be reimbursed.

(2) The carrier may consider temporary coverage of prescriptions for conditions not related to the compensable injury when such medications are necessary to promote recovery of the compensable injury.

(b) The carrier shall pay for detoxification and/or chemical dependency treatment in the following circumstances:

(1) The injured employee becomes dependent or toxic due to medication prescribed for a compensable injury;

(2) The injured employee becomes dependent or toxic due to medications prescribed for a condition not related to the compensable injury in order to promote recovery of the compensable injury; or,

(3) The injured employee is dependent or toxic due to medications for an unrelated condition, but that dependency or toxicity is retarding recovery of the compensable injury.

(c) Additional Information:

(1) When a spinal cord injury is the compensable injury, the carrier may authorize payment for anti-spasticity medication by any indicated route of administration.

(2) Prescriptions for injectable opioids or other injectable analgesics, sedatives, antihistamines, tranquilizers, psychotropics, vitamins, minerals, food supplements, and hormones are not routinely reimbursed.

(3) The carrier may pay for injectable medications under the following circumstances:

(A) Inpatients;

(B) During emergency treatment of a life-threatening condition/injury;

(C) During outpatient treatment of severe soft tissue injuries, burns, or fractures when needed for dressing or cast changes; or,

(D) During the preoperative period and the postoperative period, not to exceed forty-eight hours from the time of discharge.

(4) The carrier may pay for prescriptions of injectable insulin, heparin, anti-migraine medications, or impotency treatment, when reasonable and medically necessary.

(5) Payment of prescriptions for benzodiazepines are limited to the following types of patients:

(A) Hospitalized patients;

(B) Claimants with an accepted psychiatric disorder for which benzodiazepines are indicated;

(C) Claimants with an unrelated psychiatric disorder that is retarding recovery but which the carrier has temporarily authorized treatment and for which benzodiazepines are indicated; and,

(D) Other outpatients for not more than thirty days over the life of the claim.

(6) When cancer or any other end-stage disease is the compensable injury, the carrier may authorize payment for any indicated scheduled drug and by any indicated route of administration.

(d) The carrier may take any or all of the following steps when concerned about the amount or appropriateness of drugs the patient is receiving:

(1) Notify the prescribing doctor, injured employee, and pharmacy of concerns regarding the medications such as drug interactions, adverse reactions, and prescriptions by other providers;

(2) Require that the prescribing doctor send a statement of medical necessity addressing the drug concerns;

(3) Request a consultation from a required medical exam (RME) doctor;

(4) Request that the prescribing doctor consider reducing the prescription and provide information on chemical dependency programs; or,

(5) Limit the payment for drugs on a claim to one prescribing doctor.

(e) When a doctor has placed an injured employee on a routine, regularly observed regimen of prescription drugs, the carrier may only discontinue payment for one or more drugs in the regimen after adequate prior notification of 15 days has been given to the employee, pharmacy, and doctor. The commission may prescribe the form and manner of notification.

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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Susan Cory
General Counsel
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CHAPTER 180. MONITORING AND ENFORCEMENT

The Texas Workers' Compensation Commission (the commission) proposes amendments to §180.1 and §180.7 and new §180.2 and §§180.20 - 180.27. The proposal includes changing the title of Chapter 180 to "Monitoring and Enforcement" to reflect the broader nature of the subject matter and because

monitoring and enforcement activities are shared among different parts of the agency and are not only concentrated in the Compliance and Practices Division.

The *Texas Register* published text shows the proposed amended and new language and should be read to determine all proposed changes. As used in this preamble the term "Statute" refers to the Texas Worker Compensation Act including any and all amendments to it by the Texas Legislature and the term "Rules" means the Rules adopted by the commission as authorized by Texas Labor Code §402.061.

House Bill 2600 (HB-2600), passed by the 77th Texas Legislature in its 2001 session, made numerous amendments to the Texas Labor Code. Many of these changes related to regulating medical benefit delivery by: changing the commission's approved doctor list (ADL) and application process (including mandated training); changing the grounds under which the commission can issue sanctions (as well as expanding the sanctions); adding a Medical Advisor to the commission staff and Medical Quality Review Panel (QRP), and providing for expanded financial disclosure and prohibiting inappropriate referral fees, kickbacks, or other financial incentives.

To implement these changes, the commission examined its existing rules and found that most of the provisions relating to general regulation of doctors and health care are spread out among several Chapters (126, 133, and 134 in particular). Given the scope of changes to be made and to simplify usage, the commission is proposing to move these provisions to Chapter 180. The commission's Medical Advisor provided recommendations regarding these rules.

In doing this, though many of the proposed rules in Chapter 180 are technically "new rules," most of them relocate provisions that the commission currently has in place in other Chapters. This preamble identifies the current rules proposed to be replaced and discusses the way the proposed rules differ from the current ones.

The amendments and additions proposed for Chapter 180 are based upon legislative changes provided in Articles 1 and 6 of HB-2600. Chief among the changes is that admission to the ADL now requires a doctor to apply and meet specified criteria. Prior to this change, admission to the ADL was automatic upon receiving a license. Now doctors will be required to take training and register to be on the list. In addition, the commission has been given the authority to deny or restrict admission based upon factors such as practice restrictions. Approved doctors will be issued certificates of registration that expire if re-training requirements are not met.

Another major change is that HB-2600 now mandates that doctors serving any role in the Texas workers' compensation system be on the ADL. In the past, only treating doctors were required to be on the ADL. Doctors who are not on the ADL will be prohibited from performing services or receiving reimbursement in the Texas workers' compensation system (except in an emergency or for immediate post-injury medical care).

HB-2600 also mandates that the commission set up modified training and registration requirements for certain types of doctors such as those who do not participate in the Texas workers' compensation system at a high volume or those who only perform peer reviews and utilization review (UR). Doctors from other states are permitted to be on the ADL. However, out of state doctors who review health care services (such as though utilization review or peer reviews) are required to be supervised by a doctor licensed in Texas.

HB-2600 requires that the commission collect information about treating doctors regarding return to work outcomes, patient satisfaction, and cost and utilization of health care in order to promote quality of care and best practices. The commission previously collected information on cost and utilization of care but this was based upon the person providing the care and who was not necessarily the treating doctor for the claim. This information will be important over time because HB-2600 makes major changes to the way the commission regulates doctors on the ADL.

As a simplification, HB-2600 now mandates that the Executive Director remove doctors from the list who fail to register with the commission, who are deceased, whose license to practice has been revoked, suspended, or not renewed by the appropriate licensing authority, or who requests to be removed. Previously, removal under these circumstances required commissioner approval.

The commission's authority to address activities not in full compliance with the law or not representative of quality care has been greatly expanded. Both the grounds for taking action and the actions the commission is authorized to take are broader than under the previous statute.

To help evaluate behavior by doctors and carriers (as relates to medical benefit delivery), HB-2600 created an official Medical Advisor position that is imbued with specific authority and responsibilities. Also created was the QRP which functions to support the Medical Advisor in reviewing the conduct of doctors and carriers relating to medical benefit delivery.

As another measure to control costs, HB-2600 requires the commission to adopt a definition of financial interest consistent with analogous federal regulations and to adopt the federal standards that prohibit the payment or acceptance of payment in exchange for referrals.

Finally, HB-2600 clarifies the commission's enforcement authority with regard to violations of the Statute and Rules that don't carry a specific violation class. For example, Texas Labor Code §408.027 requires carriers to pay or dispute medical bills within 45 days but doesn't specify what class administrative violation it is if a carrier fails to meet this requirement. The language in Article 6 clarifies that actions such as this constitute administrative violations.

It is these mandates that are the primary motivation for the changes proposed in Chapter 180. First, the commission proposes placing the existing rules in Chapter 180 under the general subchapter heading "General Rules For Enforcement". The proposed changes to this newly labeled subchapter include: amendments to §180.1 (relating to Definitions); addition of §180.2 (relating to Referrals, Confidentiality); and amendments to §180.7 (relating to Date Administrative Violation Deemed to Have Occurred).

The commission also proposes the addition of "Subchapter B. Medical Benefits Regulation". Within this subchapter the commission proposes relocating concepts currently contained in rules in Chapters 126, 133, and 134 relating to the ADL, the Designated Doctor List (DDL), financial disclosure, and the responsibilities of treating, referral, and consulting doctors. Specifically, the commission proposes eight new rules in this subchapter: §180.20 (relating to Application for Registration/commission Approved Doctor List); §180.21 (relating to

commission Designated Doctor List); §180.22 (relating to Health Care Provider Roles and Responsibilities); §180.23 (relating to Commission Required Training for Doctors/Certification Levels); §180.24 (relating to Financial Disclosure); §180.25 (relating to Improper Inducements); §180.26 (relating to Doctor and Insurance Carrier Sanctions); and §180.27 (relating to Sanctions Process/Appeals/Restoration/Reinstatement).

These rules will replace all or parts of the following current rules: §126.8 (relating to Commission Approved Doctor List); §126.10 (relating to Commission Approved List of Designated Doctors); §133.3 (relating to Responsibilities of Treating Doctor) §133.4 (relating to Consulting and Referral Doctors); §134.100 (relating to Provider Disclosure of Financial Interest, Submission to the Commission); and §134.101 (relating to Provider Disclosure of Financial Interest, Submission to the Carrier). Amendment and repeal of those rules are included in separate preambles.

Proposed Amendment to §180.1--Definitions

Proposed amendments to §180.1 primarily involve adding new definitions used by new and amended rules. In addition, amendments are proposed to the existing definitions.

The commission is proposing a broad definition of "conviction" or "convicted" to ensure that a relevant conviction (including those resulting from procedures such as plea agreements) can be used as grounds for sanction of a doctor. The intent is that the conduct for which a person is convicted serves as the grounds for the sanction. Regardless of whether or not there is a conviction by jury or judge, if it is determined that the conduct occurred and is relevant, can be used by the commission to issue sanctions.

"Emergency" is defined by reference to the definition in §133.1 of this title (relating to Definitions) to maintain consistency with other portions of the Rules.

The terms "wilful", "intentional", and "knowingly" are proposed to be given individual definitions in the rule rather than referencing the Texas Penal Code as in the current rule. There is no definition of "wilful" in the penal code. Therefore, one has been added to make that term effective. The definitions of intentional and knowingly are proposed to remain consistent to their definitions in the penal code but are set out in this rule for easier reference.

"Wilfully" is being proposed to mean "knowingly or intentionally". However, it is also proposed that a something is wilful even if it was originally accidental, if it continues after the person was made aware of the noncompliance.

"Significant Violation" is proposed as a way to differentiate between violations that require recommending deletion from the ADL and violations that the commission can address through other sanctions.

A definition of "Uncorrected Pattern of Practice" is being proposed as it is one of the ways a violation can be deemed to be a "Significant Violation".

"Continued noncompliance" is proposed to be defined to help differentiate between a violation where the act was tied to a specific period and a violation that is continuing (thus requiring some action or change in behavior to bring conduct out of continued noncompliance).

Other definitions the commission is proposing include: "Abusive Practice", "Administrative Law Judge", "Agent", "Charged Person", "Compliance", "Controlled Substances", "Noncompliance or Noncompliant Act", "Remuneration", "System Participant", "Violation", and "Violator".

In addition, the commission proposes abbreviations for "commission Rules" ("Rules"), "State Office of Administrative Hearings" ("SOAH"). The "Texas Workers' Compensation Act" is referred to as "the Statute" in accordance with §102.7 (relating to Abbreviations) in order to simplify and shorten the rules. These abbreviations are used in this preamble as well.

Proposed New §180.2--Referrals

The commission proposes adding new §180.2 to note that any person may make a referral to the commission for fraudulent acts or omissions, failure of a health care provider or insurance carrier to provide or ensure quality medical care, or for other violations of the Texas Workers' Compensation Act or commission rules.

Proposed Amendment to §180.7--Date Administrative Violation Deemed to Have Occurred--(Proposed to be retitled: Date Violation Deemed to Have Occurred; Establishing Wilful Violations)

The commission proposes two amendments to this rule. First, as noted, HB-2600 clarifies that the commission can enforce statutory requirements where no specific administrative violation class is listed. The commission proposes amending §180.7 to be consistent by changing "administrative violation" to "violation".

In addition, language is proposed to be added that helps the commission establish the existence of a wilful violation. The proposed language is consistent with the definition in proposed §180.1.

Proposed New §180.20--Application for Registration/Commission Approved Doctor List

HB-2600 mandates that the commission develop a list of doctors who are licensed in this state and approved to provide health care under the Statute. HB-2600 also provides that the commission establish by rule requirements regarding application and registration, training, and impairment rating testing. The requirements shall apply to doctors and other health care providers who provide health care services as treating doctors, referral doctors, consulting doctors, required medical exam doctors, peer review doctors, utilization review doctors, designated doctors, and Medical Quality Review Panel doctors.

HB-2600 requires the commission to adopt rules to implement the new ADL not later than February 1, 2002. It further requires the commission to set a date (not to exceed 18 months from the date of adoption) after which doctors must have complied with the new registration and training requirements imposed by the rules. The commission is proposing this effective date be August 1, 2003.

Currently, the only requirement to be included on the ADL is that the doctor must be licensed in this state or licensed in another jurisdiction. Proposed §180.20 replaces subsections (a) - (c) of §126.8 after August 1, 2003 when the new ADL is in place, and lays out the application process and registration requirements to be included on the ADL, as required by HB-2600.

Proposed subsection (a) maintains the requirement in §126.8 that a doctor providing medical treatment to an employee be on the ADL except in the case of an emergency. In addition, as a result of HB-2600, a doctor providing immediate post-injury medical care does not have to be on the ADL either. A more significant change resulting from HB-2600 is the requirement that not just treating doctors be on the ADL. Now doctors serving in any capacity within the system (other than for emergency or immediate post-injury care) be on the list.

The proposed language explains that immediate post-injury care is that care that is provided when the employee first seeks medical attention for the workers' compensation injury or illness. The intent is not that this care be tied until a specific time-frame because the employee might not realize they need medical attention immediately following the injury or might not realize they have a worker related illness. However, once they have initially sought medical attention, they will have to receive all future care from a doctor on the ADL. The language is also written without a timeframe tied to it so that in cases where an employee's injury is significant enough to require immediate hospitalization, the employee is not expected to start treatment with one doctor and then switch doctors while in the middle of a stay in the hospital.

Proposed subsection (b) explains that a doctor licensed in this state or in another jurisdiction may apply to be included on the ADL by completing required training, applying for registration, and disclosing financial interests. These minimal requirements are included in HB-2600.

Proposed subsection (c) clarifies the information required in an application to the ADL which is information currently required in an application to the ADL, but not addressed by rule. With the additional discretion that HB-2600 provides the commission, additional information is needed for evaluation and tracking. These additional items will include: the certificate of training indicating the level of training completed (necessary to establish the doctor's certification level under §180.23), impairment rating test score (if applicable), verification of licensure, disciplinary actions or practice restrictions (which can serve as grounds for denial of a request to be put on the ADL), and a signed affidavit of sponsorship by a doctor on the ADL agreeing to supervise a doctor licensed in another jurisdiction, performing peer review or utilization review of medical services for Texas workers' compensation (HB-2600 requires doctors licensed out of state and who wish to perform work for a utilization review agent (URA) to do so under the supervision of a doctor licensed in this state).

In addition, the commission believes that it needs the ability to quickly contact doctors on the ADL to provide important information on a timely basis. Therefore, the commission is proposing in this subsection that doctors be required to provide the commission with an e-mail address through which the commission can contact them. The commission believes that it is not unreasonable to expect doctors to have internet access. Given the August 1, 2003 date, doctors won't actually be required to have an email address for more than 18 months which gives them plenty of time to set up internet access.

Proposed subsection (d) states that the commission may utilize the Medical Quality Review Panel set-up by HB-2600 for evaluating ADL applications and making recommendations to the Medical Advisor to approve or deny admission to the ADL.

Proposed subsection (e) gives the reasons a doctor may be denied admission to the ADL or admitted with conditions or restrictions, as provided by HB-2600. The reasons include failing to submit a complete application or complete the required training, having relevant practice restrictions or other activities which warrant denial including but not limited to grounds that would allow deletion or sanction of the doctor under §180.26. The clear intent of much of the language in Article 1 of HB-2600 is for the commission to better regulate the ADL and prevent it from being populated with doctors whose patterns of practice are outside of professionally recognized standards of care

Proposed subsection (f) states that the commission shall notify a doctor of approval or denial of the doctor's application to the ADL and reasons for denial. The notification of a denial shall be by verifiable means. This proposed subsection also gives the doctor 14 days after receiving a denial from the commission to respond to the reasons for denial. As in other rules, the term "verifiable means" is used to allow the commission the flexibility to use new and cheaper means of sending notices in such a way the can confirm delivery other than using certified mail.

As noted, the requirements relating to the new ADL shall be effective August 1, 2003. Therefore, proposed subsection (g) provides for the deletion from the ADL of all doctors previously on the ADL upon the earlier of either the date the doctor applies for and is denied approval or August 1, 2003 (if the doctor failed to register and be approved prior to that date).

Proposed subsection (h) states that a carrier may not withhold reimbursement to a doctor licensed in another jurisdiction solely because the doctor was not on the ADL at the time the care was provided, unless the doctor was removed from the ADL by the commission. This is largely the same as the requirements in current §126.8(b). However, §180.20 will limit this concept to a doctor who treats or evaluates 12 or fewer injured employees in a twelve month period (low-volume), provides care in an emergency, or provides immediate post-injury care, as provided by HB-2600.

Currently the commission makes available information relating to actions it has taken regarding the ADL. Current §126.8(c) requires the commission to provide the names of doctors deleted, reinstated or added to the ADL from other jurisdictions. Proposed subsection (i) would require the commission to provide similar information via its website. This will help ensure ready access to the ADL and to information of the commission's activities regarding the list.

Proposed subsection (j) requires a doctor on the ADL to provide the commission with any change in information provided in the doctor's application, within 30 days of the change in information. This is necessary for the maintenance of an accurate ADL database. The commission currently has great difficulty contacting doctors on the ADL because there is no requirement for doctors to provide the commission with accurate contact information. This often results in mail being returned to the commission and necessitates that staff manually attempt to verify information.

Add New §180.21--Commission Designated Doctor List Proposed §180.21 sets out requirements for a doctor applying to become a designated doctor for the commission and replaces §126.10. These requirements are general to all designated doctors regardless of the purpose of the examination. Requirements for specific designated doctor examinations will be addressed in individual rules addressing the specific purpose of the exam.

Proposed subsection (a) maintains the requirement that in order to serve as a designated doctor the doctor must be on the Designated Doctor List (DDL).

Proposed subsection (b) includes the requirements for being admitted to the DDL prior to August 1, 2003 and they are essentially the same as those currently in §126.10 with the clarification that an "active practice" is at least 20 hours per week of treating patients. This definition is not currently in §126.10 but was taken from the Texas Insurance Code and is the standard that the commission currently uses.

Proposed subsection (c) addresses the same requirements in subsection (b) for being approved to be on the DDL after August 1, 2003, but changes the three years of active practice to one year, and adds that the doctor must have an ADL Level 3 Certification under §180.23. The reason for the change from 3 years of active practice to 1 year is based upon the fact that 1 year of active practice is generally enough to allow for board certification.

Proposed subsection (d) explains that a doctor who is on the current DDL and fails to apply in accordance with this section, or applies but is not approved under subsections (f) - (h) of this section, shall be deleted from the DDL on the earlier of the date of the denial, or August 1, 2003. This is largely the same as the requirement in proposed §180.20(i).

Proposed subsection (e) lists the information required in an application to the DDL, which is general contact information, training certificate, Impairment Rating Skills Examination score, license verification, and any disciplinary actions or practice restrictions. The requirements under this subsection are again essentially the same as the requirements of proposed §180.20(c).

Proposed subsection (f) states that the commission may utilize the Medical Quality Review Panel to evaluate the DDL applications and make recommendations to the Medical Advisor to approve or deny an application. This matches the provisions of proposed §180.20(d).

Proposed subsection (g) lists the reasons a doctor may be denied admission to the DDL. These reasons are nearly identical to those proposed in §180.20 with a few exceptions. For example, a doctor could be denied for not being on the ADL or for having ADL restrictions. Another example is that a doctor could be denied for having failed the required examination.

Proposed subsection (h) explains that the commission shall notify doctor of the approval or denial of the application to the DDL and reasons for denial and that the commission will notify the doctor by verifiable means of a denial and gives the doctor 14 days to respond to the reasons for denial. The intent here is to offer the doctor the opportunity to respond to the commission's reasons for not approving the doctor. The response will be reviewed and, if it appears that the commission's initial recommendation to deny the application was in error, the commission will notify the doctor of the approval. Otherwise, the commission will provide a response to the doctor's rebuttal and explain why the denial is being upheld.

As proposed, subsection (i) allows the commission to waive any of the requirements stated in this section for an out-of-state doctor to serve as a designated doctor in order to facilitate the timely resolution of a dispute. This concept is taken from current §126.10 and is supported by HB-2600, which allows the commission to waive requirements to ensure access to care and evaluations (particularly for out-of-state cases).

Proposed subsection (j) states that the commission shall make available on its website the names of doctors on the DDL, and the names of doctors deleted, reinstated, and added from other jurisdictions. This will help ensure ready access to the DDL and to information of the commission's activities regarding the list.

Proposed subsection (k) requires the doctor to notify the commission of any change in information provided in the doctor's application to the DDL within 30 days of the change. This requirement and the reasons for it are the same as those for the ADL.

Proposed subsection (l) lays out grounds that the commission may use to suspend or delete a doctor from the DDL. Currently these requirements are contained in §126.10(l). In general, proposed §180.26 lays out the grounds for deletion from the ADL or imposing other sanctions on a doctor. Rather than repeating those grounds in this rule, the commission proposes referencing the grounds in §180.26 here in this rule and adding to them a list of DDL-specific grounds. The additional grounds are largely similar to the grounds currently listed in §126.10(l).

Proposed subsection (m) explains that notification and appeal of a sanction is governed by §180.27 of this title (relating to Sanctions Process/Appeals). This represents a change from the current process in that the current designated doctor deletion/suspension process does not provide for an appeal to the State Office of Administrative Hearings (SOAH). Rather, such appeals are handled via an administrative review (not unlike the method proposed to be used for reviewing rebuttals to denials of requests for admission to the DDL). The reason for the change is that HB-2600 lists deletion from the DDL as a sanction that the commission can impose after the opportunity for a hearing is given. This is a statutory change and thus an opportunity to appeal to SOAH is now guaranteed to designated doctors being suspended or removed from the list.

The subsection also provides that suspension, deletion, or other sanction relating to the DDL shall be in effect during the pendency of any appeal. Given the critical nature of the designated doctor's role and the fact that the doctor's opinion generally has presumptive weight on the matter that the doctor was requested to review, the commission believes that it is not appropriate for a doctor to serve as a designated doctor while questions exist regarding the doctor's eligibility to be on the list.

Add New §180.22--Health Care Provider Roles and Responsibilities

HB-2600 requires that all doctors participating in the Texas workers' compensation system shall be on the ADL, with few exceptions. Proposed §180.22 describes different roles of doctors participating in the system and the responsibilities of those roles. The rule also applies to ancillary health care providers not licensed as doctors.

Currently the commission has the responsibilities of several doctor roles explicitly described by rule (treating doctors in §133.3 and consulting and referral doctors in §133.4). Other doctors, however, are described more via process rules that describe how they are utilized. Although these other rules are important, the commission believes that having one rule which lays out all the roles and responsibilities will help ensure understanding of them. In addition, HB-2600 formally recognizes peer review and utilization review doctors and Medical Quality Review Panel doctors.

Proposed subsection (a) of this section states the primary responsibility of all health care providers (HCP) in the system is to provide reasonable and necessary health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery and enhances the employee's ability to return to work. These responsibilities match many of the original goals of the Texas Workers' Compensation Act and subsequent legislation.

Proposed subsection (b) expresses that the HCP must comply with all applicable Statute and Rules, including, the reporting of information, disclosure of financial interests, evaluating impartially, and billing correctly. Though several responsibilities are listed, the list is far from inclusive. The Statute and Rules

are filled with individual requirements and prohibitions relating to health care providers that they are expected to comply with.

Proposed subsection (c) explains that the treating doctor is the doctor primarily responsible for the management of the employee's health care related to the compensable injury. These responsibilities are currently found in §133.3, with the additions of communicating with the employer about the employee's ability to return to work with or without restrictions, and reporting work release data, cost and utilization data, and patient satisfaction data required by HB-2600 to be captured by the commission. Not included in this subsection is the requirement of the treating doctor to certify maximum medical improvement (MMI) and assign an impairment rating. This requirement is addressed in Chapter 130 (relating to Benefits-Impairment and Supplemental Income Benefits), which regulate the impairment rating process.

Subsection (d), as proposed, incorporates the description of the consulting doctor responsibilities from §133.4 (relating to Consulting and Referral Doctors) and clarifies them. Although peer review, utilization review, and required medical examination (RME) doctors provide evaluations that are similar to consulting doctors, their responsibilities are listed separately because their roles are slightly different.

Proposed subsection (e) incorporates the description of the referral doctor responsibilities from §133.4.

Proposed subsection (f) addresses the responsibilities of the RME doctor. Currently, these are not addressed by rule, but are generally recognized by the commission and other system participants. The responsibilities for the RME doctor are the same as the responsibilities for the consulting doctor addressed in proposed subsection (e) of this section but RME doctors perform examinations at the request of the carrier or the commission. In addition, employees are required to attend RMEs whether by order of the commission or agreement with the carrier made in accordance with commission rule.

Proposed subsection (g) addresses peer review doctors as formal participants in the system. As proposed, the role of the peer review doctor is to evaluate health care services and patient care, including the qualifications of professional health care practitioners providing those services and care. Providing this description by rule is consistent with the provisions in HB-2600. Peer reviews are generally conducted without benefit of an examination of the employee but rather are reviews of medical reports and other chart information.

Proposed subsection (h) describes the role and responsibilities of the utilization review doctor. The utilization review doctor reviews medical care either prospectively, concurrently, or retrospectively for medical necessity. Like the peer review doctor, utilization review doctors generally perform their evaluations without an examination of the employee and base their opinions on medical documentation submitted with a medical bill or with a request for preauthorization, concurrent review, or precertification.

Proposed subsection (i) describes the role and responsibilities of the designated doctor. The section incorporates the basic responsibilities in current §126.10 and apply to a designated doctor regardless of the purpose of the examination being performed. In addition to these general responsibilities, a designated doctor may have additional responsibilities associated with the specific examination being performed. These responsibilities are addressed in the specific rules associated with the various types of examinations. Subsection (i) also incorporates the requirements from §126.10 that a designated doctor notify the commission of disqualifying associations and not self-refer or treat the employee.

The Medical Quality Review Panel doctor (MQRP) is a new doctor role provided by HB-2600, and the roles and responsibilities are addressed in proposed subsection (j) of this section. This subsection states that the MQRP doctor is chosen by the commission's Medical Advisor, must have ADL Level 3 Certification and meet the performance standards specified by contract to be eligible for selection, and serve on the Medical Quality Review Panel as prescribed by contract.

Add New §180.23--Commission Required Training for Doctors/Certification Levels

HB-2600 mandates that the commission establish training requirements for doctors and health care providers providing services under this title. With HB-2600, the commission's authority is expanded and, through §180.23, training is being mandated for all doctors.

However, the commission recognizes that not all doctors need to have the same level of training. For example, there are doctors who are involved in a few cases per year and for whom the requirement to attend regular, workers' compensation-specific training would be burdensome when compared to their actual involvement. HB-2600 had similar considerations in that it required the commission to modify its training and registration requirements for some types of doctors.

Therefore, the commission proposes setting up three main levels of certification (Levels 1 to 3) and one auxiliary certification level (Level X--for eXception). Each level of certification has different training requirements and authorizes the doctor to serve in different roles in the system. Proposed subsection (a) explains this.

Proposed subsection (b) allows the commission to grant exceptions to let a doctor perform functions not normally permitted by the doctor's certification level. The reason for this is language in HB-2600 that authorizes such exceptions in order to ensure access to health care and evaluations of the employee's health care and income benefits eligibility.

Proposed subsection (c) describes various certification levels, the training necessary to achieve each certification level, and the authorizations allowed once certified. Higher certification requires more training but this is partially offset by increasing the amount of time the doctor has between trainings. Though the highest level of certification requires 2.5 days of training (plus passage of a test on impairment ratings), it should be noted that the training will be certified for continuing medical education credits.

Proposed subsection (c)(1) states that all doctors on the ADL regardless of their ADL Certification Level, are authorized, within the scope of their licensure to provide treatment to an employee, evaluate an employee's ability to work and any work restrictions, evaluate an employee's medical condition, and serve as a referral, consulting, peer review, or utilization review doctor. This subsection is included to prevent repetition among the various certification levels.

Proposed subsection (c)(2) describes the requirements and authorizations of an ADL Level 1 Certification. This level of certification requires a doctor to complete a training course emphasizing the basics of worker's compensation, return to work, and

efficient utilization of care once every two years. Achieving this level of certification authorizes a doctor to provide only the standard services described in subsection (c)(1). A doctor with a Level 1 Certification is not authorized to serve as a treating doctor, RME doctor, designated doctor, serve on the Medical Quality Review Panel, or certify MMI or evaluate permanent impairment. Level 1 Certification is intended to be used by doctors who wish to serve as consulting, referral, peer review, or utilization review doctors and not serve as the primary provider on a claim.

Proposed subsection (c)(3) requires a doctor seeking a Level 2 Certification to complete the training required for level 1 certification and a second training module that covers certifications of MMI and the evaluation of permanent impairment. This training is required every three years. A doctor with a Level 2 Certification has all of the standard authorizations and is also authorized to serve as an RME or treating doctor and to certify MMI and evaluate permanent impairment. However, a doctor with Level 2 Certification is not authorized to serve as a designated doctor, or serve on the Medical Quality Review Panel.

The reason that the commission proposes that RME doctors be required to have Level 2 Certification is that carriers are required to use the same RME doctor on a claim unless good cause exists for a change to a different RME doctor. One of the main differences between Level 1 and Level 2 Certification is the authority to certify MMI and assign impairment ratings. Although HB-2600 has de-emphasized the role of the RME doctor relating to MMI and impairment ratings (by limiting carrier RMEs in this situation to after a designated doctor examination), the commission believes that RME doctors should be trained to evaluate MMI and impairment rather than setting up two "classes" of RME doctors and having employees regularly seeing more than one RME doctor.

Proposed subsection (c)(4) states the requirements for a Level 3 Certification. A doctor who completes Level 2 Certification training and a third training module covering case studies and successfully passes an Impairment Evaluation Skills Examination every five years will be certified at Level 3. A doctor with Level 3 Certification has all of the authorizations of a doctor with Level 2 Certification but is also authorized to serve as a designated doctor and to serve on the Medical Quality Review Panel (if the doctor applies and is chosen by the Medical Director). The only limit on the authorizations of a doctor with Level 3 Certification are those imposed by licensure, the Statute and Rules, or the commission.

Proposed subsection (c)(5) offers an alternative certification level X, for those doctors who want to participate in the Texas workers' compensation system on a limited basis by making an exception to the training requirements in the previous subsections. This proposed certification level and its training requirements are supported by HB-2600's requirement that the commission modify the registration and training requirements for doctors who infrequently provide health care (often referred to as "low volume doctors").

Level X Certification requires a doctor to complete self-study training course (eventually to be internet based), and it provides the doctor all the authorizations of a Level 2 Certification with some exceptions. First, the doctors may only perform evaluations, provide care or medical opinions on no more than 12 employees per year. The number 12 was chosen based upon similar requirements in the workers' compensation system in Florida. The other exception is that a doctor with Level X Certification may only certify MMI and evaluate permanent impairment if granted permission by the commission on a case-by-case basis.

It is likely that out-of-state providers who are providing care to an employee who was injured in, or moved to, another state will seek Level X Certification. However, the commission does not intend Level X Certification to be applied exclusively to out-of-state doctors. There are likely to be in-state doctors who general don't wish to participate in the Texas workers' compensation system but who wish serve as the treating doctor to an employee whom the doctor already serves as primary care physician. Further, there are a number of out-of-state providers who regularly provide treatment to employees living in Texas (particularly near border regions). These doctors are welcome to participate in the system (assuming they comply with the Statute and Rules and are approved to be on the ADL). However, if they wish to treat more than 12 employees per year, they will need to go through the training and seek certification at the level that authorizes them to serve in the roles they are seeking.

Proposed subsection (d) requires that a doctor seeking Level 1, 2, and 3 Certifications must receive training from a commission-approved sponsor (vendor). As noted, training for Level X Certification will eventually be internet-based. In addition, the commission may approve distance-learning, interactive training for Level 1, 2, and 3 Certification such as through video conferencing.

Proposed subsection (e) requires a person who seeks to be approved to provide training under this rule to apply for commission approval in the form and manner prescribed by the commission.

Proposed subsection (f) explains that the commission approved trainer shall file or provide the registration and training information for each doctor applying to the ADL, in the form and manner prescribed by the commission. The commission's intent is that a doctor will attend the training and provide the commission approved trainer with their application for registration and financial disclosure information. This information will then be recorded in an electronic file that is transmitted to the commission for processing along with the paper copies for commission records.

The commission proposes this arrangement as a time-saving measure in processing thousands of ADL applications by August 1, 2003. By having the commission approved trainers provide the information electronically, the commission will be able to concentrate its efforts on reviewing the applications rather than data-entering them.

Proposed subsection (g)(1) prohibits a doctor not licensed in this state from performing utilization review and/or peer review for an carrier or its agent, unless directed by a doctor who: is licensed in this state, on the ADL, has a Level 3 Certification, and agrees to direct the doctor's reviews. This requirement comes from HB-2600.

Proposed subsection (g)(2) states that the commission may restrict or reduce a doctor's privileges or authorizations as provided by the Statute or Rules. Section 180.26 lays out the various types of sanctions the commission may impose on a doctor. This subsection is designed to ensure that the two rules are not read in such a way as to limit the commission's ability to impose sanctions that reduce a doctor's certification level or authorization.

Add New §180.24--Financial Disclosure

This new rule is proposed to comply with statutory mandates in the Texas Labor Code. Prior to the 77th Texas Legislative

Session, 2001, §413.041 of the Texas Labor Code required the commission to adopt rules mandating an annual disclosure requirement by a health care provider who refers an employee to another health care provider in which the referring provider has more than a five percent financial interest. Disclosure to the commission and insurance carriers was required. Currently, financial disclosure is governed by §134.100 and §134.101 of this title (relating to Provider Disclosure of Financial Interest, Submission to the Commission and Provider Disclosure of Financial Interest, Submission to the Carrier, respectively).

HB-2600 amended §413.041. The revised statute requires each health care practitioner to disclose to the commission the identity of any health care provider in which the health care practitioner, or the health care provider that employs the doctor, has a financial interest. It further requires the health care practitioner to make the disclosure in the manner provided by commission rule. The revised statute also provides that the commission, by rule, require that a doctor disclose financial interests in other health care providers as a condition of registration for the approved doctor list established under §408.023, and to define "financial interest" for purposes of the subsection as provided by analogous federal regulations. The section also provides an administrative penalty for failure to disclose the interest and includes forfeiture of the right to reimbursement for services rendered during the period of noncompliance.

In proposing §180.24, the commission intends to replace §134.100 and §134.101 with a single rule that covers disclosure to both the commission and carriers.

Proposed subsection (a) sets forth the definitions relevant to the section. The subsection defines "financial interest" consistent with the definition of "financial relationship" found in Title 42, United States Code §1395nn and incorporates the exceptions to that statute that have been adopted as of the date this rule is adopted. The rule always provides a mechanism to review and incorporate changes to exceptions which may be adopted in the future. The term "compensation arrangement" is also defined consistent with statute. The term "immediate family member" is not defined by the statute. The proposed definition is based on the definition found in 42 CFR 411.351 (relating to physician referrals for Medicare services). The regulatory exceptions include those found at 66 *Federal Register* 856 (January 4, 2001) pertaining to 42 CFR Parts 411 and 424, and effective on January 4, 2002.

Proposed subsection (b) lays out requirements for financial disclosure reporting to the commission.

Proposed subsection (b)(1) requires that a health care practitioner report any financial interest to the commission when the health care practitioner becomes a system participant. The interest may be either a direct or indirect ownership or direct or indirect compensation arrangement of the health care practitioner, the health care provider who employs the health care practitioner, or an interest of an immediate family member. To be in compliance with the subsection, the health care practitioner must disclose newly acquired interests not later than 30 days from its acquisition. The proposed 30 day disclosure requirement is similar to the current requirement except that the duty to make the disclosure is tied to the assumption of the interest rather than making the first referral. Tying the reporting duty to the assumption of the interest should make it easier for providers to remember to report the interest.

Proposed subsection (b)(2) requires that a doctor, as a condition for a certificate of registration for the ADL, report all financial interest to the commission at the time of application for a certificate of registration for the approved doctor list on the form and in the manner prescribed by the commission. The interest may be either a direct or indirect ownership or direct or indirect compensation arrangement of the health care practitioner, the health care provider who employs the health care practitioner, or an interest of an immediate family member. To be in compliance with the subsection, the doctor must disclose newly acquired interests not later than 30 days from their acquisition.

Proposed subsection (b)(3) explains what must be contained in the disclosure. As a minimum, the disclosure must contain: the disclosing health care practitioner's name, business address, federal tax identification number, professional license number and any other unique identification number, the name(s), business address(es), federal tax identification number(s), professional license number(s), and any other unique identification number of the health care provider(s) in which the disclosing health care practitioner has a financial interest; the nature of the financial interest, including, but not limited to: percentage of ownership, type of ownership (e.g., direct or indirect, equity, mortgage), type of compensation arrangement (e.g, salary, contractual arrangement, stock as part of a salary payment) and the entity with the ownership (disclosing health care practitioner, the health care provider who employs the health care practitioner, or an immediate family member of the health care practitioner).

Proposed subsection (c) lays out requirements for financial disclosure reporting to carriers. It should be noted that Texas Labor Code §413.041 as amended by HB-2600 no longer includes a specific requirement to report financial interest to carriers. However, the commission believes that this reporting is necessary in order to ensure effective operation of the provisions of §413.041 which prohibit compensation for a provider who is out of compliance with the financial disclosure requirements of the Statute and Rules. Further, the underlying premise of the financial disclosure requirements seems to be that referrals when the referring provider has financial interest may need extra scrutiny to determine reasonableness and necessity. Since carriers make the initial determinations regarding payment of medical benefits in the Texas workers' compensation system, they will need disclosure information. Further, under §134.101, doctors are currently required to make such disclosure within 7 days of initially making a referral where there is a financial interest. Therefore, proposed subsection (c) imposes a similar requirement. Further supporting the commission's authority to do this is Texas Labor Code §408.0025, which authorizes the commission to adopt requirements regarding reports and records.

Section 180.24(d) addresses the consequences of a failure to disclose. Failure to disclose a financial interest has a number of consequences. First, as with any failure to comply with the Statute and Rules, proposed subsection (d) provides that the commission may take enforcement action as otherwise authorized. In addition, a health care practitioner, including a doctor, who fails to comply with any provisions of the section may be subject to a forfeiture of payments for all services, treatments or health care provided on a specific claim that is provided during a period of noncompliance even if the services themselves did not implicate any disclosure requirements.

Specific enforcement citations and violation language are not contained in the rule as they would be redundant to the statute.

Failure to include enforcement language does not limit the commission's authority to take enforcement action for violations of this or any other rule. The commission's authority to enforce the statute and rules is granted in multiple provisions of the statute and duplicate language in rules is redundant and unnecessary.

Proposed subsection (d)(1) prohibits a health care practitioner who rendered services on a claim during a period in which the practitioner did not comply with the disclosure requirements of the section, regardless of whether the circumstances of the services themselves were subject to disclosure, and regardless of whether the services were medically necessary, from presenting or causing to be presented a claim or bill to any individual, third party payer, or other entity for those services. Services include any treatments or health care provided.

Proposed subsection (d)(2) makes clear that a health care practitioner who collects any amounts that were billed for services on a claim during a period in which the practitioner did not comply with the disclosure requirements under the section, regardless of whether the circumstances of the services themselves were subject to disclosure, and regardless of whether the services were medically necessary shall be liable to the individual or entity for, is responsible for timely refunding any amounts collected, regardless of whether the services were medically necessary. Services include any treatments or health care provided. Refunds shall be deemed to have been timely paid if they are paid within 45 days of the date the request for refund is received by the practitioner (as provided in §133.304 relating to Medical Payments and Denials).

Proposed subsection (d)(3) provides that a referral for services to a health care provider by a health care practitioner under circumstances in which required a disclosure under the section, but were not disclosed as required, creates a rebuttable presumption that the services were not medically necessary. Services include any treatments or health care provided. The presumption is justified by both the absence of disclosure and a number of studies that consistently found that physicians who had ownership or investment interests in entities to which they referred ordered more services than physicians without those financial relationships (some of these studies involved compensation as well). Increased utilization occurred whether the physician owned shares in a separate company that provided ancillary services or owned the equipment and provided the services as part of his or her medical practice. This correlation between financial ties and increased utilization was the impetus for Congressional action resulting in section 1877 of the Social Security Act. See 66 Federal Register 856, 859 (January 4, 2001).

Add New §180.25--Improper Inducements, Influence, and Threats

HB-2600 requires the commission to adopt federal standards relating to fraud, abuse, and antikickbacks that prohibit the payment or acceptance of payment in exchange for health care referrals. An employee is entitled to reasonable and necessary medical care. Providing fees for referrals creates an incentive to over-prescribe care and unnecessarily add costs to the workers' compensation system. In addition, the commission has noted that there are other attempts to improperly induce system participants (sometimes including threats) as relates to medical benefits. The purpose of proposed §180.25 is to address these improper inducements.

Proposed subsection (a) provides an overview of the intent of the rule and makes it clear that the rule applies to all system participants and their agents. The subsection generally prohibits offering, paying, soliciting, or receiving an improper inducement relating to medical benefit delivery and any improper attempts to influence medical benefit delivery, including through the making of improper threats.

Proposed subsection (b) lays out the specific conduct that will be deemed to be an improper inducement, influence or threat. Conduct which violates subsection (a) is prohibited regardless of whether it is specifically listed in subsection (b).

Proposed subsection (b)(1) and (2) relate to the federal standards. They cover soliciting, receiving, offering, or paying any remuneration for referrals and generally adopt the federal provisions in Title 42, United States Code §1320a-7b (Antikickback Statute). Section 180.25(c) provides that the exceptions found in the federal statute apply to these two subsections. The language is constructed in such a way that a third party is not permitted to engage in these activities either.

Proposed subsection (b)(3) and (4) prohibits attempting to influence where an employee seeks medical care by offering financial or other incentives such as favorable medical opinions that could impact the employee's benefits or offering to keep the employee off of work. The subsection also prohibits providing such incentives to attempt to influence the employee to comply with the provider's treatment plans.

This makes clear that, although the offering of the inducement under subsection (b)(4) requires a level of knowledge, the knowledge requirement does not extend to knowing that the inducement may cause a particular provider to be selected, if a reasonable person could conclude that such would be the result. The inducement is improper whether it is offered directly or indirectly, overtly or covertly, in cash or in kind. For example, this provision would prohibit the offering of a store gift certificate to provide supplemental food and clothing support while an injured employee participated in a single or multidisciplinary program, such as work conditioning or work hardening.

Offering an employee the income benefit enhancements provided by §408.0222 in exchange for treating within a regional network established under that subsection is an exception under the prohibition. Another exception is for providing conveniences such as transportation, translation services, and claim filing information, etc., that make it easier to obtain reasonable and necessary medical care if the conveniences are generally available to all patients, including nonworkers' compensation patients.

Proposed subsection (b)(5) prohibits attempting to influence the opinion of a provider or carrier by threatening to file a complaint or embroil them in other legal action. Medical benefit delivery is to be based solely upon reasonableness and medical necessity. This subsection is meant to prevent a chilling effect on the professional opinion of system participants performing duties arising under the Statute or Rules that may result from the threat of harassment through frivolous allegations. Frivolous assertions may result from a lack of facts to support the claim, a lack of legal basis for the claim, or a lack of legal authority of the body with whom the assertion is filed to act on the claim by sanctions, disciplinary action and the like. Like the other inducements described in subsection (b), attempting to influence benefit delivery with threats is improper and prohibited.

Proposed subsection (c) provides exceptions to subsection (b)(1) and (2). The proposed exceptions are those that apply to analogous provisions in Title 42, United States Code §1320a-7b(3). HB-2600 mandates that the commission by rule

shall adopt the federal standards that prohibit the payment or acceptance of payment in exchange for health care referrals. Therefore, unlike the exceptions found in §180.24(a)(2)(C), the exceptions to this section include all current and future federal statutory and regulatory exceptions.

Add New §180.26--Doctor and Insurance Carrier Sanctions

This rule replaces requirements currently in §126.8(d) and expands them based upon the provisions of HB-2600. The rule lays out the grounds (conduct, actions, inactions, and events) that will require the Executive Director to delete a doctor from the Approved Doctor's List (ADL); the grounds that allow the commission to either delete a doctor or issue a sanction against a carrier or doctor; the evidence the commission may consider as conclusively establishing the grounds to issue a sanction; and the types of sanction the commission may issue.

The chief changes between this rule the old rule are that under the old rule, the commission was only authorized to delete a doctor from the ADL and the threshold for invoking that authority differed from HB-2600's provisions. As a result, what was previously a single subsection in §126.8 is now a separate rule.

Proposed subsection (a) clarifies that sanctions provided and imposed under this rule are in addition to sanctions provided by Statute or other Rules and otherwise serves as an overview for the rule.

Proposed subsection (b) outlines the grounds that will require the Executive Director to delete a doctor from the Approved Doctor's List. This subsection is based upon new Texas Labor Code §408.0231 which states that the Executive Director "shall delete from the list of approved doctors" if any of four conditions apply. The proposed subsection of the rule is virtually identical to the language in §408.0231 except that it adds clarification to one of the conditions. Section 408.0231(a)(3) provides for deletion by the Executive Director if the doctor's license to practice in this state "is revoked, suspended, or not renewed by the appropriate licensing authority". Proposed subsection (b) makes it clear that voluntary relinquishment of a license by a doctor or deferred suspension or revocation by the licensing authority are covered by the subsection.

Proposed subsections (c) and (d) outline the grounds under which Medical Advisor shall recommend a doctor (any type of doctor) for removal from the ADL or may recommend removal or other sanctions against a doctor or a carrier. Proposed subsection (c) covers grounds for deletion and proposed subsection (d) provides grounds for deletions and other sanctions. The two subsections are very similar with some grounds appearing to be identical. However, this is not the case. The main difference between the two subsections is that subsection (c) covers mandatory removal for "significant violations" while subsection (d) covers discretionary removals and other sanctions for other violations.

As noted, proposed amendments to §180.1 provide a definition of "significant violation" to help clarify this proposed rule. A significant violation is basically one which was Wilfully committed, which was part of an uncorrected pattern of practice, which resulted or could have resulted in significant harm to an employee or another system participant, or which, based upon the facts of the violation, raise reasonable concern about a violator's ability to conform its future conduct to applicable laws and rules. It is worth noting that the term "significant violation" is not applied only to violations of the Statute and Rules. It can also be a significant violation of regulations enforced by another regulatory body.

Proposed subsection (c) lists the grounds for deletion and provides a non-inclusive list of examples where it was believed that such as list would provide clarification. Texas Labor Code §408.0231(c) amends the list of factors that the commission can consider for deleting a doctor or imposing other sanctions on a carrier or doctor. The commission can use "anything [it] considers relevant" and the list of examples that was already in the statute was made broader.

Proposed subsection (c)(1) states that the Medical Advisor shall recommend deletion of a doctor who commits a significant violation of the Statute, Rules or a commission decision or order. Listed examples include wilful or intentional violations as well as violations that are part of an uncorrected pattern. The commission believes that if a doctor commits a wilful or intentional violation, or if the doctor continues a pattern of conduct that violates the Statute, Rules, or commission decisions or orders even after the doctor was notified of the noncompliance of the conduct, the doctor has demonstrated an unwillingness to abide by the requirements of the Statute and Rules and should not be allowed to participate in the Texas workers' compensation system.

Proposed subsection (c)(2) is similar to subsection (c)(1) in that it involves significant violations but in this case, it is significant violations of statutes or regulations not administered by the commission. For example, behavior that causes sanctions by the Medicare or Medicaid programs is considered to be a significant violation.

Proposed subsection (c)(3) provides for deletion for "professional failure to practice medicine or provide health care, including chiropractic care, in an acceptable manner consistent with the public health safety and welfare". Included as examples of this are things like negligent practices that result in or substantially increase the probability of death or injury to a patient. Some other examples include excessive surgical care, excessive complications, having an uncorrected pattern of failing to timely and appropriately release an employee to return to work. The commission anticipates using benchmarks, guidelines, and the QRP to establish the grounds in this subsection. The proposed subsection references benchmarks rather than specific thresholds because over time, benchmarks fluctuate as standards of care change due to new techniques and technology. Setting specific thresholds in the rule would limit the commission's ability to ensure that the quality of care in the workers' compensation system keeps pace with advances in quality in other health care systems.

Proposed subsection (c)(4) provides for deletion if a doctor has a significant (uncorrected or wilful) pattern of conduct relating to the delivery of health care that the commission finds is not fair and reasonable or that the commission determines does not meet professionally recognized standards of health care. Some examples of this include unjustifiable differences between the doctor's diagnoses or treatments and acceptable standards of care; administering improper, unreasonable, or medically unnecessary treatment or services and/or seeking preauthorization for same; making unnecessary referrals; and having a practice of submitting medical bills with a pattern of inappropriate coding or which is abusive or violates Rules and Guidelines including but not limited to, such practices as upcoding and unbundling as defined in §133.1 (relating to Definitions) and which, if relied upon

by the carrier, has the potential of unlawfully increasing the doctor's fee.

Proposed subsection (c)(5) provides for deletion for dishonest or criminal conduct. Though this may appear redundant to proposed subsection (c)(2), the commission proposes giving this its own subsection to emphasize it.

Proposed subsection (c)(6) provides for deletion in a case where a doctor refuses to refund moneys improperly paid to the doctor. Doctors are entitled to specific fees for reasonable and necessary medical care assuming the care was provided and billed in accordance with the Statute and Rules. If the commission finds that the doctor was paid moneys he or she was not entitled to or was otherwise overpaid, the doctor is expected to comply with the refund order. Failure to do so (after opportunity for appeal of the order) constitutes a wilful violation of the order and represents conduct that warrants deletion.

Proposed subsection (c)(7) is a "catch-all" category that allows the commission to recommend deletion for conduct not specifically stated in the rule but which otherwise rises to the level that makes it appropriate to recommend deletion. This subsection is functionally identical to language contained in current §126.8.

Proposed subsection (d) lists discretionary grounds for suspension, deletion, or other sanction. Because the grounds under this section are similar to the grounds under subsection (c), no examples were provided under subsection (d). The examples under subsection (c) can apply to subsection (d). For example, both proposed subsections (c) and (d) reference "conduct relating to the delivery of health care that the commission finds is not fair and reasonable or that the commission determines does not meet professionally recognized standards of health care." However subsection (c), addresses a "significant (uncorrected or wilful) pattern of practice" and subsection (d) does not require a significant pattern of practice.

Proposed subsection (d) also provides that the commission issue a sanction for violation of the Statute, Rules, or commission decision or order; or violation of other statutes or regulations not administered by the commission but relevant to the provision of and payments for health care as well as "other activities which warrant sanction".

One similar feature of proposed subsection (d) is that it provides for sanction if there is a refusal to "pay moneys owed to a health care provider". The reason this is in subsection (d) instead of subsection (c) like the analogous provision for doctors refusing to pay refunds is that the commission is not authorized to "delete" a carrier under HB-2600. Therefore, this provision was put under the subsection providing for grounds for sanctions.

Proposed subsection (e) provides for immediate and binding suspension from the ADL for a doctor who fails to maintain his or her training requirements. It also provides for immediate reinstatement upon providing the commission documentation that proves the doctor brought his or her training up to date. Reinstatement shall be retroactive back to the date the training was brought up to date.

The rule proposes immediate and binding suspension in these circumstances because being trained is a minimal qualification for being on the ADL. Because a doctor who is not trained is not eligible to be on the list and because doctor's are given notice of expiration of training at least 60 days prior to expiration (required by Texas Labor Code §408.023(d)), the commission believes this appropriate.

Proposed subsection (f) identifies different types of evidence that the commission can use to establish the grounds for issuing a sanction against a carrier or doctor (including deleting or suspending a doctor). The intent of this section is to allow the commission to use facts already established through adjudication, agreement, no contest plea or other finding by a regulatory entity, hearing, court, or administrative review process. This will save the commission the expense of reestablishing facts already established should the recommendation for sanction or deletion be appealed. The subsection also notes that information obtained from any source (including expert opinions such as from the QRP) can be used as well.

Proposed subsection (g) states which of the types of evidence listed in subsection (f) are conclusive evidence.

Proposed subsection (h) lists the sanctions that the commission is authorized to impose or recommend against a doctor or carrier. The list is identical to Texas Labor Code §408.0231(f) but it contains some parenthetical examples to try to explain what form the sanctions might take.

Proposed subsection (i) states that a doctor deleted or suspended from the ADL may not provide health care or receive remuneration after being deleted or while suspended. The definition of remuneration in proposed §180.1 is "any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind including, but not limited to forgiveness of debt." Therefore, by prohibiting remuneration to a doctor who has been deleted or suspended from the ADL, the commission intends that health care providers in which the doctor has a financial interest will not be permitted to receive remuneration either (because this remuneration would take the form of an indirect payment to the doctor who was deleted or suspended).

Add New §180.27--Sanctions Process/Appeals/Restoration/Reinstatement

This rule replaces requirements currently in §126.8(e) - (h) and modifies them based upon the provisions of HB-2600. The rule lays out the process for issuing sanctions authorized by §180.26, the process for appeals, and the processes for requesting and reviewing requests for reinstatement to the list or restoration of privileges (restricted by sanction). In addition, the analogous processes currently in §126.10 (relating to Commission Approved List of Designated Doctors) are replaced with those in this rule.

Some of the requirements of the proposed rule are the same as they were under §126.8 and §126.10 others are not. One difference is that this rule also applies to sanctions involving carriers while the current rules do not. Where proposed processes are different, they will be noted.

Proposed subsection (a) requires the commission to send notice of its intent to recommend or impose a sanction to the person by verifiable means. Current §126.8 and §126.10 went into more detail about how such notice was to be sent (certified mail with return receipt requested). However, certified mail is but one way to verify delivery and so the commission recommends language that will allow more flexibility to use other means of delivery.

Proposed subsection (a) also provides that the person has 20 days to request a hearing or the sanction recommendation will go to commissioners for their approval. This is not unlike how it is under current §126.8 (for ADL deletions) but it is very different than current §126.10 (for DDL suspensions or deletions). Current §126.10 only provided for an administrative review by the

commission and the doctor had only 14 days to file it. However, HB-2600, by listing "deletion or suspension from the approved doctor and designated doctor lists", seems to require actions relating to designated doctors to be handled as they are for other sanctions. This means that the doctor is entitled to request a hearing.

The proposed subsection also provides that if a hearing is not timely requested then the commissioners shall act on the recommendation at a public meeting. If a hearing was requested, the commission generally will have the burden of proof unless the recommendation is based upon facts already established/adjudicated.

Proposed subsection (b) provides that if the commission modifies, amends, or changes the a recommended finding of fact or conclusion of law or order of the administrative law judge's (ALJ), the commission's final order shall state the legal basis and specific reasons for the change. The intent of this subsection is to ensure that the commission's reasoning is well documented should the commission's order be appealed.

Proposed subsection (c) requires the commission to provide copies of an order for sanction to the employees being treated by the doctor and requires the doctors to do the same. This requirement is a carryover from the current requirements of §126.8.

The reason that the commission wants employees to be informed is to ensure that they both understand that sanctions have been imposed and to understand why the sanctions were imposed. It is important for employees to know both of these things so that (even if the doctor was not deleted) they decided whether they want to change doctors. For example, the sanctions might impact their access to care that might cause them to want to change. Alternately, when they hear the grounds for the sanction, it might make them concerned about the quality of care they are receiving.

Proposed subsection (d) provides that the commission can issue further sanctions against a person who fails to comply with sanctions.

Proposed subsection (e) allows a person who was sanctioned to request the sanction be lifted (whether through restoration of privileges or readmission to the list the doctor was deleted or suspended from). Requests shall be evaluated by the Medical Advisor and the QRP. The subsection also requires the requestor to pay for the cost of the review, which may involve an audit of the doctor or carrier's practices in order to establish the that sanctions should be lifted. This charge is authorized by Texas Labor Code §402.064 which requires the commission to set reasonable fees for services requested from the commission.

Subsection (f) provides that if the Medical Advisor believes it is appropriate to lift the sanctions, that the commissioners shall receive and act on that recommendation. If the Medical Advisor does not believe that it is appropriate to lift the sanctions, the requestor shall be notified and have the opportunity to respond within 14 days. The response would be reviewed by the Medical Advisor and a final recommendation made to the commissioners who will also be provided a copy of the doctor's response.

This proposed process is similar to the process currently in place for actions relating to the DDL but different than the current process for requests for reinstatement to the ADL. Section 126.8 currently provides for a hearing if a doctor requests reinstatement to the ADL. Though this is a current requirement, it was not a statutory requirement prior to HB-2600 and HB-2600 did not change this.

Dr. Bill Nemeth, the commission's Medical Advisor, has determined the following with respect to fiscal impact for the first five-year period the proposed amended and new rules are in effect.

With regard to enforcement and administration of the rules by state or local governments there will be no significant impact on local governments. However, there are significant fiscal implications to the commission because of the need to develop or modify automated systems, review thousands of applications for the ADL, and train and monitor doctors and carriers, and train commission staff. However, it is difficult to quantify these costs. The ability of the Executive Director to administratively remove some doctors from the ADL should decrease some costs for the commission.

Local government and state government as covered regulated entities, will be impacted in the same manner as persons required to comply with the rules as proposed.

Dr. Nemeth has determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rules will be better access to higher quality medical care, reduced medical and indemnity claims costs (which will eventually result in reduced premiums), and more timely returns to work. However these benefits will increase over time and may not be significant in the first two years as the requirements of the rules will not be fully implemented by then.

Employees

Employees will benefit in a number of ways. The intent of HB-2600, and these rules is to ensure that employees have access to doctors who will provide timely quality care that is designed to cure or relieve the effects naturally resulting from the compensable injury, promote recovery, and/or enhance the ability of the employee to return to or retain employment. The commission expects that employees will see improvements in these areas as a result of the new rules. The exceptions provided for some out-of-state and low-volume doctors should help ensure employee access to quality health care.

The training relating to MMI and impairment should provide a number of benefits. Employees should receive more accurate impairment ratings and this will ensure that they get the benefits they are entitled to. More accurate impairment ratings should also reduce disputes and this should reduce the number of employee exams required and reduce delays in employees receiving their benefits. Disputes relating to MMI date should also be reduced because doctors will be better educated on how to certify MMI.

Studies have shown that employees who remain off of work longer are less likely to ever return to work at wages approaching those they were earning while injured. The emphasis on timely return to work in the training that doctors will receive should result in fewer employees remaining off of work longer than medically appropriate. As a result, the long-term impact of injuries on employees should be lessened.

Currently carriers utilizing the medical opinions of doctors who are not fully trained in Texas workers' compensation law often interrupt employees' medical care. By educating peer review and utilization review doctors, disputes that affect benefit delivery

may be avoided. Reductions in disputes should improve medical benefit delivery, lower frustration, and speed recovery. Education and training of designated doctors should result in faster resolution of disputes.

Employees are not expected to see an increase in costs as a result of these rules. Employees who are currently kept off of work longer than is appropriate might receive fewer benefits under the new rules but this is off set by the benefit of returning to work.

Health Care Providers

Doctors will similarly benefit from these rules in a number of ways. First, as noted, carrier-selected doctors will be better trained and this should reduce unnecessary disputes (both prospective and retrospective). With costs currently very high and rising, action by some carriers designed to address non-compliant doctors may be affecting some doctors who are compliant. To the extent that the commission is able to reduce the number of non-compliant doctors (e. g. by changing behavior or removing the doctors who won't change), the remaining doctors should experience increased efficiencies in the handling of their claims. In addition, these doctors are likely to see an increase in their worker's compensation business.

Currently some doctors offer improper inducements to employees in order to get the employees to change doctors. Often the doctors who are doing this are the doctors who keep employees off work longer than medically necessary and otherwise add to system costs by overutilizing care. The prohibition of improper inducements and the efforts to remove non-compliant doctors, should also increase workers' compensation business for those who comply with system rules and regulations.

Another benefit to providers is that the commission's ability to sanction carriers for quality of care issues is expanded by these rules. The increased ability to hold carriers responsible for their actions and inactions should result in improved compliance and, as a result, payments of medical bills may be more timely and accurate while disputes may be reduced.

Some doctors may see a slight increase in costs associated with obtaining email access and with having to take periodic training. However these increases are expected to be nominal and the statute requires that the commission establish some training requirements. Doctors already have continuing education requirements which are required for them to keep their licenses in good standing. Since the required training will be certified for continuing education credit, doctors will be able to fulfill two requirements at once. Treating doctors may also experience some costs associated with reporting outcome information to the commission. However, this requirement is mandated by the Legislature.

The expanded financial disclosure requirements may also increase some costs to providers, however, these requirements were also mandated by the Legislature.

Insurance carriers

Insurance carriers will benefit from the lower costs that will come as the system transitions from using an open list of approved doctors to using a controlled list of doctors specially trained in Texas workers' compensation. Prior to HB-2600, the commission's ability to exclude or otherwise limit doctors from participation in the system was limited. The system has seen workers' compensation costs (both indemnity and medical costs) rise significantly, especially when compared to costs in other states. To the extent that the commission is able to change utilization and return to work patterns (e.g. by changing behavior or by removing doctors who won't change behavior), costs shall be reduced.

In addition, with full financial disclosure, carriers will be able to give extra scrutiny to medical services provided through a self-referral by the doctor. Though these services may be reasonable and necessary, doctors who self-refer have an additional incentive to make the referral and thus additional scrutiny may be appropriate.

Similarly, prohibitions against improper inducements should ensure that only those benefits that the employee is truly entitled to are delivered.

The commission's expanded ability to remove doctors from the system should help increase compliance with the Statute and Rules. This should reduce claim costs by reducing overpayments caused by late reports by doctors.

Employers

Because insurance premiums are driven by claim costs, employers will see benefits to the extent that the commission is able to successfully implement HB-2600. Employers should benefit because the new rules should promote earlier returns to work. The earlier returns to work should also reduce the loss of productivity that an injury can cause. Employers should not see an increase in costs associated with these rules.

There will be no adverse economic impact on small businesses or on micro-businesses as a result of the proposed rule amendments. There will be only a proportionate difference in the cost of compliance for small businesses and micro-businesses as compared to the largest businesses, including state and local government entities. The same basic processes and procedures apply, regardless of the size or volume of the business. The business size cost difference will be in direct proportion to the volume of business that falls under the purview of these proposed rules.

Comments on the proposal must be received by 5:00 p.m., October 1, 2001. You may comment via the Internet by accessing the commission's website at *http://www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments. You may also email your comments to *RuleComments@twcc.state.tx.us* or mail or deliver your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific subsection and paragraph commented upon. The commission may not be able to respond to comments which cannot be linked to a particular proposed subsection. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations. Unspecified comments submitted will not be addressed.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect with reference to specifics in the proposed rule amendments.

A public hearing on this proposal will be held on October 2, 2001, at the Austin central office of the commission (Southfield Building, 4000 South IH-35, Austin, Texas). Those persons interested in attending the public hearing should contact the commission's Office of Executive Communication at (512) 804-4430 to confirm the date, time, and location of the public hearing for this proposal. The public hearing schedule will also be available on the commission's website at *http://www.twcc.state.tx.us*.

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

28 TAC §180.1, §180.7

The proposed amended rule is proposed under: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code§ 413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of Medical Advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. §414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

The amendments are affected by the following rules: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees

that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of Medical Advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. Section 414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

§180.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. [~~Other terms such as "willful", "intentional", and "knowingly" shall have the meanings defined by the Texas Penal Code.~~]

(1) Abusive practice--A practice that:

(A) does not meet professionally recognized standards for health care or insurance claims adjusting; or

(B) does not meet standards required by Statute, Rules, or previous notification to system participant; or

(C) is inconsistent with sound fiscal, business, or medical practices and that results in:

(i) unnecessary system costs or in reimbursement for services that are not medically necessary; or

(ii) improper reduction or increase of benefits.

(2) Administrative Law Judge--An administrative law judge (ALJ) designated by the State Office of Administrative Hearings (SOAH) to preside over the hearing, or a hearing officer of a state or federal tribunal.

(3) Agent--A person or entity that a system participant (insurance carrier, health care provider, employer, employee or attorney), contracts with or utilizes for the purpose of providing claims service or fulfilling duties under the Statute and Rules. The system participant that the agent works on behalf of is responsible for the acts and omissions of that agent executed in performance of services for the participant.

(4) [~~(1)~~] Charged Person (also Alleged Violator)--The person who is charged with an administrative violation or wrongful act. As used in these rules, charged person includes both people initially charged and those found guilty of an administrative violation(s) [~~violations~~].

(5) Compliance--a person is in compliance if the person timely and accurately fulfills his or her duties under the Statute and Rules in the form and manner required (does not commit a violation by an act of omission or commission) and if the person does not commit an act which is prohibited.

(6) Continued Noncompliance (also Active Noncompliance)--A person is in "continued noncompliance" if the person has committed a violation of the Statute or Rules and has yet to take action to come into full compliance. For example, a person who fails to file a required report in the form and manner required by the commission (or who files an incomplete report) would be in "continued noncompliance"; the person could "get out" of continued noncompliance by filing a properly completed report (though, doing so would not eliminate the existence of a violation for failing to timely file a complete report in the first place). By contrast, a person who filed a required report in the form and manner prescribed by the commission but filed it late, would not be in "continued noncompliance".

(7) Controlled substances--"Controlled substance" as defined by the Texas Controlled Substances Act (Texas Civil Statutes, Article 4476-15) or its successor and the Federal Controlled Substances Act (21 USCA §8.01 et seq.) or its successor.

(8) Conviction or convicted--A person is considered to have been convicted of a criminal offense when:

(A) a judgment of conviction has been entered against the person by a federal, state, or local court, regardless of whether an appeal is pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged or whether the sentence is subsequently propbaeted and the person has been discharged from probation;

(B) the person has been found guilty by a federal, state, or local court and that finding has not been overturned on appeal;

(C) the person has entered a plea of guilty or nolo contendere (no contest) that has been accepted by a federal, state, or local court;

(D) the person has entered a first offender or other program and judgment of conviction has been withheld; or

(E) the person has received deferred adjudication.

(9) Emergency--As defined in §133.1 of this title (relating to Definitions).

(10) Intentionally--A person acts intentionally under this subsection with respect to the nature of his conduct or to a result of his

conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(11) Knowingly--A person acts knowingly with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(12) Noncompliance or Noncompliant Act- a violation of the Statute or Rules.

(13) [~~(2)~~] Pattern [~~Patterns~~] of Practice [~~conduct~~]--The acts or omissions of a participant in the workers' compensation system which are repeated. This term is synonymous with similar [~~the~~] terms such as "business practice", "pattern of conduct", [~~and~~] "matter of practice", etc.

(14) Rules--The commission's rules adopted under this Statute.

(15) Remuneration--any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind including, but not limited to forgiveness of debt.

(16) Significant Violation--a violation which:

(A) based upon the facts surrounding it, raises reasonable concern about a system participant's ability to conform its future conduct to applicable laws or rules;

(B) resulted or could have resulted in significant physical or emotional harm to an injured employee;

(C) resulted or could have resulted in significant economic harm to a system participant; or

(D) was either wilfully committed or which is part of an uncorrected pattern of practice.

(17) SOAH--The State Office of Administrative Hearings.

(18) System Participant--A person or entity required to comply with the Statute and Rules. This will generally be an insurance carrier (carrier), employer, health care provider (provider or HCP), attorney, injured employee (employee) or other claimant.

(19) Uncorrected Pattern of Practice--a pattern of practice which continues even after the commission notifies the person committing the violations of their noncompliance.

(20) Violation--a failure to comply with a duty established under the Statute or Rules or commission of an act prohibited by the Statute or Rules.

(21) Violator--a person found to have committed an administrative violation or another offense.

(22) Wilfully--intentionally or knowingly. Also, continuing conduct after being notified of noncompliance.

§180.7. Date [~~Administrative~~] Violation Deemed to [~~To~~] Have Occurred; Establishing Wilful Violations .

(a) A violation is [~~Administrative violations are~~] deemed to have occurred:

(1) on the date a noncompliant action is taken; or

(2) [~~on the date required by the Texas Workers' Compensation Act or rule,~~] when no action is taken by the close of business on the [~~that~~] date that the Statute or Rules requires an action to be taken.

(b) A violation may be deemed to be "wilful" if the person who committed the violation:

(1) did so knowingly or intentionally; or

(2) remains in continued noncompliance seven days after the date the commission brought the violation to the attention of the violator.

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 August 20, 2001.

TRD-200104905
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

28 TAC §180.2

The new rule is proposed under: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the

necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of Medical Advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. Section 414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

No other statutes, articles or codes are affected by this new rule.

§180.2. Referrals.

Any person may make a referral to the commission for fraudulent acts or omissions, for failure of a health care provider or an insurance carrier to provide/ensure quality medical care, or for other violations of the Statute or Rules.

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 August 20, 2001.

TRD-200104906
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §§180.20 - 180.27

The new rules are proposed under: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, the Texas Labor Code: §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.010 that authorizes the commission to adopt rules regarding claims service; the Texas Labor Code §408.021 that states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code §408.022 which address choice of treating doctor; the Texas Labor Code §408.023 which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list; the Texas Labor Code §408.0231 which provides the commission with the responsibility for maintenance of the list, with the authority for imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code §413.002, that requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code §413.011 that requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012 which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013 which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code §413.014 that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.017 that establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by

the carrier; the Texas Labor Code §413.031, that establishes the right to access medical dispute resolution; the Texas Labor Code §413.041 which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code §413.0511 which creates the position of Medical Advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code §413.0512 which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code, §413.0513 which lays out confidentiality provisions relating to the MQRP. Section 414.007, that allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and the Texas Labor Code §415.0035 that establishes administrative violations for repeated administrative violations.

No other statutes, articles or codes are affected by these new rules.

§180.20. Commission Approved Doctor List.

(a) Except in an emergency, as defined in §133.1 of this title (relating to Definitions) or for the immediate post-injury medical care (care provided by the first doctor visited by the employee on the date the employee first seeks medical attention for the workers' compensation injury or illness), on or after August 1, 2003, a doctor providing or evaluating medical treatment and services or an employee's medical condition (or receiving payment for same) related to a compensable workers' compensation injury or illness shall be on the commission's Approved Doctor List (ADL).

(b) A doctor licensed in this state or licensed by another jurisdiction may apply to be included on the ADL by:

(1) completing training required by §180.23 of this title (relating to Commission Required Training for Doctors/Certification Levels);

(2) applying for a certificate of registration with the commission in the form and manner prescribed by the commission; and

(3) disclosing financial interests as required by Texas Labor Code §413.041 and §180.24 of this title (relating to Financial Disclosure) with the application.

(c) An application for registration shall include:

(1) general contact information including, but not limited to: name, mailing address, voice and facsimile numbers and an email address;

(2) the training certificate indicating the level of training completed;

(3) Impairment Rating Skills Examination score, if applicable;

(4) verification of licensure;

(5) disciplinary actions or practice restrictions by an appropriate licensing or certification authority, if any; and

(6) if the doctor applying for the ADL is not licensed in this state but wishes to perform utilization review and/or peer reviews for an insurance carrier or its agent, a signed sponsorship affidavit by a doctor who is licensed in this state, who is on the ADL at Level 3 Certification (as provided in §180.23 of this title) and who has agreed to direct the doctor's reviews. This affidavit shall be in the form and manner prescribed by the commission.

(d) The commission may utilize the Medical Quality Review Panel for evaluating ADL applications and make recommendations to the Medical Advisor to approve or deny admission to the ADL.

(e) Doctors may be denied admission to the ADL or admitted with conditions or restrictions for:

(1) failing to submit a complete application in accordance with this section;

(2) failing to complete required training;

(3) having relevant restrictions on their practice (including, but not limited to prior deletion from the ADL); or

(4) other activities which warrant application denial or restriction including, but not limited to, grounds that would allow the commission to delete from the ADL or otherwise sanction a doctor as specified in §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or the Statute and Rules.

(f) The commission shall notify a doctor of the commission's approval or denial the doctor's application to the ADL. Denials shall include the reason(s) for the denial and be sent by a verifiable means of delivery. Within 14 days after receiving the notice, a doctor may file a response which addresses the reasons given for the denial.

(g) Any doctor on the ADL prior to the effective date of this section who does not apply to be on the ADL in accordance with subsections (b) and (c) of this section or who applies but is not approved under subsections (d) - (f) shall be deleted from the ADL on the earlier of:

(1) the date the doctor is denied approval; or

(2) August 1, 2003.

(h) Unless the commission has deleted or suspended the doctor from the ADL, a carrier shall not withhold reimbursement to a doctor licensed in another jurisdiction and/or who is a low-volume doctor (meaning the doctor is treating or evaluating 12 or fewer Texas workers' compensation employees per year) when the only reason for nonpayment is that the doctor was not on the ADL at the time the care was provided. In addition, a carrier shall not withhold reimbursement to a doctor providing medical care in an emergency or providing immediate post-injury medical care solely because the doctor who provided the care was not on the ADL at the time the care was provided.

(i) The commission shall make available through its internet website the names of:

(1) doctors on the ADL and their certification levels (once mandatory);

(2) doctors deleted from the list or otherwise sanctioned by the commission (including a description of the sanction); and

(3) doctors reinstated to the list or whose sanctions were lifted by the commission.

(j) Doctors on the ADL shall provide the commission with updated information within 30 days of a change in any of the information provided to the commission on the doctor's ADL application.

§180.21. Commission Designated Doctor List.

(a) In order to serve as designated doctor, a doctor must be on the Designated Doctor List (DDL).

(b) To be on the DDL prior to August 1, 2003, the doctor must:

(1) be currently active on the Approved Doctor List (ADL) as set forth in Texas Labor Code §408.023;

(2) have maintained for the past three years and continue to maintain routine office hours for the treatment of patients in an active practice of at least 20 hours per week;

(3) have filed a request to be on the DDL in the form and manner prescribed by the commission and been approved by the commission; and

(4) meet the following training requirements:

(A) have successfully completed commission-approved training in the proper use of the AMA Guides prior to submission of an application;

(B) successfully complete commission-approved training at least every two years from the date of the last training; and

(C) have passed the commission-approved written examination for impairment rating training within the timeframe as specified by the commission.

(c) To be on the DDL on or after August 1, 2003, the doctor must:

(1) be currently active on the ADL as set forth in Texas Labor Code §408.023 and §180.20 of this title (relating to Application for Registration/Commission Approved Doctor List);

(2) have maintained for the past one year and continue to maintain routine office hours for the treatment of patients in an active practice of at least 20 hours per week;

(3) have Level 3 Certification under §180.23 of this title (relating to Commission Required Training for Doctors/Certification Levels); and

(4) have filed a request in the form and manner prescribed by the commission, and have been approved by the commission to be included on the DDL.

(d) Any doctor on the DDL prior to August 1, 2003 who does not apply to be on the DDL in accordance with subsection (e) of this section or who applies but is not approved under subsections (f) - (h) shall be deleted from the DDL on the earlier of:

(1) the date the doctor is denied approval; or

(2) August 1, 2003.

(e) A DDL application shall include:

(1) general contact information including, but not limited to: name, mailing address, voice and facsimile numbers and an email address;

(2) the training certificate indicating the level of training completed;

(3) Impairment Rating Skills Examination score;

(4) verification of licensure;

(5) disciplinary actions or practice restrictions by an appropriate licensing or certification authority, if any.

(f) The commission may utilize the Medical Quality Review Panel for evaluating DDL applications and make recommendations to the Medical Advisor to approve or deny admission to the DDL. The commission may also utilize the Medical Quality Review Panel regarding deletion, suspension, or other sanction of a designated doctor as provided in this section.

(g) Doctors may be denied admission to the DDL for:

(1) not being on the ADL with no restrictions;

(2) failing to submit a complete application in accordance with this section;

(3) failing to complete required training;

(4) failing to pass the required test;

(5) having a relevant restriction on their practice (including, but not limited to prior deletion from the ADL or DDL or a prior ADL restriction); or

(6) other activities which warrant application denial including, but not limited to, grounds that would allow the commission to delete from the ADL or otherwise sanction a doctor as specified in §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or the Statute or Rules.

(h) The commission shall notify a doctor of the commission's approval or deny the doctor's application to the DDL. Denials shall include the reason(s) for the denial and be sent by a verifiable means of delivery. Within 14 days after receiving the notice, a doctor may file a response which addresses the reasons given for the denial.

(i) When necessary because the injured employee is temporarily located or is residing out-of-state, the commission may waive any of the requirements as specified in this rule for an out-of-state doctor to serve as a designated doctor to facilitate a timely resolution of the dispute.

(j) Doctors on the DDL shall provide the commission with updated information within 30 days of a change in any of the information provided to the commission on the doctor's DDL application.

(k) In addition to the grounds for deletion or suspension from the ADL or for issuing other sanctions against a doctor under §180.26 of this title, the commission may delete or suspend a doctor from the DDL, or otherwise sanction a designated doctor for noncompliance with requirements of this section or any of the following:

(1) four refusals within a 90 day period, or four consecutive refusals to perform within the required time frames, a commission requested appointment for which the doctor is qualified;

(2) misrepresentation or omission of pertinent facts in medical evaluation and narrative reports;

(3) unnecessary referrals to other health care providers for the assignment of impairment rating or determination of maximum medical improvement (MMI);

(4) submission of an inaccurate or inappropriate reports due to insufficient examination and analysis of medical records;

(5) failure to timely respond to a request for clarification from the commission regarding an examination;

(6) assignments of MMI and/or impairment ratings overturned in a contested case hearing, appeals panel decision and/or court decision;

(7) any of the factors listed in subsection (f) of this section that would allow for denial of admission to the DDL;

(8) failure to successfully complete training requirements as specified in subsection (c)(4) of this section;

(9) failure to notify the commission field office of any disqualifying association within 48 hours of receiving notice of being selected as a designated doctor;

(10) failure to maintain routine office hours for the treatment of patients in an active practice of at least 20 hours per week;

(11) self-referring for treatment or becoming the employee's treating doctor for the medical condition evaluated by the designated doctor; or

(12) violation of Statute and Rules while serving as a designated doctor.

(l) The process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Sanctions Process/Appeals) except that suspension, deletion, or other sanction relating to the DDL shall be in effect during the pendency of any appeal.

(m) The commission shall make available through its internet website the names of:

(1) doctors on the DDL;

(2) doctors deleted or suspended from the list or otherwise sanctioned by the commission (including a description of the sanction); and

(3) doctors reinstated to the list or whose sanctions were lifted by the commission.

§180.22. Health Care Provider Roles and Responsibilities.

(a) Health care providers shall provide reasonable and necessary health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) In addition to the general requirements of this section, health care providers shall timely and appropriately comply with all applicable requirements under the Statute and Rules, including but not limited to:

(1) reporting required information;

(2) disclosing financial interests;

(3) impartially evaluating an employee's condition; and

(4) correctly billing for health care provided.

(c) The treating doctor is the doctor primarily responsible for the efficient management of medical care and for coordinating the medical care for an injured employee's (employee) compensable injury. The treating doctor shall:

(1) except in the case of an emergency, approve or recommend all health care rendered to the employee including, but not limited to, medically reasonable and necessary treatment or evaluation provided through referrals to consulting and referral doctors or other health care providers, as defined in this section;

(2) maintain efficient utilization of health care;

(3) communicate with the employer about the employee's ability to work or any work restrictions on the employee;

(4) make available, upon request, in the form and manner prescribed by the commission:

(A) work release data

(B) cost and utilization data

(C) patient satisfaction data, including comorbidity, sf 12 and recovery expectations.

(d) The consulting doctor is a doctor who examines an employee or the employee's medical record in response to a request from the treating doctor, the designated doctor, or the commission. The consulting doctor shall:

(1) perform unbiased evaluations of the employee as directed by the requestor including, but not limited to, evaluations of:

(A) the accuracy of the diagnosis and appropriateness of the treatment of the injured employee;

(B) the employee's work status, ability to work, and work restrictions;

(C) the employee's medical condition; and

(D) other similar issues;

(2) not make referrals or provide treatment without the approval of the treating doctor.

(3) initiate treatment only if the treating doctor approves or recommends the treatment; and

(4) become a referral doctor if s/he begins to prescribe or provide health care to an injured employee.

(e) The referral doctor is a doctor who examines and treats an employee in response to a request from the treating doctor. The referral doctor shall:

(1) supplement the treating doctor's care; and

(2) report the employee's status to the treating doctor at least every 30 days

(f) The Required Medical Examination (RME) doctor is a doctor who examines the employee's medical condition in response to a request from the insurance carrier (carrier) or the commission under Texas Labor Code §408.004. The RME doctor shall:

(1) perform unbiased evaluations of the employee as directed by the RME order including, but not limited to, evaluations of:

(A) the accuracy of the diagnosis and appropriateness of the treatment of the injured employee;

(B) the employee's work status, ability to work, and work restrictions;

(C) the employee's medical condition; and

(D) other similar issues;

(2) not make referrals or provide treatment without the approval of the treating doctor.

(3) initiate treatment only if the treating doctor approves or recommends the treatment; and

(4) not evaluate the employee's maximum medical improvement (MMI) status or permanent whole body impairment except following an examination by a designated doctor or otherwise directed by the commission.

(g) The peer review doctor evaluates medical and health care services, including evaluation of the qualifications of professional health care practitioners and of health care provided by those practitioners. Peer reviews generally include the evaluation of the:

(1) accuracy of a diagnosis;

(2) quality of the care provided by a health care practitioner;

(h) The utilization review doctor reviews the medical care proposed to be provided or which has been provided to an employee to determine if the health care is reasonable and necessary.

(i) The designated doctor is a doctor appointed by the commission to recommend a resolution of a dispute as to the medical condition of an employee. The designated doctor shall:

(1) be currently active on the ADL as set forth in Texas Labor Code §408.023;

(2) notify the commission of any disqualifying association within 48 hours of receiving notice of being selected as a designated doctor;

(3) comply with all the requirements for designated doctors as specified by Statute or Rules;

(4) not self-refer for treatment or become the injured employee's treating doctor for the medical condition evaluated by the designated doctor. The designated doctor may indicate in the narrative report any treatment recommendations for the treating doctor to consider, but should not assist in any manner or facilitate the receipt of this treatment.

(j) A Medical Quality Review Panel (QRP) Doctor is a doctor chosen by the commission's Medical Advisor under Texas Labor Code §413.0512. All eligibilities, terms, responsibilities and prohibitions shall be prescribed by contract and the QRP Doctor shall serve on the QRP as prescribed by contract. A doctor must have Level 3 Certification on the ADL and meet the performance standards specified in the contract to be eligible for selection by the Medical Advisor to serve on the QRP.

§180.23. Commission Required Training for Doctors/Certification Levels.

(a) The level of training successfully completed by a doctor shall establish the doctor's ADL Certification Level, which in turn, determines the type of medical treatment and service the doctor is authorized to provide, as described in this title.

(b) The commission, in order to ensure employees have access to health care and insurance carriers have access to evaluations of an employee's health care and income benefit eligibility, may grant exceptions that allow a doctor to perform functions not normally permitted by the doctor's Certification Level. Such exceptions shall be granted on a per request, per case basis.

(c) ADL Training shall be broken out into modules that correspond with the different ADL Certification Levels. Higher certification requires additional training. Training shall be certified for continuing medical education credits. Doctors are only permitted to serve in the capacity authorized by their Certification Level.

(1) All doctors on the commission's list of approved doctors (ADL), regardless of Certification Level, are authorized (within their scope of licensure) to perform the following functions consistent with the restrictions contained in paragraphs (2) - (5) of this subsection:

(A) provide health care to an employee;

(B) evaluate an employee's work status, ability to work, and work restrictions;

(C) provide evaluations of an employee's medical condition; and

(D) serve as a referral, consulting, peer review, or utilization review doctor (as defined by §180.22 of this title (relating to Health Care Provider Roles and Responsibilities)).

(2) A Level 1 Certification requires a doctor to successfully complete in-depth training covering the basic requirements of the workers' compensation system with an emphasis on return to work, efficient utilization of care, and entitlement to benefits every two years.

(A) A doctor with Level 1 Certification only has the standard authorizations laid out in paragraph (1) of this subsection.

(B) A doctor with Level 1 Certification is not authorized to:

(i) serve as a treating, RME, or designated doctor (as defined by §180.22 of this title);

(ii) serve on the Medical Quality Review Panel; or

(iii) certify maximum medical improvement (MMI) or evaluate permanent whole body impairment.

(3) A Level 2 Certification requires a doctor to successfully complete the in-depth training required for Level 1 Certification and a second training module covering certification of MMI and evaluation of permanent whole body impairment in accordance with the AMA Guides, every three years.

(A) In addition to the standard authorizations, a doctor with Level 2 Certification is authorized to:

(i) serve as a treating or RME doctor; and

(ii) certify MMI and evaluate permanent whole body impairment.

(B) A doctor with Level 2 Certification is not authorized to:

(i) serve as a designated doctor; or

(ii) serve on the Medical Quality Review Panel.

(4) A Level 3 Certification requires a doctor to successfully complete the in-depth training required for Level 2 Certification and a third training module covering case studies and passage of a test on evaluation of permanent whole body impairment in accordance with the AMA Guides, every five years.

(A) In addition to the standard authorizations, a doctor with Level 3 Certification is authorized to:

(i) serve as a treating, RME, peer review, utilization review, or designated doctor (assuming the doctor applies and is approved under §180.21 of this title (relating to Commission Designated Doctor List); and

(ii) serve on the Medical Quality Review Panel (if the doctor applies and is approved by the commission's Medical Advisor).

(B) A doctor with Level 3 Certification has no limitations on authorization other than those imposed by licensure, the Statute and Rules, or the commission on a specific doctor pursuant to §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions).

(5) As an alternative to the other Certification Levels provided by this section, a doctor who wants to participate in the Texas workers' compensation system on a limited basis may apply for Level X Certification (which stands for "eXception").

(A) A Level X Certification requires a doctor to successfully complete an internet-based training course that covers the basic requirements of a doctor treating an employee.

(B) A doctor with Level X Certification has all the authorizations that a doctor with Level 2 Certification has but:

(i) may only perform evaluations, provide care, or provide medical opinions on no more than 12 Texas worker's compensation injured employees in a twelve month period (cumulative); and

(ii) may only certify MMI and evaluate permanent whole body impairment if granted specific authorization by the commission on a per case basis pursuant to subsection (b) of this section.

(d) A doctor seeking admission to the ADL with certification other than Level X Certification shall receive training from a commission approved trainer.

(e) A person seeking to become a commission approved trainer shall apply for approval in the form and manner prescribed by the commission.

(f) For each doctor applying to be included on the commission's list of approved doctors (ADL) the commission approved trainer shall file or provide the doctor's registration and training information in the form and manner prescribed by the commission.

(g) Not withstanding any other subsection of this section:

(1) a doctor not licensed in this state shall not perform utilization reviews and/or peer reviews for an insurance carrier or its agent unless the doctor performs the reviews under the direction of a doctor who is licensed in this state, who is on the ADL at Level 3 Certification, and who has agreed to direct the doctor's reviews; and

(2) the commission may restrict or reduce a doctor's privileges or authorizations as provided in the Statute or Rules.

§180.24. Financial Disclosure.

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

(1) Compensation arrangement--any arrangement involving any remuneration between a health care practitioner (or a member of a health care practitioner's immediate family) and a health care provider.

(2) Financial interest means:

(A) an interest of a health care practitioner, including an interest of the health care provider who employs the health care practitioner, or an interest of an immediate family member of the health care practitioner, which constitutes a direct or indirect ownership or investment interest in a health care provider, or

(B) a direct or indirect compensation arrangement between the health care practitioner, the health care provider who employs the referring health care practitioner, or an immediate family member of the health care practitioner and a health care provider.

(C) The statutory and regulatory exceptions that apply to referrals in Title 42, United States Code §1395nn(b) - (e) and have been adopted at the time of the adoption of this rule shall apply to the disclosure requirements of the interests in paragraph (1)(A) and (B) of this subsection. The Executive Director of the commission shall make an administrative determination regarding use of any revised Federal Statute or regulations and shall establish the date by which compliance with the revised statute or regulations is required. In determining whether to incorporate statutory or regulatory revisions, the Executive Director shall consider whether use is consistent with the Statute and Rules. The Executive Director shall inform the commissioners of the determination, and shall inform the public by issuing a commission advisory regarding the determination and by filing the determination for publication in the *Texas Register*.

(3) Immediate family member - Immediate family member or member of a doctor's immediate family means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

(b) Submission of Financial Disclosure Information to the Commission.

(1) In each calendar year during which a health care practitioner refers an injured employee (employee) to another health care provider in which the health care practitioner has a financial interest, the health care practitioner shall file a disclosure with the commission within 30 days of the date the first referral is made. This disclosure shall be filed for each health care provider to whom an employee is referred and shall include the information in paragraph (3) of this subsection.

(2) In addition, as a condition for a certificate of registration for the approved doctor list (ADL), the doctor shall file with the commission at the time of application for a certificate of registration for the ADL in accordance with §180.20 of this title (relating to Commission Approved Doctor List) a disclosure of financial interests of the doctor on the form and in the manner prescribed by the commission. Thereafter, a doctor registered on the ADL list shall report to the commission within 30 days, on the doctor's own initiative, any changes in the information the doctor previously provided when applying for registration.

(3) The health care practitioner's disclosures in paragraphs (1) and (2) of this subsection shall include:

(A) the disclosing health care practitioner's name, business address, federal tax identification number, professional license number, and any other unique identification number;

(B) the name(s), business address(es), federal tax identification number(s), professional license number(s), and any other unique identification number of the health care provider(s) in which the disclosing health care practitioner has a financial interest as defined in subsection (c) of this section; and

(C) the nature of the financial interest; including, but not limited to: percentage of ownership, type of ownership (e.g., direct or indirect, equity, mortgage), type of compensation arrangement (e.g, salary, contractual arrangement, stock as part of a salary payment) and the entity with the ownership (disclosing health care practitioner, the health care provider who employs the health care practitioner, or an immediate family member of the health care practitioner).

(c) Submission of Financial Disclosure Information to the Carrier. A health care practitioner who refers an employee to another health care provider in which the referring health care practitioner has a financial interest shall submit to the insurance carrier, within seven days of the referral, the following:

(1) general information required under §102.8 of this title (relating to Information Requested on Written Communications to the Commission);

(2) the information required in subsection (b)(3) of this section.

(d) Failure to disclose. In addition to any penalties provided by the Statute and Rules, failure to disclose a financial interest is subject to a penalty of forfeiture of the right to reimbursement for any services rendered on a claim during the period of noncompliance, regardless of whether the circumstances of the services themselves were subject to disclosure, and regardless of whether the services were medically necessary.

(1) Limitations on billing. A health care practitioner who rendered services on a claim during a period in which the practitioner was out of compliance with the disclosure requirements under this section, regardless of whether the circumstances of the services themselves were subject to disclosure, shall not present or cause to be presented a claim or bill to any individual, third party payer, or other entity for those services (regardless of whether the services were medically necessary).

(2) Refunds. If a health care practitioner collects any amounts that were billed for services on a claim provided during a period in which the practitioner was in noncompliance with the disclosure requirements of this section, regardless of whether the circumstances of the services themselves were subject to disclosure, the practitioner shall be liable to the individual or entity for, and shall timely refund, any amounts collected (regardless of whether the services were medically necessary).

(3) Rebuttable Presumption. A referral for services to a health care provider by a health care practitioner under circumstances which required a disclosure under this section, but which was not timely disclosed as required, creates a rebuttal presumption that the services were not medically necessary.

§180.25. Improper Inducements, Influence and Threats.

(a) Offering, paying, soliciting, or receiving an improper inducement relating to medical benefit delivery is prohibited as are improper attempts to influence medical benefit delivery, including through the making of improper threats. This section applies to all participants in the workers' compensation system and their agents.

(b) The following specific acts will be deemed to be an improper inducement, influence or threat:

(1) Intentionally, knowingly or wilfully soliciting or receiving any remuneration (including, but not limited to, any kickback, bribe, or rebate) in return for referring an injured employee (employee) to a person (either the person soliciting or receiving the inducement or another person):

(A) for the furnishing or arranging for the furnishing of any item, treatment or service for which payment may be made in whole or in part under the Statute or Rules; or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, treatment or item for which payment may be made in whole or in part under the Statute or Rules.

(2) Intentionally, knowingly or wilfully offering or paying any remuneration (including, but not limited to, any kickback, bribe, or rebate) in return for referring an employee to a person (either the person offering or paying the inducement or another person):

(A) for the furnishing or arranging for the furnishing of any item, treatment or service for which payment may be made in whole or in part under the Statute or Rules; or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, treatment or item for which payment may be made in whole or in part under the Statute or Rules.

(3) Except as provided by Texas Labor Code §408.0222, providing any financial incentive or promising an employee evaluation reports or other medical opinions that could enhance the employee's income benefits or keep an employee off of work as an inducement to have the employee treat with the provider or comply with the provider's proposed treatment.

(4) Intentionally, knowingly or wilfully offering or soliciting an inducement in return for selecting a particular health care provider for the furnishing or arranging for the furnishing of any item, treatment or service (including purchasing or leasing) for which payment may be made in whole or in part under the Statute or Rules; or intentionally, knowingly or wilfully offering or soliciting an inducement which may reasonably tend to cause a particular provider to be selected (excluding a convenience, such as: transportation, translator services, claim filing information, etc., if generally available to all patients). Such inducement is improper whether offered directly or indirectly, overtly or covertly, in cash or in kind.

(5) Intentionally, knowingly or wilfully making, presenting, filing or threatening to make, present or file any frivolous claim or assertion against a system participant, medical peer reviewer, or any other person performing duties arising under the Statute or Rules, with the commission or any licensing, certifying, regulatory or investigatory body.

(c) The exceptions that apply to subsection (b)(1) and (2) of this section are those that apply to analogous provisions in Title 42, United States Code §1320a-7b(3). The exceptions shall apply to subsection (b)(1) and (2).

§180.26. Doctor and Insurance Carrier Sanctions.

(a) This section is in addition to and does not affect sanctions provided by Statute or by rules adopted under §415.023(b) or other Rules and it establishes:

(1) the grounds (conduct, actions, inactions, and events) that will require the Executive Director to delete a doctor from the Approved Doctor's List (ADL);

(2) the grounds that allow the commission to delete a doctor from the ADL or otherwise issue a sanction against a carrier or doctor;

(3) the evidence the commission may consider as conclusively establishing the grounds to delete a doctor or issue a sanction; and

(4) the types of sanctions the commission may issue.

(b) The Executive Director shall delete from the ADL a doctor:

(1) who fails to meet the registration and certification requirements of §180.20 of this title (relating to Application for Registration/Commission Approved Doctor List);

(2) who is deceased;

(3) who requests to be removed from the list; or

(4) whose license to practice in this state is revoked, suspended, or not renewed by the appropriate licensing or certification authority. This includes but is not limited to suspensions or revocations that are deferred and voluntarily relinquishment of the license to practice.

(c) The Medical Advisor (as defined by Texas Labor Code §413.0511) shall recommend deletion of a doctor from the ADL if any of the following occur:

(1) significant violation(s) of the Statute, Rules, or a commission decision or order including but not limited to:

(A) committing a wilful or intentional violation(s) of the Statute, Rules, or a commission decision or order;

(B) having an uncorrected pattern of practice of violating the Statute, Rules, or commission decisions or orders;

(2) significant violation of other statutes or rules not administered by the commission but relevant to the provision of and payments for health care including but not limited to:

(A) committing an offense that results in the doctor being sanctioned by the Medicare or Medicaid program;

(B) pleading guilty, nolo contendere, or being convicted of, or having a professional license revoked or suspended for, a violation of state or federal statutes relating to:

(i) dangerous drugs, controlled substances, or any other drug-related offense;

(ii) fraud;

(iii) moral turpitude; or

(iv) conduct that either resulted in physical harm or otherwise endangered a person;

(C) committing an act that results in suspension, revocation of license, or issuance of a practice restriction(s) by the appropriate licensing or certification authority (even if probated);

(D) being convicted of a criminal offense which indicates an unwillingness or inability to provide quality treatment or to abide by the Statute, Rules or commission decisions or orders;

(3) professional failure to practice medicine or provide health care, including chiropractic care, in an acceptable manner consistent with the public health safety and welfare including but not limited to:

(A) engaging in any negligent practice resulting in death, injury, or substantial probability of death or injury to the provider's patients;

(B) providing substandard clinical care as evidenced by:

(i) excessive surgical care;

(ii) excessive complication rate such as having to repeat surgeries based on relevant benchmarks or having infections in excess of similar benchmarks;

(iii) practicing beyond the doctor's scope of licensure or certification;

(iv) having three or more final adverse malpractice judgments against the doctor;

(C) having an uncorrected pattern of practice of failing to timely and appropriately release employees to return to work as compared to relevant benchmarks set based upon the commission's work release guidelines;

(D) being excluded or removed from participation from other health plans for cause;

(E) losing hospital privileges for cause;

(F) abusing drugs, alcohol, or other substances;

(G) having a medical or other condition which impacts the doctor's judgment or ability to safely practice medicine;

(H) over-prescribing potentially dangerous medication such as narcotics;

(4) having a significant (uncorrected or wilful) pattern of practice relating to the delivery of health care that the commission finds is not fair and reasonable or that the commission determines does not meet professionally recognized standards of health care including but not limited to:

(A) having unjustifiable differences between the doctor's diagnoses or treatments and acceptable standards of care;

(B) unjustifiable differences between the doctor's charges or fees and the commission's Fee Guidelines;

(C) administering improper, unreasonable, or medically unnecessary treatment or services and/or seeking preauthorization for same;

(D) failing to fulfill responsibilities set out in §180.22 of this title (relating to Health Care Provider Roles and Responsibilities);

(E) submitting medical bills with a pattern of practice of including coding or billing for noncompensable injuries or areas;

(F) having a practice of submitting medical bills with a pattern of practice of inappropriate coding or which is abusive or violates Rules and Guidelines including but not limited to, such practices as upcoding and unbundling as defined in §133.1 of this title (relating to Definitions) and which, if relied upon by the carrier, has the potential of unlawfully increasing the doctor's fee;

(G) improperly or unjustifiably denying requests for preauthorization or concurrent review or issuing peer review opinions improperly or unjustifiably denying payment for reasonable and necessary medical care (as evidenced by denial rates higher than relevant benchmarks);

(H) certifying MMI and/or assigning impairment ratings in violation of the Statute and Rules (including but not limited to not complying with the applicable AMA Guides when assigning an impairment rating);

(I) making improper or unjustifiable recommendations regarding the reasonableness and medical necessity of care provided or proposed to be provided to an employee;

(J) making unnecessary referrals;

(5) Dishonest or criminal conduct including but not limited to:

(A) submitting a false statement or misrepresentation, or omitting pertinent facts when claiming payment under the Texas Workers' Compensation Act or when supplying information used to determine the right to payment under the Texas Workers' Compensation Act;

(B) submitting a false statement, information, or misrepresentation, or omitting pertinent facts, that, if relied upon by the carrier, has the potential of unlawfully increasing the doctor's fee;

(C) submitting a false statement, information, or misrepresentation, or omitting pertinent facts that, if relied upon by the insurance carrier, has the potential of cause approval of preauthorization requests for medical care that is not reasonable and necessary;

(D) submitting a false statement or misrepresentation or omitting pertinent facts to the commission which could affect the commission's decision to:

(i) include the doctor on the ADL (per §180.20 of this title);

(ii) certify the doctor for a specific certification level (per §180.23 of this title (relating to commission Approved Training for Doctors/Certification Levels)); or

(iii) otherwise allow the doctor to provide medical care in the Texas workers' compensation system;

(E) practicing without credentials or practicing with falsified credentials;

(6) refusing to refund moneys improperly paid to the doctor when ordered; or

(7) other activities which warrant deletion.

(d) The Medical Advisor may recommend a sanction against a doctor or a carrier or the deletion or suspension of a doctor from the ADL if any of the following occur:

(1) violation of the Statute, Rules, or a commission decision or order;

(2) violation of other statutes or regulations not administered by the commission but relevant to the provision of and payments for health care;

(3) conduct relating to the delivery, evaluation, or remuneration of health care that the commission finds is not fair and reasonable or that the commission determines does not meet professionally recognized standards of health care;

(4) refusing to pay moneys owed to a health care provider; or

(5) other activities which warrant sanction.

(e) Failure of a doctor to timely renew training requirements to remain on the ADL as required by §180.23 of this title, shall result in the immediate suspension of the doctor from the ADL. The doctor shall be reinstated upon providing the commission proof that the doctor has met the training requirements. A doctor who is suspended shall suspend providing treatment to employees (except in an emergency) and shall, within 7 days of suspension, notify all employees treating with him/her that he has been suspended from the ADL and that they will need to receive medical care from a different doctor.

(f) The evidence the commission may consider to establish the grounds for the issuance of a sanction of a carrier or doctor or the suspension or the deletion of a doctor include, but are not limited to:

(1) the findings of fact and legal conclusions made by a federal, state, or local court, an administrative law judge, an Independent Review Organization (whether considering a Texas workers' compensation matter or matter from another health care system), or appropriate licensing, certification, or regulatory authority on a matter in which the doctor or carrier was, or had the opportunity to be, a party;

(2) a plea of nolo contendere (no contest) by the carrier or doctor that has been accepted by a federal, state, or local court, an administrative law judge, an Independent Review Organization; (whether considering a Texas workers' compensation matter or matter from another health care system), or appropriate licensing, certification, or regulatory authority;

(3) the findings of experts working for or with the commission to evaluate a doctor or carrier (this includes, but is not limited to, members of the Medical Quality Review Panel or an Independent Review Organization); or

(4) the stipulations of an agreement entered into by the carrier or doctor who the commission is sanctioning (even if the agreement is not with the commission);

(5) information or documentation from:

(A) the commission's records;

(B) the records of an appropriate licensing or certification authority;

(C) the records of another regulatory or law enforcement authority; or

(D) the records of a system participant or the general public.

(g) Evidence of the existence of items listed in subsection (f)(1), (2), and (4) is conclusive grounds for sanction, deletion, or suspension, provided not subsequently overturned.

(h) The sanctions that the commission may recommend or impose against a doctor or carrier under this section include but are not limited to:

(1) reduction of allowable reimbursement to a doctor (such as an automatic percentile reduction on all or some types of health care);

(2) mandatory preauthorization or utilization review of all or certain health care treatments and services (such as mandatory treatment plans);

(3) required supervision or peer review monitoring, reporting, and audit (by the carrier, the commission, or an independent auditor/reviewer);

(4) deletion or suspension from the approved doctor and/or designated doctor lists;

(5) restrictions on appointment (such as reducing the roles the doctor is allowed to play in a claim or reducing the number of workers' compensation claimants the doctor will be allowed to treat except in an emergency);

(6) conditions or restrictions on a carrier regarding actions by carriers under the Act and Rules in accordance with a memorandum of understanding adopted between the commission and the Texas Department of Insurance regarding Article 21.58A, Insurance Code; and

(7) mandatory participation in training classes or other courses as established or certified by the commission.

(i) A doctor who has been deleted or suspended from the ADL shall not (except in the case of an emergency) provide medical care or receive direct or indirect remuneration under the Statute after being deleted or while suspended.

§180.27. Sanctions Process/Appeals/Restoration/Reinstatement.

(a) If the commission intends to take action under §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or action against a designated doctor under §180.21 of this title (relating to Commission Designated Doctor List), the commission shall notify the person to be sanctioned by verifiable means of the commission's intent.

(1) Not later than 20 days after receiving the notice, a doctor may request a hearing at the State Office of Administrative Hearings by filing such a request with the Chief Clerk of Proceedings at the commission.

(2) If no request for hearing is filed within the time allowed, the recommendation for sanction will be reviewed by the commissioners at a public meeting and a decision made. If a hearing was held, the commissioners shall review the decision of the administrative law judge (ALJ) after the hearing is held.

(b) If the commission modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the ALJ, the commission's final order shall state the legal basis and the specific reasons for the change.

(c) If the commissioners vote to impose the sanction, the commission shall notify the person by issuing an order of which describes the effects of the sanction. This order shall be delivered by verifiable means with a copy to the appropriate licensing or certification authority and, if the sanction is against a doctor, copies shall be delivered to those injured employees the commission is aware are being treated by that doctor.

(d) Failure to comply with the sanction may result in further sanctioning by the commission.

(e) A person who was sanctioned can apply to have the sanction lifted (whether through restoration of privileges or recertification) by applying in the form and manner prescribed by the commission.

(1) The request shall be evaluated by the Medical Advisor and the Medical Quality Review Panel. The requestor shall be liable for the cost of the review which may include an audit of the records of the requestor.

(A) If, in the Medical Advisor's opinion, the person has all the appropriate unrestricted licenses/certifications, has overcome the conditions which resulted in sanction, and should be reinstated, the Medical Advisor shall recommend that the commissioners reinstate the doctor or restore the privileges removed or restricted by the sanction.

(B) If, in the Medical Advisor's opinion, the person has not met the requirements for reinstatement or restoration of privileges, the Medical Advisor shall notify the person by verifiable means of the intent to recommend to the commissioners that the sanctions not be lifted. Within 14 days after receiving the notice, a doctor may file a response which addresses the reasons given that the recommendation was to be made. The Medical Advisor shall review the response and make a final recommendation to the commission. The Medical Advisor shall also provide a copy of the requestor's response to the commission for consideration.

(2) The commissioners shall consider the matter in a public meeting and shall notify the requestor by verifiable means with a copy to the appropriate licensing or certification authority. If the commissioners choose to not lift the sanction, the commissioners may include in their final decision the conditions which the sanctioned person must meet before the commission will reconsider lifting the sanctions (including but not limited to the amount of time that the person must wait prior to rerequesting lifting the sanction).

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 August 20, 2001.

TRD-200104907
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 804-4287

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§363.1, 363.2, 363.501, and 363.503 and new §§363.521 - 363.524 concerning the Economically Distressed Areas Program (EDAP), to facilitate implementation of the provisions of SB 312 related to water supply and wastewater projects that are to be completed through the self-help efforts and initiatives of the residents who will receive water or wastewater service from the completed project. The 77th Legislature in SB 312 added a new Subchapter P to the Texas Water Code, Chapter 15 (§§15.951 - 15.959), for the first time authorizing the board to provide financial assistance to tax exempt nonprofit organizations who assist with and facilitate the self-help efforts of residents of economically distressed areas to obtain otherwise unavailable water and wastewater services. The amendments and new sections are intended to provide the application requirements and parameters for financial assistance to be provided by the board for such projects.

Amendments are proposed to §363.1, Scope of Subchapter, and to §363.2, Definitions of Terms, to add the Colonia Self-Help Program authorized by the new Water Code provisions to those programs to which Subchapter A of Chapter 363 is applicable. Section 363.501, Scope of Subchapter, is also proposed to be amended to add the new program to those applicable under the provisions of Subchapter E of Chapter 363. Section 363.503, Determination of Economically Distressed Area, is also proposed to be amended to make it consistent with the new §363.524, clarifying the board's discretion to consider all relevant information in making this determination.

Chapter 363, Subchapter E, Economically Distressed Areas, will be restructured into two divisions. The existing §§363.501 - 363.509 will comprise Division 1, Economically Distressed Areas Program. The proposed new §§363.521 - 363.524 will comprise Division 2, Colonia Self-Help Program, and will contain the provisions under which the board will consider providing grant assistance to a qualified tax exempt nonprofit organization that incurs reimbursable expenses related to a water supply or wastewater project completed through the self-help efforts and initiatives of the residents receiving service from the project.

New §§363.521 - 363.524 provide the requirements for an application for financial assistance under the Colonia Self-Help Program. The application must be submitted by a qualified tax exempt nonprofit organization and must include organization information, documentation which demonstrates that the project area is economically distressed, project description and estimated cost information, and documentation which demonstrates that the conventional costs of the proposed project will be significantly reduced through the efforts of the residents that will benefit from the completed project. The application must further demonstrate that the design and construction of the project will be reviewed and inspected by the political subdivision that will provide the utility services.

Ms. Misti Hancock, Interim Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will be no additional fiscal implications on state and local government as a result of implementation and administration of the amended and new sections.

Ms. Hancock has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of implementing the proposed sections will be alleviation of potential threats to the public health and safety through the completion of additional self-help water and wastewater projects with financial assistance from the board using the Water Assistance Fund of the Texas Water Development Board. Ms. Hancock has determined there will be no new economic costs to small businesses or individuals who comply with the sections as proposed.

Comments on the proposed amendments and new sections will be accepted for 30 days following publication and may be submitted to Robert F. Moreland, (512) 936-0863, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.1, §363.2

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including, specifically, §15.958 of the Water Code related to the Colonia Self-Help Program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter P, §§15.951 - 15.959.

§363.1. Scope of Subchapter.

This subchapter shall govern the board's programs of financial assistance under the following programs established by the Texas Water Code:

(1) in Chapter 15:

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

(E) Colonia Self-Help Program authorized under Subchapter P;

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

§363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapters 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) - (13) (No change.)

(14) Financial assistance--Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15; Subchapters B, C, E, [~~and~~] J, and P; Chapter 16; Subchapters E and F, and Chapter 17; Subchapters D, F, G, I, and K.

(15) - (19) (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 August 15, 2001.

TRD-200104767
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 17, 2001
For further information, please call: (512) 463-7981

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SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS
DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §363.501, §363.503

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including, specifically, §15.958 of the Water Code related to the Colonia Self-Help Program.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter P, §§15.951 - 15.959.

§363.501. Scope of Subchapter.

The sections in this subchapter shall govern the board's Economically Distressed Areas Program as established by the Texas Water Code, Chapter 16, Subchapter J and Chapter 17, Subchapter K (as provided in Division 1) and Colonia Self-Help Program established by Chapter 15, Subchapter P (as provided in Division 2). Unless in conflict with the provisions in this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) shall also apply to economically distressed areas projects.

§363.503. Determination of Economically Distressed Area.

To determine that an area is economically distressed, the board shall consider [~~rely on the~~] information and data presented with the application or otherwise available to the board to determine that the water or sewer services are inadequate to meet the minimal needs of residential users; that the financial resources of the residential users of the services are inadequate to provide water or sewer services that will satisfy those minimal needs; and that an established residential subdivision was located in the economically distressed area on June 1, 1989.

(1) - (5) (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 August 15, 2001.

TRD-200104768
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 17, 2001
For further information, please call: (512) 463-7981

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DIVISION 2. COLONIA SELF-HELP PROGRAM

31 TAC §§363.521 - 363.524

The new sections are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including, specifically, §15.958 of the Water Code related to the Colonia Self-Help Program.

The statutory provisions affected by the proposed new sections are Texas Water Code, Chapter 15, Subchapter P, §§15.951 - 15.959.

§363.521. Definitions of Terms.

The following words and terms, when used in this division, shall have the following meanings unless the context clearly indicates otherwise. Other words and terms defined in Texas Water Code, Chapter 15, Subchapter P, and not defined here shall have the meanings provided in the said Subchapter P.

(1) Applicant--An eligible nonprofit organization that submits an application for financial assistance under the Colonia Self-Help Program established by Texas Water Code, §15.951, et seq.

(2) Colonia--A geographic area that is an economically distressed area as defined by Texas Water Code, §17.921, and §363.503 of this title (relating to Determination of Economically Distressed Areas) and located in a county any part of which is within 50 miles of an international border.

(3) Eligible nonprofit organization--An organization which is exempt from federal income taxes under the Internal Revenue Code of 1986, §501(c)(3), as amended, and has a demonstrated record of completing construction of self-help projects in conjunction with a retail public utility, as determined by the board.

(4) Self-help project--A project providing necessary water or wastewater services to a colonia in which the people who will benefit from the project actively participate.

§363.522. Financial Assistance.

The board may award a grant under the Colonia Self-Help Program directly to an eligible nonprofit organization to reimburse the organization for expenses incurred in a self-help project.

§363.523. Application.

An applicant for financial assistance under the Colonia Self-Help Program shall submit an application in the form and numbers prescribed by the executive administrator before any reimbursable project expenses are incurred. The application shall include the information required by the Texas Water Code, §15.955, and any additional information required by the board, including:

(1) the name of the nonprofit organization and its principal officers, documentation of its tax exempt status under the Internal Revenue Code, §501(3)(c), and documentation that demonstrates its prior record of completing self-help projects;

(2) a description of the project area, its existing water and wastewater facilities, the number of new utility connections expected to be made, and the number of residents expected to be served by the project;

(3) a description of the project and its estimated total cost, a description of the aspect of the project for which the grant sought from the board will be used and its estimated cost, and a summary of the sources of funding for the total cost of the project;

(4) sufficient evidence that the residents of the area to be served by the proposed project will contribute labor to the construction of the system or otherwise participate in the project in a manner that results in a significant reduction of the total conventional project cost, as determined by the board;

(5) a resolution from a retail public utility authorized to provide water or wastewater services to the colonia that it will inspect the project during and after construction to ensure adequacy of the project to provide water or wastewater service upon completion of construction by the applicant;

(6) a resolution from a retail public utility that it has the capability to and will assume ownership of the completed project and responsibility for its operation and maintenance and will provide the water or wastewater services that the project is intended to make available to the colonia;

(7) documentation which demonstrates that the retail public utility that is to provide wastewater services exercises the authority granted to such service providers pursuant to the Texas Water Code, §17.934, and requires property owners that can be served by wastewater system improvements resulting from completion of the self-help project to connect to the service provider's sewer system; and

(8) information which adequately identifies an amount necessary for the purchase of capacity in an existing treatment plant and/or related facilities to which the completed project will be connected, if applicable.

§363.524. Determination of Eligible Colonias.

To determine that a colonia for which self-help assistance is sought is economically distressed, the board shall consider information and data presented with the application or otherwise available to the board to determine that the water or sewer services are inadequate to meet the minimal needs of residential users; that the financial resources of the residential users of the services are inadequate to provide water or sewer services that will satisfy those minimal needs; and that an established residential subdivision was located in the economically distressed area on June 1, 1989. The board shall use the procedures and rely on the standards set out in §363.503 of this title (relating to Determination of Economically Distressed Area) in making such determination.

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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Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 17, 2001
For further information, please call: (512) 463-7981

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SUBCHAPTER I. PILOT PROGRAM FOR WATER AND WASTEWATER LOANS TO RURAL COMMUNITIES

The Texas Water Development Board (Board) proposes new 31 TAC §§363.901-363.906, 363.921-363.923, 363.931-363.936, and 363.951-363.955 comprising new Subchapter I, Pilot Program for Water and Wastewater Loans to Rural Communities, to Chapter 363, Financial Assistance Programs. The new sections govern applications for loans of financial assistance to rural communities for the construction of water and wastewater facilities under the rural community water and wastewater loan fund established by Texas Water Code, Chapter 15, Subchapter O.

Sections 363.901 - 363.906 will comprise Division 1, Introductory Provisions. Section 363.901 describes the scope of the proposed new subchapter and notices customers that additional requirements from the Chapter 363 General Provisions apply to the program for rural communities unless in conflict with the rural communities rules. Section 363.902 provides definitions for two terms that have specific meanings for this subchapter and program.

Section 363.903 provides a brief summary for customers of who may receive funds for which kind of project. Section 363.904 limits the term of loans to 20 years and the amount of the loan to $250,000. The section further advises customers that no loan fee is charged.

Section 363.905 implements legislation allowing rural communities to incur long-term debt by entering into a loan agreement and promissory note. Section 363.906 further implements legislation that allows a municipality or county to pledge a percentage of the sales and use tax revenue to secure the debt.

Sections 363.921 - 363.923 will comprise Division 2, Application Procedures. Section 363.921 provides notice to customers of the information that must be submitted in conjunction with an application for loan assistance, in part to ensure that the applicant is authorized to incur debt and has the resources for repaying the debt. Section 363.922 provides information on the environmental activities that must be completed for the proposed project to be in compliance with state law. Section 363.923 advises customers of the statutory findings that the Board is required to make in order to approve the loan.

Sections 363.931 - 363.936 will comprise Division 3, Closing and Release of Funds. Section 363.931 sets out the terms and conditions for debt that is evidenced through a loan agreement and promissory note. The terms of the loan agreement ensure that the funded project is constructed and maintained in accordance with law and that the means of repaying the debt is properly monitored and documented.

Section 363.932 advises customers of the permits and completion documents that will have to be submitted before funds are released. The section ensures that applicable laws and rules are complied with in the pre-construction and construction phases of the proposed project. Section 363.933 provides notice to applicants of the process for applying for pre-design funding and describes the requirements for using the option. Section 363.934 describes engineering contracts, plans and specifications that must be submitted for a project to ensure that the project is in compliance with applicable laws and rules addressing construction.

Section 363.935 provides for the interest rate that will be charged on loans in this program. The interest rate implements the legislative intent to provide low-cost financing to rural communities.

Section 363.936 provides notice to customers that the Board reserves the right to conduct audits to ensure that projects are constructed according to Board approvals and that the borrower is following responsible financial accountability practices.

Sections 363.951 - 363.955 will comprise Division 4, Construction and Post-Construction.

Section 363.951 describes construction contract requirements. These requirements comply with statutory requirements as to competitive bidding, retainage, standard of work done under a contract, and the use of local labor. Section 363.952 implements a statutory requirement for an engineering review by Board staff of construction contracts and plans and specifications.

Section 363.953 requires borrowers to hire a registered professional to inspect and certify to construction work. The section also reserves the right of the Board to inspect the construction of the project to ensure that the facility is being built according to the specifications, plans and representations of the borrower. Section 363.954 provides that after approval, no material alterations in the project plans may be made without the authorization of the executive administrator so as to ensure that the project built is the project that was approved by the Board. Section 363.955 states the circumstances under which a certificate of approval of the project will not be issued.

Ms. Misti Hancock, Interim Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will be no fiscal implications to state government as a result of enforcement and administration of the sections. There will be fiscal implications to local governments in the form of savings. The projected net present value savings to local governments based on an assumption of $260,000 in loans in each of FY 2002 and FY 2003 will be $1,600.90 in FY 2002, $5,213.60 in FY 2003, $6,940.90 in FY 2004, $6,428.62 in FY 2005, and $5,943.80 in FY 2006.

Ms. Hancock has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated will be low interest loans available specifically to rural communities through either the purchase of the community's bonds or a new loan agreement and promissory note option. Ms. Hancock has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Bruce Crawford, Assistant Director, Policy Development Specialist, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by fax at 512/305-9243.

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §§363.901 - 363.906

The new sections are proposed under the authority of the Texas Water Code, §6.101 and §15.909.

The statutory provisions affected by the proposed new sections are Texas Water Code, Chapter 15, Subchapter O.

§363.901. Scope of Subchapter.

This subchapter shall govern applications for loans of financial assistance to rural communities for the construction of water and wastewater facilities under the rural community water and wastewater loan fund established by Texas Water Code, Chapter 15, Subchapter O. The funding program described in this subchapter shall be known as the Pilot Program for Water and Wastewater Loans to Rural Communities. Unless

in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter shall also apply to applications for financial assistance from the Pilot Program for Water and Wastewater Loans to Rural Communities.

§363.902. Definitions of Terms.

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

(1) Fund--The rural community water and wastewater loan fund.

(2) Rural community--A municipality or county with a population of less than 5,000 or a district or authority created under the Texas Constitution, §52, Article III or §59, Article XVI, with a population of less than 5,000 that is located outside the boundaries or extraterritorial jurisdiction of a municipality.

§363.903. Use of the Fund.

The fund may be used to provide loans to rural communities for the construction, acquisition, or improvement of water and wastewater projects.

§363.904. Financial Assistance.

A loan provided under this subchapter may not exceed $250,000 for each project. The terms of a loan may not exceed 20 years. No loan origination fee will be charged for loans provided under this subchapter.

§363.905. Loan Agreement and Promissory Note.

The board may make financial assistance available to a rural community by entering into a loan agreement and promissory note. The loan agreement will provide for the payment of principal and interest on the debt and other terms and conditions of the loan. The rural community must execute a promissory note, payable to the board, to evidence the obligation to repay the loan.

§363.906. Sales and Use Tax as Loan Security.

A rural community that is a municipality or county may pledge a percentage of the sales and use tax revenue that is received to the payment of debt incurred under a loan agreement entered into with the board, subject to authorization by a majority of the voters at an election called and held for that purpose.

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 August 15, 2001.

TRD-200104763
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 17, 2001
For further information, please call: (512) 463-7981

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DIVISION 2. APPLICATION PROCEDURES

31 TAC §§363.921 - 363.923

The new sections are proposed under the authority of the Texas Water Code, §6.101 and §15.909.

The statutory provisions affected by the proposed new sections are Texas Water Code, Chapter 15, Subchapter O.

§363.921. Applications.

A rural community seeking loan assistance shall submit a written application for financial assistance which includes:

(1) the citation of the law under which the rural community operates and was created;

(2) a description of the water or wastewater project for which the financial assistance will be used;

(3) the total cost of the project;

(4) the name of the rural community and its principal officers;

(5) the amount of state financial assistance requested;

(6) the plan for repaying the total cost of the project;

(7) whether the rural community has adopted a program of water conservation;

(8) any other information the executive administrator requires to evaluate the application; and

(9) an affidavit stating that:

(A) the facts and information contained in the application are true and correct;

(B) the applicant will comply with all representations in the application and with all laws of the state and all rules and policies of the board;

(C) there is no litigation or other proceeding pending or threatened where in adverse decision would materially adversely affect the financial condition of the applicant or its ability to issue debt; and

(D) the application for financial assistance was approved by the governing body in an open meeting.

§363.922. Environmental Review before Board Approval.

Board staff will use preliminary environmental data provided by the rural community, as specified in §363.14 of this title (relating to Environmental Assessment) and make a written report to the executive administrator on known or potentially significant social or environmental concerns. The executive administrator may recommend approval of the project to the board if, based on preliminary information, there appear to be no significant environmental, permitting, or social issues associated with the project. Where a loan agreement is utilized, the loan agreement will provide for the terms and conditions for completion of the environmental review process, which will be consistent with §363.14 of this title and with identified mitigation measures with the intent to ensure environmentally responsible and legally compliant project design and implementation.

§363.923. Approval of Application.

The board by resolution may approve an application for a loan if the board finds that:

(1) the public interest requires state participation in the project;

(2) the revenue or taxes pledged will be sufficient to meet all the obligations assumed by the rural community during the loan period; and

(3) the project meets needs in a manner consistent with the State Water Plan.

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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Suzanne Schwartz
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DIVISION 3. CLOSING AND RELEASE OF FUNDS

31 TAC §§363.931 - 363.936

The new sections are proposed under the authority of the Texas Water Code, §6.101 and §15.909.

The statutory provisions affected by the proposed new sections are Texas Water Code, Chapter 15, Subchapter O.

§363.931. Requirements for Loan Closing.

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1) evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) certified copy of the ordinances or resolutions adopted by the governing body authorizing issuance of debt sold to the board which has received prior approval by the executive administrator and which shall have sections providing:

(A) that an escrow account, if applicable, shall be created which shall be separate from all other funds and that:

(i) the account shall be maintained at an escrow agent bank or maintained with the trust agent;

(ii) funds shall not be released from the escrow account without written approval by the executive administrator;

(iii) the escrow account bank statements or trust account statement will be provided on a monthly basis to the Development Fund Manager's office; and

(iv) the escrow account will be adequately collateralized as determined by the executive administrator sufficient to protect the board's interest;

(B) that a construction fund shall be created which shall be separate from all other funds of the applicant;

(C) that a final accounting be made to the board of the total sources and authorized use of project funds and that any surplus loan funds be used in a manner as approved by the executive administrator;

(D) that an annual audit of the rural community, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant be provided annually to the executive administrator;

(E) that the rural community shall fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest;

(F) that the rural community shall maintain current, accurate and complete records and accounts necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(G) that the rural community covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapters 15, 16, and 17; and

(H) that the rural community, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the rural community's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the rural community's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's bonds if the rural community is an obligated person with respect to such bonds under rule 15c2-12;

(3) unqualified approving opinions of the attorney general of Texas and if bonds are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) if bonds are issued, an unqualified approving opinion by a recognized bond attorney acceptable to the executive administrator, or if a promissory note and loan agreement is used, an opinion from the rural community's attorney which is acceptable to the executive administrator;

(5) executed escrow agreement entered into by the entity and an escrow agent bank or an executed trust agreement entered into by the entity and the trust agent satisfactory to the executive administrator, in the event that construction funds are escrowed;

(6) other or additional data and information, if deemed necessary by the executive administrator.

(b) Loan agreement and promissory note. The loan agreement and promissory note shall be executed at the time of closing. The loan agreement shall provide for the following:

(1) the term of the loan and a schedule for repayment of principal and interest;

(2) that an annual audit of the rural community, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, be provided annually to the executive administrator for the term of the loan;

(3) that a final accounting be made to the executive administrator of the total sources and authorized use of project funds;

(4) that the rural community shall fix and maintain rates and collect taxes and/or charges to provide:

(A) adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest; and

(B) adequate revenue to pay principal and interest on the loan as it comes due;

(5) that the rural community covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapter 15;

(6) that the rural community covenants to comply with all applicable state and federal environmental requirements prior to the initiation of construction and any mitigation which might be required after construction;

(7) that the rural community will apply any unused funds to the repayment of loan principal; in inverse order of maturity or in a manner as approved by the executive administrator;

(8) that the rural community shall maintain current, accurate and complete records and accounts necessary to demonstrate compliance with financial assistance related legal and contractual provisions; and

(9) any additional conditions that may be imposed by the board or requested by the executive administrator.

(c) Bonds. If bonds are issued, the documents which shall be submitted by the time of closing shall comply with the requirements of §363.42 of this title (relating to Loan Closing).

§363.932. Release of Funds.

(a) Release of funds for planning, design and permits. Prior to the release of funds for planning, design, and permits, the rural community shall submit for approval to the executive administrator the following documents:

(1) a statement as to sufficiency of funds to complete the activity;

(2) certified copies of each contract under which revenues for repayment of the rural community's debt will accrue;

(3) executed consultant contracts relating to services provided for planning, design, and/or permits;

(4) evidence that the requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations; and

(5) other such instruments or documents as the board or executive administrator may require.

(b) Pre-design funding. The funds needed for the total estimated cost of the engineering planning, and design cost if the engineering feasibility report required under §363.13 of this title (relating to Engineering Feasibility Data) has been approved, the costs associated with the loan, and any associated capitalized interest will be released to the loan recipient and the remaining funds will be escrowed to the escrow agent bank or to the trust agent until all applicable requirements in subsections (a) and (c) of this section have been met.

(c) Release of funds for building purposes. Prior to the release of funds for building purposes, the rural community shall submit for approval to the executive administrator the following documents:

(1) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(2) one executed original copy of each construction contract the effectiveness and validity of which is contingent upon the receipt of board funds;

(3) evidence that the necessary acquisitions of land, leases, easements and rights-of-way have been completed or that the applicant has the legal authority necessary to complete the acquisitions;

(4) a statement as to sufficiency of funds to complete the project;

(5) certified copies of each contract under which revenues to the project will accrue;

(6) evidence that all requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including permits and authorizations; and

(7) other such instruments or documents as the board or executive administrator may require.

(d) Escrow of funds. At the time of loan closing, the executive administrator may require the escrow of project funds related to building purposes when the rural community has not met the requirements of subsection (c) of this section.

§363.933. Pre-design Funding Option.

(a) Use of the pre-design funding option. The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.

(b) Applications. Applications for pre-design funding must include the following information:

(1) for loans which include building costs and which require engineering services, a preliminary engineering feasibility report which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected flows; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;

(2) contracts for engineering services; and

(3) any additional information the executive administrator may request to complete evaluation of the application.

(c) Environmental concerns. Board staff will use preliminary environmental data provided by the applicant and make a written report to the executive administrator on known or potential significant social or environmental concerns. Subsequently, these projects must have a favorable executive administrator's recommendation which is based upon a full environmental review during planning, as provided under §363.14 of this title (relating to Environmental Assessment).

(d) Special mitigative or precautionary measures. The executive administrator will advise the board concerning projects that involve major economic or administrative impacts to the rural community resulting from environmentally related special mitigative or precautionary measures from an environmental assessment under §363.14 of this title.

§363.934. Engineering Design Approvals.

The following applies to projects requiring engineering services.

(1) A rural community shall obtain executive administrator approval of contract documents, including engineering plans and specifications, prior to receiving bids and awarding the contract.

(2) After receiving bids, the rural community will submit for the executive administrator's approval the following documents:

(A) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(B) one executed original copy of each construction contract;

(C) evidence that the necessary acquisitions of land, leases, easement and rights-of-way have been completed or that the rural community has the legal authority to complete the acquisitions; and

(D) other such instruments or documents as the board or executive administrator may require.

§363.935. Interest Rate.

The board will establish interest rates for loans from the rural community water and wastewater loan fund in accordance with the Delphis A scale minus 150 basis points.

§363.936. Audits.

The executive administrator may conduct financial, engineering, and environmental audits of every project which is financed in whole or in part by the board. Audits may be conducted on site and board staff shall be provided access to all project records necessary to complete such audit. The rural community shall take actions to correct any items found to be in noncompliance with agreements relating to board financial assistance.

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

Filed with the Office of the Secretary of State, on August 15, 2001.

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Suzanne Schwartz
General Counsel
Texas Water Development Board
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DIVISION 4. CONSTRUCTION AND POST-CONSTRUCTION

31 TAC §§363.951 - 363.955

The new sections are proposed under the authority of the Texas Water Code, §6.101 and §15.909.

The statutory provisions affected by the proposed new sections are Texas Water Code, Chapter 15, Subchapter O.

§363.951. Construction Contract Requirements.

The rural community shall require in all project construction contracts that:

(1) each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) each contractor awarded a construction contract furnish performance and payment bonds as follows:

(A) the performance bond must include guarantees that work done under the contract will be completed and performed according to approved plans and specifications in accordance with sound construction principles and practices; and

(B) the performance and payment bonds must be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year after the date of approval by the engineer of the rural community;

(3) payment will be made in partial payments as the work progresses;

(4) each partial payment shall not exceed 95 percent of the amount due at the time of the payment, as shown by the engineer of the project, but if the project is substantially complete, a partial release of the five percent retainage may be made by the rural community with the approval of the executive administrator;

(5) payment of the retainage remaining due on completion of the contract shall be made only after:

(A) approval by the engineer for the rural community;

(B) approval by the rural community by resolution or other formal action of the governing body; and

(C) certification by the executive administrator that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices;

(6) no valid approval shall be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specification; and

(7) labor from inside the rural community has been used to the extent possible.

§363.952. Filing the Construction Contract.

The rural community shall file with the board a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract must contain or have attached to it the specifications, plans, and details of all work included in the contract.

§363.953. Inspection of Projects.

(a) After a construction contract is awarded, the rural community shall provide for adequate inspection of the project by a registered professional engineer and require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, provisions for environmental mitigative measures, and in accordance with sound engineering principles and construction practices.

(b) The board may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the approved engineering plans of the project; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(c) Inspection of a project by the board does not subject the state to any civil liability.

§363.954. Alteration of Plans.

After the executive administrator approves the engineering plans, a rural community may not make any substantial or material alteration in the plans unless the executive administrator authorizes the alteration.

§363.955. Certificate of Approval.

The executive administrator may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to the approved plans;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

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

Filed with the Office of the Secretary of State, on August 15, 2001.

TRD-200104766
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 17, 2001
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §§181.1 - 181.7, 181.10 - 181.12

The Texas Bond Review Board proposes amendments to Title 34 TAC, Chapter 181, §§181.1 - 181.7 and §§181.10 - 181.12. The rules are amended to comply with changes in Chapter 1231, Government Code, and to clarify procedures.

James T. Buie, Executive Director of the Bond Review Board, has determined that for each year of the first five years that the amended sections are in effect, there will be negligible fiscal implications for state and local government as a result of enforcing or administering the amended sections.

Mr. Buie has also determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of enforcing the amended sections will be simplification and clarification of procedures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted to James T. Buie, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The amended sections are proposed under §3, Chapter 1231, Government Code, which gives the Texas Bond Review Board the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state bonds.

The following is the statute that is affected by these rules: Chapter 1231, Government Code.

§181.1. Definitions.

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

(1) Board--The Bond Review Board, created under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 codified as Chapter 1231, Government Code [~~bond review board created by Acts of the 70th Legislature, 1987, particularly Senate Bill 1027~~].

(2) State security [~~bond~~]

(A) an [~~A bond or other~~] obligation,including a bond, issued by:

(i) - (iii) (No change.)

(B) an installment sale or lease-purchase [~~lease purchase~~] obligation issued by or on behalf of an entity listed in clauses (i), (ii), or (iii) of this subparagraph that has a stated term of longer than five years or has an initial principal amount of greater than $250,000.

(C) References in these rules to a board member include the person designated to act on their behalf, except as noted in §181.4(b) of this title (relating to Meetings).

§181.2. Notice of Intention To Issue.

(a) An issuer intending to issue state bonds shall submit a written or electronic notice to the bond finance office no later than three weeks prior to the date requested for board consideration. The director of the bond finance office shall forward one copy of the notice to each member of the board. Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible. The notice is for information purposes only, to facilitate the scheduling of board review activities.

(b) A notice of intention to issue under this section shall include:

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

(4) an agreement to submit the required application described [~~set forth herein~~] in §181.3 of this title (relating to Application for Board Approval of State Bond Issuance) no later than the first Tuesday of the month in which the applicant requests board consideration.

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

§181.3. Application for Board Approval of State Bond Issuance.

(a) An officer or entity may not issue state bonds unless the issuance has been approved or exempted from review by the [~~Bond Review~~] Board. An officer or entity that has not been granted an exemption from review by the board and that proposes to issue state bonds shall apply for board approval by filing one application with original signatures and nine copies with the Executive Director [~~director~~] of the bond finance office. The Executive Director [~~director~~] of the bond finance office shall forward one copy of the application to each member of the board and one copy to the Office of the Attorney General.

(b) Applications must be filed with the bond finance office no later than the first Tuesday of the month in which the applicant requests board consideration. Applications filed after that date will be considered at the regular meeting only with the approval of the Chair [~~governor~~] or two [~~three~~] or more members of the board.

(c) An application for approval of a lease-purchase agreement must include:

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

(4) a detailed explanation of the terms of the lease-purchase agreement, including, but not limited to, amount of purchase, trade-in allowances, interest charges, service contracts, etc.

(d) An application for all state bonds other than lease-purchase agreements must include:

(1) evidence of all necessary approvals from any state boards or state agencies, except for that of the Attorney General;

(2) [~~(1)~~] a substantially complete draft or summary of the proposed resolution, order, or ordinance providing for the issuance of state bonds;

(3) where applicable, evidence of review of proposed issuance by local entities;

(4) [~~(2)~~] a brief description of the program under which the state bonds are proposed to be issued, which may include a reference to a legislative enactment or to existing rules if the program is established in accordance with an existing statute or existing rules;

(5) [~~(3)~~] the applicant's plans for use of state bond proceeds, including a description of, statement of the need for, and cost of each specific project for which bond proceeds are proposed to be used;

(6) [~~(4)~~] the applicant's plans for the administration and servicing of the state bonds to be issued, including, when applicable, a disbursement schedule of bond proceeds, the proposed flow of funds, the sources and methods of repayment, and an estimated debt-service schedule;

(7) [~~(5)~~] a description of the applicant's investment provisions for bond proceeds, including any specific provisions for safety and security and a description of the duties and obligations of the trustee and paying agent/registrar as applicable;

(8) [~~(6)~~] a timetable for financing that contains dates of all major steps in the issuance process, including all necessary approvals;

(9) [~~(7)~~] if the applicant has authority to issue both general obligation and revenue bonds and the proposed issuance is of one of these, a statement of the applicant's reasons for its choice of type of state bonds;

(10) [~~(8)~~] a statement of the applicant's estimated costs of issuance, listed on an item by item basis, including, as applicable, the estimated costs for:

(A) bond counsel

(B) financial advisor

(C) paying agent/registrar

(D) rating agencies

(E) official statement printing

(F) bond printing

(G) trustee

(H) credit enhancement

(I) liquidity facility

(J) miscellaneous issuance costs;

(11) [~~(9)~~] an estimate, if bond sale is negotiated, of underwriter's spread, specified in [~~broken down into~~] the following components[~~,~~] and accompanied by a list of underwriters' spreads from recent comparable bond issues:

(A) management fee

(B) underwriter's fees

(C) selling concessions

(D) underwriter's counsel

(E) other costs;

(12) [~~(10)~~] a list of the firms providing the services reported in paragraphs (10) and (11) [~~(8) and (9)~~] of this subsection and a statement of prior representation of the issuer by each firm;

(13) [~~(11)~~] a justification of the decision of whether or not to apply for municipal bond insurance or other credit enhancement, including a comparison of expected bond ratings and borrowing costs for the issue with and without the particular enhancement(s) considered;

(14) copy of preliminary official statement, if available;

(15) [~~(12)~~] a statement of any potential liability of the general revenue fund or any other state funds resulting from the issuance;

(16) [~~(13)~~] a copy of any preliminary written review of the issuance that has been made by the attorney general;

(17) [~~(14)~~] a statement addressing the participation of women and minorities. The purpose of this section is to promote economic opportunity by affording equal access to the procurement of contracts for professional services for the financing of bonds by state issuers. Therefore, the following information about each participant (including, but not limited to, bond counsel, underwriters, underwriter's counsel, and financial advisor) must be included:

(A) the degree of ownership and control of each participant firm by minorities and women;

(B) the number and percentage of professionally employed women and minorities in each participant's firm; and

(C) a brief description of the effort made by each participant to encourage and develop participation of women and minorities. This description can include internal firm recruitment efforts, any offers tendered for apportioning responsibilities by subcontract or joint venture, and the equal opportunity goals and policies of each participant's firm.

(18) [~~(15)~~] The notification procedures used by or on behalf of the issuer to select the participants referenced in paragraph (17) of this subsection [~~(14) above~~].

(e) In addition to the information required by subsections [~~subsection~~] (c) or (d) of this section, an application under this section may include any other relevant information the applicant wants to submit to the board.

(f) (No change.)

§181.4. Meetings.

(a) The regular meeting of the board shall be held the Thursday following the third Tuesday of each month, with the exception of the months of January, July and September. No meetings will be held in those months unless called by the Chair.

(b) The Chair [~~As chairman of the board, the governor~~] may call additional meetings of the board and is responsible for filing notice of meetings as required by Chapter 551, Government Code [~~Texas Civil Statutes, Article 6252.17~~], and giving timely notice of meetings to members of the board. On the petition of two [~~three~~] or more members of the board, the governor shall call an additional meeting of the board or cancel a meeting.

(c) A planning session will be held regarding applications pending before the board on or before the second Tuesday of each month, with the exception of the months of January, July, and September. Planning sessions regarding applications to be heard at additional meetings of the board will be held as far in advance of the additional board meeting as is practicable. At a planning session, board members, their designated representatives, or their staff representatives may discuss pending applications[~~, but may not conduct board business~~].

Applicants may be required to attend a planning session and may be asked to make a presentation and answer questions regarding their application. Applicants may be asked to submit written answers to questions regarding their application in lieu of, or in addition to, their attendance at a planning session.

(d) At a meeting of the board, the [~~a~~] board [~~member or designated representative~~] may allow an applicant to make an oral presentation to the board.

(e) (No change.)

(f) The Executive Director [~~executive director~~] of the bond finance office shall notify applicants in writing of any action taken regarding their application. A letter of approval shall contain the terms and conditions of the issue as approved by the board. Issuers must inform the Executive Director [~~director~~] of the bond finance office of changes to the aspects of their application that [~~which~~] are specified in the approval letter. Such changes may prompt reconsideration of the application by the Bond Review Board [~~bond review board~~]. A copy of the approval letter shall be forwarded to the Office of the Attorney General [~~attorney general~~].

(g) If applicable law requires the approval by the Attorney General [~~attorney general~~] of an issuance of state bonds that are not exempt from review by the board, Attorney General [~~attorney general~~] approval must be obtained after approval by the board.

(h) (No change.)

§181.5. Submission of Final Report.

(a) Within 60 days after the signing of a lease-purchase agreement or delivery of the state bonds and receipt of the state bond proceeds, the issuer or purchaser, as applicable, shall submit one original [~~and one copy~~] of a final report to the bond finance office and a single copy of the final report to the Texas Comptroller of Public Accounts.

(b) A final report for lease purchases [~~lease-purchases~~] must include a detailed explanation of the terms of the lease-purchase agreement, including, but not limited to, amount of purchase, trade-in allowance, interest charges, service contracts, etc.

(c) A final report for all state bonds other than lease-purchase agreements must include:

(1) all actual costs of issuance, including, as applicable, the specific items listed in §181.3(d)(10) and (11) [~~(c)(8) and (9)~~], as well as the underwriting spread for competitive financings and the private placement fee for private placements, all closing costs, and any other costs incurred during the issuance process; and

(2) a complete bond transcript, including the preliminary official statement and the final official statement, private placement memorandum, if applicable, or any other offering documents as well as all other executed documents pertaining to the issuance of the state bonds. The issuer also must submit a copy of the [~~winning~~] bid form or a listing of orders and allotments and a final debt-service [~~debt service~~] schedule (if applicable).

(d) (No change.)

(e) The bond finance office shall prepare and make available to [~~distribute to~~] the members of the bond review board a summary [~~summarization~~] of each final report within 30 days after the final report has been submitted by the issuer. This summary [~~summarization~~] shall compare [~~include a comparison of~~] the estimated costs of issuance for the items listed in §181.3(d)(10) and (11) [~~(c)(8) and (9)~~] contained in the application for approval with the actual costs of issuance listed in subsection (c)(1) of this section [~~§181.5(b)(1)~~] submitted in the final report. This summary [~~summarization~~] must also include [~~such~~] other information that [~~which~~] in the opinion of the bond finance office[~~,~~] represents a material addition to[~~,~~] or a substantial deviation from[~~,~~] the application for approval.

§181.6. Official Statement.

(a) The official statement or any other offering documents prepared in connection with issuance of bonds approved by the board must conform, to the extent feasible, to the most recent Disclosure Guidelines for State and Local Government Securities published by the Government Finance Officers Association. The preliminary official statement[~~,~~] or other offering documents may [~~, shall~~] be submitted to and reviewed by the Executive Director [~~director~~] of the bond finance office prior to mailing. [~~Issuers should submit early drafts of the preliminary official statement to the director of the bond finance office to allow adequate time for review.~~] Review of the preliminary official statement by the Executive Director [~~director~~] of the bond finance office is not to be interpreted as a certification as to the accuracy, timeliness, and completeness of the specific data in the document. These standards remain the responsibility of the provider(s) of the data.

(b) The comptroller shall certify the accuracy and completeness of statewide economic and demographic data, as well as revenues, expenditures, current fund balances, and debt-service requirements of bonded indebtedness of the state contained in the preliminary official statement. This data shall be used unchanged in the final official statement unless changes are approved in writing by the comptroller. The comptroller may execute a waiver of any part of this subsection.

§181.7. Designation of Representation.

A member of the board may designate another person to represent the member on the board by filing a designation to that effect with the Executive Director [~~director~~] of the bond finance office. A designation of representation filed under this section is effective until revoked by a subsequent filing by the member with the bond finance office. During the time a designation of representation is in effect, the person designated has all powers and duties as a member of the board, except the authority to make a designation under this section.

§181.10. Annual Issuer Report.

All state bond issuers whose bonds are subject to review by the board must file a report with the bond finance office no later than September 15 of each year, [~~with the bond finance office~~] to include:

(1) the investment status of all unspent state bond proceeds (i.e., the amount of proceeds, name of institution, type of investment program or instrument, maturity, and interest rate);

(2) an explanation of any change during the fiscal year previous to the deadline for this report, in the debt-retirement schedule for any outstanding bond issue (e.g. exercise of redemption provision, conversion from short-term [~~short term~~] to long-term [~~long term~~] bonds, etc.); [~~and~~]

(3) a description of any bond issues [~~issue~~] expected during the fiscal year, including type of issue, estimated amount, and expected month of sale; and [~~.~~]

(4) a list of all bond issues outstanding and corresponding debt service schedules for all bonds outstanding in a digital and hard copy format.

§181.11. Filing of Requests for Proposal.

The Bond Review Board wishes to encourage use of the request for proposal process to maximize participation in the bond issuance process. Any state bond issuer whose bonds are subject to review by the board is requested, for information purposes only, to submit to the Executive Director [~~executive director~~] at the time of distribution one copy

of any request for proposal for consultants prepared in connection with the planned issuance of state bonds. The bond finance office [~~Bond Finance Office~~], upon request, will make the request for proposals available to consultants, other state bond issuers[~~,~~] and the general public.

§181.12. Charges for Public Records.

The charge to any person requesting copies of any public records of the Texas Bond Review Board will be the charge established by the General Services Commission; however, the Texas Bond Review Board will charge the following amounts necessary to recoup the costs of items as follows:

(1) computer resources charges (mainframe and programming time), [~~shall be~~] as determined by the Department of Information Resources.

(2) Copies of public records shall be furnished without charge or at a reduced charge if the Executive Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(3) Any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known.

(4) A reasonable deposit may be required for requests where the total charges are over $200.

(5) All requests will be treated equally. The Executive Director may exercise discretion in waiving [~~waive~~] charges [~~at his/her discretion~~].

(6) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the agency and will be at the discretion of the Executive Director.

(7) Confidential documents will not be made available for examination or copying except under court order or other directive.

(8) All open records requests will be referred to the Executive Director or designee before the agency staff will release the information.

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

Filed with the Office of the Secretary of State, on August 20, 2001.

TRD-200104883
James T. Buie
Executive Director
Texas Bond Review Board
Proposed date of adoption: October 9, 2001
For further information, please call: (512) 463-1741

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CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §§190.1 - 190.7

The Texas Bond Review Board proposes amendments to Title 34 TAC, Chapter 190, §§190.1 - 190.7. The program rules are amended to comply with changes in Chapter 1372, Government Code, as amended and the repeal of Texas Civil Statutes, Article 5190.9a. Generally, the amendments will allow more applications to receive a reservation.

James T. Buie, Executive Director of the Bond Review Board, has determined that for each year of the first five years that the amended sections are in effect, there will be negligible fiscal implications for state and local government as a result of enforcing or administering the amended sections.

Mr. Buie has also determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of enforcing the amended sections will be an increase in the number of applicants receiving a reservation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted to James T. Buie, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The amended sections are proposed under Chapter 1372, Government Code, as amended, which gives the Texas Bond Review Board the authority to adopt rules governing the implementation and administration of the allocation of the state's ceiling on private activity bonds.

Chapter 1372, Government Code is affected by this proposed amendments.

§190.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Administrative Procedure Act, Chapter 2001, Government Code, [~~Chapter 2001, Texas Civil Statutes, Article 5190.9a, as amended,~~] and Chapter 1372, Government Code, the Bond Review Board prescribes the following sections regarding practice and procedure [~~before the board~~] in the allocation administration [~~of the allocation~~] of the authority in the state to issue private activity bonds.

(b) Objective. The objective of [~~the sections in~~] this chapter is to establish the most equitable and efficient means of allocating the state ceiling on private activity bonds in accordance with the Act. The Board intends [~~intent of the board is~~] to formulate policies and guidelines that would provide eligibility standards [~~of eligibility~~] and procedures for applications submitted to reserve a portion of the state ceiling for private activity bonds.

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

(1) Act - [~~Texas Civil Statutes, Article 5190.9a, as amended, and~~] Chapter 1372, Government Code.

(2) Amount - With respect to bonds, reservation certificate, or a portion of the state ceiling, is a sum measured in terms of United States dollars.

(3) Application fee - The $500 nonrefundable [~~application~~] fee submitted to the board simultaneously with an application for reservation or an application for carryforward.

(4) Application for carryforward - The application [~~for a carryforward~~] required to be filed by an issuer with all attachments and amendments to reserve a portion of the state ceiling for carryforward purposes.

(5) Application for reservation - The application [~~for reservation~~] required to be filed by an issuer with all attachments to reserve a portion of the state ceiling.

(6) Authorized representative - A person [~~representative~~] authorized by the issuer to execute certain correspondence under §190.5(h) and (i) [~~and (j)~~] of this title (relating to Consideration of Qualified Applications by the Board).

(7) Available - Any amount of the state ceiling set aside for reservations by an issuer upon compliance with the terms of the Act and this chapter.

(8) Board - The Bond Review Board created under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 codified as Chapter 1231, Government Code [~~(Article 717k-7)~~].

(9) Bond authorization requirements (Thirty-five day filing requirement) - Requirements [~~Those requirements that are~~] to be filed by the issuer no later than 35 days after the issuer's reservation date.

(10) (No change.)

(11) Borrower - Any person or persons whose private business use, within the meaning of the code[~~,~~] would cause any bonds to constitute private activity bonds within the meaning of the code. If there is more than one such person with respect to any issue of bonds, then the term shall mean and include each and every such person known at the time that the issuer files an application for reservation or an application for carryforward, except that any one of such persons may execute any such application, letter, or other writing which the Act and this chapter requires to be executed by the borrower.

(12) (No change.)

(13) Carryforward - The amount of the state ceiling [~~that has~~] not [~~been~~] reserved before December 15 and any amount previously reserved that becomes available on or after that date because of a reservation [~~the~~] cancellation [~~of a reservation~~].

(14) - (16) (No change.)

(17) Certification regarding fees - The notice given to the board by legal counsel stating that a check for a required fee was sent by overnight delivery as described in §190.8(c) and (d) of this title (relating to Notices, Filings, and Submissions) in a timely manner.

(18) (No change.)

(19) Closing date - The date [~~on which~~] the bonds have been issued and delivered in exchange for the required payment therefore.

(20) Closing documents - Documents [~~Those documents that are~~] required to be filed by the issuer not later than the fifth business day after the day on which the bonds are closed.

(21) Closing fee - The nonrefundable fee in the amount of $1,000 or 0.025% of the principal amount of the bonds certified as provided by §1372.039(a)(1), Government Code, whichever is greater. In addition [~~The foregoing notwithstanding~~], an issuer exchanging a portion of the state ceiling for mortgage credit certificates shall submit to the board a closing fee in the amount of $1,000 or 0.0125% of the amount of the state ceiling exchanged, whichever is greater. An issuer receiving a carryforward designation shall submit to the board a closing fee of $1,000 or 0.0125%, whichever is greater, of the amount of carryforward ceiling received.

(22) Code - The Internal Revenue Code of 1986, and as [~~the same from time to time~~] may be amended.

(23) - (24) (No change.)

(25) Finance team members - Members associated with the specific bond issue and project or mortgage credit certificate program which may include the issuer, user, bond counsel, placement agent, [~~or~~] underwriter, trustee, or any other members.

(26) Governing body - The board, council, commission, commissioners' court, or legislative body of the government [~~governmental~~] unit.

(27) (No change.)

(28) Housing finance corporation - A corporation created under the Texas Housing Finance Corporations Act, Chapter 394, Local Government Code[~~, Chapter 394~~].

(29) (No change.)

(30) Issuer - Any department, board, authority, agency, subdivision, municipal corporation, political subdivision, body politic, or instrumentality of the State of Texas, or [~~of every kind or type whatsoever and~~] any non-profit corporation acting for or on behalf of any of the foregoing.

(31) Joint housing finance corporation - A housing finance corporation acting on behalf of more than one local government unit as provided in the Texas Housing Finance Corporations Act, Chapter 394 Local Government Code[~~, Chapter 394, §394.012~~].

(32) (No change.)

(33) Local population - The population in the local government unit or units on whose behalf a housing finance corporation is created as determined by the most recent federal census estimate. If two local government units [~~which~~] overlap, [~~have~~] each having created housing finance corporations with [~~that have~~] the power to issue bonds to provide home mortgage financing [~~for home mortgages~~], prior to the submission of either the application for reservation or the application for carryforward by either housing finance corporation, there shall be excluded from the population of the larger local government unit that portion of the population of any smaller local government unit having a population as determined by the most recent federal census estimate of 20,000 or more which is within the larger local government unit, unless the smaller local government unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local government unit. A resolution assigning authority to issue qualified mortgage bonds must have been adopted within the twelve months preceding the date of submission of the application to the board.

(34) Locally voted issue - An issue of bonds [~~which has been~~] authorized pursuant to a referendum approved by the voters of a political subdivision of the State of Texas.

(35) - (43) (No change.)

(44) Qualified small issue bond - A [~~qualified small issue~~] bond within the meaning given that term under the Code.

(45) Qualified student loan bond - A [~~qualified student loan~~] bond within the meaning given that term under the Code, §144(b).

(46) - (53) (No change.)

(54) State-voted issue - An issue of bonds [~~which has been~~] authorized pursuant to a statewide referendum approved by the voters of the state.

(55) - (56) (No change.)

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

§190.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after October 10 of the year preceding the applicable program year, the board will accept applications for reservation from issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 2 of the program year. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in §1372.022 [~~Article 5190.9a, §2(b)~~], the board shall conduct a lottery establishing the priority order [~~of priority~~] of each such application for reservation. Once the priority order [~~of priority~~] for all applications for reservation filed on or before October 20 of the year preceding the applicable program year is established, reservations for each issuer within the categories described in §1372.022 (b)(2), (3), and (6) [~~Subsections (b)(2), (b)(3), and (b)(6) of §2~~], shall be granted in the order of priority established by such lottery. Each issuer of state voted issues granted a reservation initially shall be granted a reservation date which is the first business day of the program year. If more than 10 applications by issuers, other than issuers of state voted issues, are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates for such issuers.

(c) The order of priority for reservations by housing finance corporations in the category described in §1372.022(b)(1), , Government Code, [~~Article 5190.9a, §2(b)(1)~~] shall further be determined as provided in §1372.032.

(1) The first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year. Any such priority of an issuer composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring government [~~governmental~~] unit and that unit's population base if the dollar amount of the application has not increased.

(2) The second category of priority shall include those applications for a reservation not included in the first category of priority.

(3) Within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. The most recent closing applicable to:

(A) a newly created housing finance corporation that was created by a local government unit or local government [~~governments~~] units that had previously sponsored an existing housing finance corporation or a disbanded housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation;

(B) a housing finance corporation sponsored by a local government unit that has participated in the program of another housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation; and

(C) all other housing finance corporations, is the most recent closing of qualified mortgage bonds by the housing finance corporation. In no event will a housing finance corporation or its sponsoring local government unit be allowed to achieve an advantage in the determination of its last closing date by creating or disbanding from a housing finance corporation.

(d) The order of priority for reservations in the category described in §1372.022(b)(4) [~~in Article 5190.9a, §2(b)(4),~~] shall further be determined as provided in §1372.0231 [~~Article 5190.9a, §3(h)~~].

(1) The first category of priority shall include those applications for a reservation for:

(A) projects [~~a project~~] in which the maximum allowable rents are restricted to 30% of 50% area [~~adjusted~~] median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program, for 100% of the units; and

(B) on June 1 and after, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family income levels below or at the median family income for the state according to the U.S. Department of Housing and Urban Development.

(2) The second category of priority shall include those applications for a reservation for a project in which the maximum allowable rents are restricted to 30% of 60% area [~~adjusted~~] median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program, for 100% of the units.

(3) The third category of priority shall include those applications for any other qualified residential rental project.

(4) Within each category of priority, reservations shall be granted in the order established by the lottery subject to §1372.0231).

(5) Owners of Low Income Housing Tax Credits (LIHTC) and 501(c)(3) properties that issue through State agencies are prohibited from having policies, procedures and/or screening practices which have the effect of excluding applicants because they have Section 8 voucher or certificate. The verification of such an exclusionary practice on the part of the owner or manager by a state agency will be considered a violation and may result in the owner's ability to participate in future housing programs of the state.

(e) The order of priority for reservations in the category described in §1372.022(b)(5) [~~in Article 5190.9a, §2(b)(5)~~], shall further be determined as provided in §1372.033, Government Code. Reservations shall be granted in reverse calendar year order of the most recent closing of qualified student loan bonds by each issuer of qualified student loan bonds authorized by §53.47, Education Code, with the most recent closing being the last to receive a reservation and with those issuers [~~higher education authorities~~] that have never received a reservation for student loan bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot.

(f) If state ceiling becomes available on August 15, it shall be available prior to September 1 for qualified residential rental project issues in the order of priority described in subsection (d) of this section without regard to the provisions of §1372.0231.

(g) If any issuer which was subject to the lottery conducted as described in subsection (b) of this section does not, prior to September 1 of the program year, receive the amount requested by such issuer in its application for reservation filed on or before October 20 of the preceding year, and if state ceiling becomes available on or after September 1 of the program year, such issuer, subject to the provisions of §1372.037, Government Code, shall receive a reservation for any state ceiling becoming available on or after September 1 of the program year, in the order of priority established by such lottery, without regard to the provisions of [~~§~~]§1372.032 and §1372.033, Government Code [~~and Article 5190.9a §3(h)~~].

(h) - (j) (No change.)

(k) The amount of the state's ceiling that has not been reserved prior to December 1 of the program year and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as carryforward for the carryforward purposes outlined in the Code through submission of the application for carryforward and any other required documentation. If the 120-day or 180-day period, as applicable, expires on or after December 24th of a program year in which a reservation was issued, an issuer is required to close on its bonds before December 24th. However, if an issuer's applicable period expires after December 31st, the issuer may elect to notify the board in writing before December 24th of their intent to carry forward the reservation and their expected bond closing date. The granting by the board of a carryforward designation through this described process, will allow an issuer the remaining balance of their 120- or 180-day period as applicable to close on their bond by the expected closing date. If any issuer makes this election and does not close on the bonds on the expected closing date, the carryforward designation will be applied to the category of bonds related to the carryforward designation and will be added and applied to the new private activity program year by the category of bonds in which the election was made. The added carryforward volume cap will be issued first within the appropriate category before any other cap within that category is issued.

(l) (No change.)

(m) Issuers will be eligible for carryforward according to the priority classifications listed in the Act, specifically §1372.062(b) and §1372.042(c). Reservations of state ceiling regarding this act apply to reservations granted on or after January 1, 2002.

§190.3. Filing Requirements for Applications for Reservation.

(a) (No change.)

(b) Application Filing. The issuer shall submit one original and one copy [~~two copies~~] of the application for reservation. Each application must be accompanied by the following:

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

(7) a statement by the issuer, other than an issuer of a state-voted issue or the Texas Department of Housing and Community Affairs (TDHCA) or the Texas Agricultural Finance Authority (TAFA), that the bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer, or based on the issuer's population;

(8) if unexpended proceeds exist [~~from~~], including transferred proceeds representing unexpended proceeds from[~~,~~] a prior issue or issues of bonds, other than a state-voted issue or an issue by the TDHCA or TAFA [~~Texas Department of Housing and Community Affairs~~], issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of this application, a statement by the trustee as to the current amount of unexpended proceeds that exists for each such issue. The issuer of the prior issue of bonds shall certify to the current amount of unexpended proceeds that exists for each issue should a trustee not administer the bond issues;

(9) if unexpended proceeds, including transferred proceeds, representing unexpended proceeds other than prepayments exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by TDHCA or TAFA [~~the Texas Department of Housing and Community Affairs~~], issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of this application, a definite and binding financial commitment agreement must accompany the application in such form as the board finds acceptable, to expend the unexpended proceeds by the later of 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, the commitment by lenders to originate and close loans within a certain period of time shall be deemed a definite and binding agreement to expend bond proceeds within such period of time and any additional period of time during which such origination period may be extended under the terms of such agreement; provided [~~however,~~] that any [~~such~~] extension provision may be amended, prior to the date on which the bond authorization requirements described in subsection (c) of this section must be satisfied, to provide that such period shall not be extended beyond the later of 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, issuers of qualified student loan bonds authorized by §53.47, Education Code, may satisfy the requirements of §1372.028(c)(f) [~~Article 5190.9a, §4(a)(6)~~] by, in lieu of a definite and binding agreement, providing with the application evidence as certified by the issuer that the issuer has purchased, in each of the last three calendar years, qualified student loans in amounts greater than or equal to the amount of the unexpended proceeds;

(10) if unexpended proceeds exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by the TDHCA or TAFA, [~~Texas Department of Housing and Community Affairs~~] issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of the pending application, a written opinion of legal counsel, addressed to the board, to the effect, that the board may rely on the representation contained in the application to fulfill the requirements of the Act and that the agreement referred to in paragraph (9) of this subsection constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement;

(11) a written opinion of legal counsel, addressed to the board, stating [~~to the effect that~~] the bonds are required to be included under the state ceiling and that the issuer is legally authorized [~~under the laws of this state~~] to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, the provision of the Constitution or law of the state which authorizes the bonds for the project;

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

(c) - (f)

(g) Application restrictions.

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

(4) For any one project, no issuer, prior to September 1 of the program year, may exceed the following maximum application limits:

(A) $25,000,000 for issuers described by §1372.022(a)(1) [~~Article 5190.9a, 2(b)(1)~~] other than the Texas Department of Housing and Community Affairs;

(B) $50 million for issuers described by §1372.022(a)(2) [~~Article 5190.9a, 2(b)(2)~~] other than the Texas Higher Education Coordinating Board or [~~and~~] $75 million for the Texas Higher Education Coordinating Board;

(C) an amount as limited by the code for issuers described by §1372.022(a)(3) [~~Article 5190.9a, 2(b)(3)~~];

(D) the lesser of $15 million or 15 percent of the amount set aside for this purpose for issuers described by §1372.022(a)(4); [~~Article 5190.9a, §2(b)(4)~~]

(E) $35 million for issuers described by §1372.022(a)(5) and §1372.033 Notwithstanding the cap limit described in §1372.037(5), each issuer that has requested and has been offered a reservation in the maximum amount shall be granted in equal amounts any remaining state ceiling set aside for qualified student loan issuers. This will be based on the acceptance by an issuer of a reservation and that an issuer does not refuse any additional reservation. The disbursement of equal shares will be granted in conjunction, subject to availability and acceptance, with the original request.

(F) [~~(E)~~] $25 million for issuers described by §1372.022 (a)(6). [~~Article 5190.9a, §2(b)(6); and~~]

~~[(F) $35 million for issuers described by Article 5190.9a, §2(b)(5).]~~

(5) (No change.)

§190.4. Filing Requirements for Applications for Carryforward.

(a) (No change.)

(b) Filing. The issuer shall submit one original and one copy [~~two copies~~] of the application for carryforward. Each application must be accompanied by the following:

(c) Fee. The fee required by §1372.006(e) [~~Article 5190.9a, §12~~] must be paid not later than the fifth business day following the date of receipt of the certificate of carryforward designation.

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

§190.5. Consideration of Qualified Applications by the Board.

(a) All fees required by the Act and the rules must be submitted under separate cover by overnight delivery or messenger to the lockbox address as described in §190.8(c) of this title (relating to Notices, Filings, and Submissions). Each check must be accompanied by a fee verification form as prescribed by the board. The Comptroller of Public Accounts shall note the receipt of the check on the fee verification form and forward the form to the board. All checks must be received by the Comptroller of Public Accounts within 24 hours of the receipt of corresponding documents by the board. If the fee is not received in a timely manner, the corresponding filing will not be considered to be a complete filing, and with respect to a filing pursuant to §190.3(a) or (c) of this title, the reservation will be cancelled.

(b) All other submissions required by the Act must be delivered in person to the board at its offices during normal business hours or sent by overnight delivery, certified or registered mail, postage prepaid, addressed to the board. The board shall note on the face of the documents the date and time that they are received and provide, upon issuer request, the issuer with a receipt describing the document received and the date and time of receipt. The board will review the application to determine if it is complete. The board shall return any application not in substantial compliance with the Act and these sections.

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

(e) If at any time the amount of the state ceiling or portion of the state ceiling reserved for qualified mortgage bonds, state voted issues, qualified small issue bonds, qualified residential rental project issues, qualified student loan bonds, or all other bond issues has been exhausted, applications which would otherwise qualify for a reservation shall be received and dated and become eligible for [~~receive~~] reservations as provided in subsection (f) of this section.

(f) If at any time none of the state's ceiling remains available for certificates of reservation in a specific category, but additional amounts become available in such specific category before June 1 of the program year because of cancellations or any other reason, those amounts shall be aggregated and reservations shall be granted from that category on June 1 of the program year to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. [~~If any portion of state ceiling becomes available after June 1 of the program year and before August 25 of the program year in any specific category those amounts shall be aggregated and reservations shall be granted from that category on August 25 of the program year to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board.~~] The board may grant a reservation at any time on or after January 2 if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category by the next applicant.

(g) - (i) (No change.)

§190.6. Expiration Provisions.

(a) A certificate of reservation for an application within the category described by §1372.022(b)(1) [~~Article 5190.9a, §2(b)(1)~~] shall expire at the close of business on the 180th calendar day after the date on which the reservation is given. A certificate of reservation for an application within the categories described by §1372.022(b)(2)-(6) [~~Article 5190.9a, §2(b)(2)-(6)~~] shall expire at the close of business on the 120th calendar day after the date on which the reservation is given.

(b) (No change.)

§190.7. Cancellation, Withdrawal and Penalty Provisions.

(a) (No change.)

(b) If the closing documents are not received within five business days after the closing as described in §190.3(e) of this title (relating to Filing Requirements for Applications for Reservation), the issuer's reservation is cancelled and during the 150-day period beginning on the reservation date of the cancelled reservation for applications within the categories described by §1372.022, (2) [~~Article 5190.9a, §2(b)(2)-(6),~~] and the 210-day period for an application within the category described by §1372.022 (1); [~~Article 5190.9a, §2(b)(1):~~]

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

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

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

Filed with the Office of the Secretary of State, on August 20, 2001.

TRD-200104884
James T. Buie
Executive Director
Texas Bond Review
Proposed date of adoption: October 9, 2001
For further information, please call: (512) 463-1741

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. PRACTICE AND PROCEDURE
SUBCHAPTER I. NOTICE AND PROCESSING PERIODS FOR CERTIFICATE APPLICATIONS

37 TAC §401.127

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §401.127, concerning notice and processing periods for certificate applications. The amendment corrects a typographical error in §401.127(e).

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the proposed amendment will be in effect, there will be no fiscal implications for state and local governments.

Mr. Soteriou has determined that for the first five-year period that the amendment is in effect, the public benefit will be easier access to information on the appeals process. There are no anticipated fiscal implications for individuals or small businesses. The proposal is administrative in nature and corrects a cross-reference to §401.63, Appeals to the Commission, in Chapter 401, Subchapter F.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, TX 78768- 2286 or submitted by e-mail to *info@tcfp.state.tx.us*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties.

Texas Government Code, §419.036 and §419.906 are affected by the proposed amendment. In addition, the Government Code, §§2001.001-2001.147, are affected by the amendment.

§401.127. Appeal.

(a) Hearing.

(1) Notice. An applicant who does not receive notice as to the complete or deficient status of a certificate application within the period established in this subchapter for such application may petition for a hearing to review the matter.

(2) Processing. An applicant whose permit is not approved or denied within the period established in this subchapter for such certificate may petition for a hearing to review the matter.

(3) Procedure. A hearing under this section shall be in accordance with the Administrative Procedure Act and Subchapter E of this chapter (relating to Contested Cases).

(b) Petition. A petition filed under this section must be in writing and directed to the executive director. The petition shall identify the applicant, indicate the type of certificate sought and the date of the application, specify each provision in this subchapter that the agency has violated, and describe with particularity how the agency has violated each provision. The petition shall be filed with the office of the executive director.

(c) Decision. An appeal filed under this section shall be decided in the applicant's favor if the executive director finds that:

(1) the agency exceeded an established period under this subchapter; and

(2) the agency failed to establish good cause for exceeding the period.

(d) Good cause. The agency is considered to have good cause for exceeding a notice or processing period established for a permit if:

(1) the number of certificates to be processed exceeds by 15% or more the number of certificates processed in the same calendar quarter of the preceding year;

(2) the agency must rely on another public or private entity for all or part of its certificate processing, and the delay is caused by the other entity;

(3) the hearing and decision-making process results in reasonable delay under the circumstances;

(4) the applicant is under administrative review; or

(5) any other conditions exist giving the agency good cause for exceeding a notice or processing period.

(e) Commission review. A permit applicant aggrieved by a final decision or order of the executive director concerning a period established by these sections may appeal to the commission in writing after the decision or order complained of is final, in accordance with §401.63 [~~§401.93~~] of this title (relating to Appeals to the Commission).

(f) Relief.

(1) Complete or deficient status. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to issue notice as to the complete or deficient status of an application shall be entitled to notice of application status.

(2) Certificate approval or denial. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to approve or deny a certificate shall be entitled to such approval or denial of the certificate and to full reimbursement of all filing fees that have been paid to the agency in connection with the application.

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 August 15, 2001.

TRD-200104748
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 239-4921

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CHAPTER 427. TRAINING FACILITY CERTIFICATION
SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

37 TAC §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19

The Texas Commission on Fire Protection (TCFP) proposes amendments to Chapter 427, §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19, concerning training facilities. The existing sections will be grouped together

as new Subchapter A, On-Site Certified Training Provider, of the renamed Chapter 427, Training Facility Certification. Amendments to §427.1 define "on-site training facility." Amendments to §§427.3, 427.5, 427.9, and 427.13 narrow existing language to refer to "on-site" facilities in particular. Amendments to §427.7 provide clarification for bunker gear compliance. An amendment to §427.11 removes the "basic" specification for reference material. Amendments to §427.15 clarify testing procedures. Amendments to §427.17 add specifications for staff certifications and correct a typographical error in §427.17(b) in the cross-reference to Chapter 425. Amendments to §427.19 correct grammatical errors.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the proposed amendment will be in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the rule as amended.

Mr. Soteriou has determined that for the first five-year period that the amendments are in effect, the public benefit will be clarification of the types of delivery for certification programs. There are no additional fiscal implications for individuals or small businesses required to comply with the amendments.

Comments on the proposed amendments may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, TX 78768-2286 or submitted by e-mail to *info@tcfp.state.tx.us*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.028, which provides the TCFP with authority to certify an institution or facility operated specifically for training fire protection personnel recruits.

Texas Government Code, §419.028 is affected by the proposed amendments.

§427.1. Minimum Standards for On-Site Certified Training Facilities for Fire Protection Personnel.

(a) An on-site [~~A~~] training facility must be certified by the commission in each discipline with a commission approved curriculum for which the facility provides accredited training for [~~basic~~] fire protection personnel certification. An on- site training facility is where instructors and students are in immediate proximity and where content is instructed primarily in classrooms, at demonstration projects, in fire simulation structures, on fire apparatus, or at training sites in the field under direct supervision of the training facility instructors.

(b) A certified on-sitetraining facility may be approved to instruct in any one or all of the [~~basic~~] fire protection personnel curricula[~~curriculums~~]. Minimum requirements for each curriculum must be met to receive certification.

(c) Minimum requirements for certification as a certified on-sitetraining facility shall include facilities, apparatus, equipment, reference materials, and records to support a quality education and training program. The resources must provide for classroom instruction, demonstrations, and practical exercises for the trainees to develop the knowledge and skills required for [~~basic~~] fire protection personnel certification.

(d) The on-sitefacilities and training shall be performance oriented, when required. Practical performance training with maximum participation by trainees shall be an integral part of the training program. The evaluation process for each phase of training will emphasize, as required, performance testing to determine if the trainee has acquired the knowledge and skills to achieve the required level of competency as required by the respective curriculum.

(e) It must be clearly understood that the minimum standard for training facilities is applicable only as the title implies and does not address the additional training facility resources which are required for the continuing in-service training essential to the development and maintenance of a well-coordinated and effective fire service organization.

(f) An organization, installation, or facility must submit a written application for certification as a certified on- sitetraining facility to the commission. Such application will include descriptions and addresses of physical facilities together with inventory of apparatus, equipment, and reference material to be utilized in conducting the basic curriculum as specified by the commission. It is not required that the equipment be owned by, permanently assigned to, nor kept at a training facility, but must be readily available for instructional purposes. A training facility must submit a letter of commitment with the original training facility certification application authorizing the use of resources not controlled by the training facility from the provider of said resources. Photographs of resources annotated to reflect their identity must be included with the application. When seeking basic course approvals, the facility shall certify that the resources are provided in accordance with this chapter.

(g) All training must be submitted to the commission for approval at least 20 days prior to the proposed starting date of the training.

(h) An[~~A~~] on-site[~~certified~~] training provider certified for the first time by the commission will receive[~~facility must submit a written request to the commission to be issued~~], at no charge, one Commission Certification Curriculum and Standards Manual on CD that [~~which~~]is to be utilized by the certified on- sitetraining provider's[~~facility~~] instructors. The on-site[~~certified~~] provider is[~~training facility instructors are~~] responsible for ensuring that all subjects are taught as required by the respective curriculum. Additional CD copies[~~of the Commission Certification Curriculum Manual~~] may be purchased from the commission or downloaded from the agency web site. On- site[~~Certified~~] training providers[~~facilities~~] that renew their certification will receive appropriate updates[~~,~~] at no charge[~~, to the Commission Certification Curriculum Manual~~].

§427.3. Facilities.

The following minimum resources, applicable to the curricula, are required for certification as a certified on-site training facility. These facilities may be combined or separated utilizing one or more structures. In either event the facilities must be available and used by the instructor and trainees.

(1) A training tower equivalent to two or more stories in height. The term "training tower" as used in these standards is a structure suitable for training in the practical application of ladder evolutions, rescue drills, hose advancement, and rope work.

(2) A facility for classroom instruction shall have seating capacity for anticipated trainees conducive for an effective learning environment.

(3) Area for practical application of principles and procedures of fire fighting, hose loading, pumper operation, to include friction loss, nozzle reaction, fire stream patterns, and GPM discharge utilizing various layouts for hand lines and master stream appliances.

(4) An enclosed area or room for use in practical training with self-contained breathing apparatus. This may be a smoke and fire

room or enclosed area which can be charged with smoke-producing devices to provide a realistic training environment.

(5) A structure suitable for interior live fire training and meeting the requirements of the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach interior live fire training. NFPA 1403, Standard on Live Fire Training Evolutions in Structures shall be used as a guide when conducting interior live fire training.

(6) Facilities to conduct exterior live fire training as required by the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach exterior live fire training.

(7) If performance or driving skills are part of the curriculum, suitable area(s) for practicing required skills, demonstration of skills, and performance testing must be available.

§427.5. Apparatus.

(a) Certified on-site training facility--approved for basic structural fire protection personnel.

(1) A pumper apparatus fully equipped as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.

(2) Ladders or a ladder truck as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.

(b) Certified on-site training facility--approved for basic aircraft rescue fire fighting personnel. Fire apparatus that is equipped to perform aircraft operations as required by the basic aircraft fire protection curriculum must be readily available for use by the instructors for instructional purposes.

(c) Certified on-site training facility--approved for Driver/Operator - Pumper. A piece of fire apparatus with a permanently mounted fire pump that has a rated discharge capacity of 750 gpm (2850 L/min) or greater as defined in NFPA 1901, Standard for Automotive Fire Apparatus.

§427.7. Protective Clothing.

Each and every set of protective clothing, including proximity clothing, that will be used during the course of instruction for a commission approved [~~basic~~] fire protection personnel curriculum shall comply with §435.1 of this title (relating to Protective Clothing). This rule applies whether the protective clothing is provided by the academy or the trainee. Protective clothing and elements that are no longer of use to the organization for emergency operations service but are not contaminated, defective, or damaged may be used for training that does not involve live fire training provided such clothing and elements are appropriately marked to be easily recognized.

§427.9. Equipment.

The following minimum equipment, applicable to the curricula[~~curriculum(s)~~] the training facility is certified to teach, is required for certification as a certified on site training facility. The equipment must be available for use by the certified training facility:

(1) If instruction in the use of self-contained breathing apparatus is a part of the curriculum being taught, then self- contained breathing apparatus in sufficient numbers shall be provided to enable each trainee to wear the equipment for at least the life of one breathing air tank during the training. If during the course of the training, a trainee will be subjected to a hazardous atmosphere or where the atmosphere is unknown, the trainee shall be provided with a self-contained breathing apparatus. (Note: All self-contained breathing apparatus used by a certified training facility and the air used in them must comply with §435.3 of this title (relating to Self-Contained Breathing Apparatus)). This rule applies whether the self- contained breathing apparatus is provided by the academy or the trainee;

(2) standard classroom equipment to include chalkboard, speaker rostrum, supportive instructional aids available to include audio- visual projection equipment. The use of cutaways, models, flip charts, and other visual aids are recommended to enhance effectiveness of the instruction. (Note: The instructor needs to ensure all necessary equipment is available for trainees to use regarding the basic performance skills as identified in appropriate curriculum and to comply with §427.15 of this title (relating to Testing Procedures)); and

(3) other equipment, which may include training simulators and mock training aids, and tools required by the applicable curriculum.

§427.11. Reference Material.

A reference library is required. The library must contain the publications required to conduct research and develop lesson plans covering the material required in the applicable [~~basic~~] curriculum.

§427.13. Records.

(a) Training records shall be maintained by the on site training facility that reflect:

(1) who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records); and

(2) individual trainee test scores to include performance testing.

(b) All training records must be maintained by the on- site training facility for a minimum of three years or in accordance with the requirement of the Texas State Library and Archives Commission, State and Local Records Management Division, whichever is greater.

§427.15. Testing Procedures.

(a) A system for evaluating the effectiveness of the instruction, and the comprehension of the trainee is required.

(b) If performance skills are part of the applicable curriculum, performance testing shall be done and records kept in accordance with § 427.13 of this subchapter. This will ensure [~~indicating~~] that each trainee has demonstrated an ability to competently and carefully[~~consistently~~] perform, individually and as a member of a team, all tasks and operations associated with the training [~~in a safe manner and level of competency which contributes to the successful achievement of the purpose for which the task or operation is being performed~~].

(c) Performance testing should be utilized to the maximum extent practical. The performance skills contained in the applicable [~~basic~~] curriculum shall be utilized to satisfy performance skills requirements. Each trainee shall be prepared to demonstrate any performance skill before a commission representative as may be required in Chapter 439 of this title (relating to Examinations for Certification).

(d) Periodic written[~~Written~~] tests shall be administered at the ratio of one test per 50 hours of required training, or portion thereof. In addition to periodic tests, a comprehensive final test must be administered. A passing score shall be 70%. If a course is taught in phases, one comprehensive final test shall be administered at the completion of all phases[~~designed to encompass the contents of the subjects being taught and phrased in a manner which can be readily understood by a trainee whose comprehension is at a level consistent with the academic level of the material being presented~~].

[(1) Periodic written tests serve the dual purpose of permitting the instructor to evaluate the effectiveness of the instruction and the comprehension of the trainees. The instructor must determine that each trainee understands and comprehends the subject matter being presented. Trainees must maintain a grade average of not less than 70% for all periodic tests administered during the course.]

[(A) A minimum of eight periodic written tests shall be administered during the course for certification of structural fire protection personnel, covering the subjects listed in the basic fire suppression curriculum.]

[(B) A minimum of four periodic written tests shall be administered during the course for certification of aircraft rescue fire fighting personnel, marine fire protection personnel, fire inspectors, arson investigator, and fire investigator covering the subjects listed in the applicable curriculum.]

[(C) A minimum of two periodic written tests shall be administered during the course for certification of hazardous materials technicians covering the subjects listed in the applicable curriculum.]

[(D) A minimum of one periodic written test shall be administered during the course for certification of driver/operator - pumper covering the subjects listed in the applicable curriculum.]

[(2) Comprehensive written tests shall be administered utilizing one of the following options.]

[(A) Option A. A midterm and a final comprehensive written test shall be administered, if this option is utilized. The first or midterm comprehensive test shall be given no later than midway through the curriculum and shall relate to subjects presented from the beginning of the training until the date of test. The final comprehensive test shall be given at the conclusion of the training curriculum and shall relate to subject matter presented from the beginning of the training until the date of the test. Each trainee must maintain a grade average of not less than 70% for the two comprehensive tests. The training facility may allow one retest for each comprehensive examination given.]

[(B) Option B. A final comprehensive written test shall be administered at the conclusion of the course and shall cover all subjects listed in the training curriculum. Each trainee must score a grade of not less than 70% on the final examination. The training facility may allow one retest for each comprehensive examination given.]

[(C) Option C. If the training facility is conducting an approved basic fire suppression phase level program, a comprehensive written test will be administered by the certified training facility at the completion of each phase of the curriculum. Trainees must obtain a grade of not less than 70% for all tests administered for each phase. The training facility may allow one retest for each comprehensive examination given.]

[(3) The tests in paragraphs (1) and (2) of this subsection shall be in addition to the commission examination required in Chapter 439 of this title (relating to Examinations for Certification).]

(e) Periodic and final[A master copy of written] tests shall be in addition to the [will be maintained for review by] commission examination required in Chapter 439 of this title (relating to Examinations for Certification) [representatives. The certified training facility shall maintain copies of all tests for a minimum of three years].

§427.17. Staff.

(a) A training officer of an on-site training facility, as a minimum, must possess an intermediate fire service instructor certification (refer to §425.5[§425.3] of this title (relating to Intermediate Fire Service Instructor Certification)). A newly appointed training officer must, as a minimum, possess an intermediate fire service instructor certification within one year from date of appointment.

(b) A coordinator of an on-site training facility, as a minimum, must possess an intermediate fire education specialist certification (refer to §425.205[§425.303] of this title (relating to Intermediate Fire Education Specialist Certification)). A newly appointed coordinator must, as a minimum, possess an intermediate fire education specialist certification within one year from date of appointment.

(c) All on-site instructors, except guest instructors, must possess fire instructor certification. The fire instructor(s) [instructor or instructors that will be] providing instruction must be certified in the applicable discipline or be approved by the commission to instruct in the applicable subject [curriculum or subjects].

(d) The on-site lead instructor, as a minimum, shall possess an intermediate fire instructor certification and must be certified by the commission in the applicable curriculum. [The lead instructor must have completed the course he or she is seeking to instruct or have completed comparable training in the same subject area.]

(e) Guest instructors, including fire protection personnel utilized on a limited basis, are not required to be certified as instructors. A guest instructor is defined as an individual with special knowledge, skill, and expertise in a specific subject area who has the ability to enhance the effectiveness of the training. A fire instructor certified in the applicable discipline or a certified fire instructor approved by the commission to teach the subject must be in attendance when a guest instructor is teaching. [Guest instructors can teach under the endorsement of the instructor responsible for the subject being taught.]

(f) The on-site coordinator or lead instructor for the fire officer training courses only shall as a minimum, possess an associate instructor certification and a minimum of a bachelors degree in management or the equivalent.

§427.19. General Information.

(a) All Texas certified training facilities shall meet these minimum requirements. No training credit will be recognized from a Texas training facility that has not been certified by the commission, unless the program has been approved by the commission as being equivalent. The commission shall take action on an application for certification of a training facility within 30[90] days from receipt [of same].

(b) Certified training facilities shall conduct all training in a controlled and safe manner so that trainees are not subjected to unnecessary risks. Texas Government Code, §419.032(c) provides that fire protection personnel must complete a commission approved training course in fire suppression before being assigned to fire suppression duties. In addition, certified training facilities, whether operated by a fire department or other governmental or private training facility, shall not put trainees at risk by requiring or allowing a trainee to perform the duties of fire protection personnel at actual uncontrolled emergency situations such as, but not limited to, structure fires, aircraft fires, wildland fires, hazardous materials incidents or dangerous rescue situations.

(c) A certified training facility may transport trainees to the site of an actual emergency for training purposes only if the following requirements are strictly adhered to:

(1) The [the] trainees are kept in a group under the direct supervision of an ample number of qualified instructors to maintain accountability and ensure their safety;

(2) The [the] trainees are kept outside of the emergency operations area; and

(3) The [the] trainees' activities are restricted to observation only and trainees are not allowed to participate in emergency operations.

(d) Certified training facilities are subject to inspection by the commission at any time during regular business hours.

(e) In order to retain the certification as a certified training facility, schools desiring to make substantial changes in the facility or other conditions under which the school was approved shall coordinate such plans with the commission.

(f) The commission shall be notified, in writing, within 14 days of any change in the certified training.

(g) The commission may revoke the certification of a training facility when [, in the judgment of] the commission[,] determines that the training facility:

(1) Fails [is inadequate and fails] to provide the quality of training for which the facility was approved;

(2) Fails [fails] to comply with commission rules and/or these minimum standards; or

(3) Fails [fails] to submit required reports in a timely manner or submits false reports to the commission.

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

Filed with the Office of the Secretary of State, on August 15, 2001.

TRD-200104749
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 239-4921

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SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §§427.201, 427.203, 427.205, 427.207, 427.209

The Texas Commission on Fire Protection (TCFP) proposes new Subchapter B, Distance Training Provider, to be added to the renamed Chapter 427, §§427.201, 427.203, 427.205, 427.207, 427.209, concerning Training Facility Certification. New §427.201 defines "approved distance training" and establishes the minimum standards for distance training providers. New §427.203 establishes standards for record keeping. New §427.205 establishes testing procedures. New §427.207 establishes certification requirements for instructors and training coordinators. New §427.209 provides general information regarding class credit, supervision of trainees, and grounds for revocation of certification.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the rule change is in effect the fiscal implications to state governments will be an increase in revenue of approximately $100 per year. This is due to an increase of 5 new distance training facilities being certified. Local governments that choose to utilize the distance learning concept will incur an additional cost of $20 in certification fees and approximately $1,500 in the cost of developing a distance learning program.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for the first five-year period that the new rules are in effect, the public benefit anticipated is greater flexibility for personnel to obtain certified programs using the internet.

The cost to individuals is anticipated to be approximately $250 per course, which may be higher than a traditional on-site delivered course. There will be no impact to small businesses.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, TX 78768- 2286 or submitted by e-mail to *info@tcfp.state.tx.us*.

The new sections are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.028, which provides the TCFP with authority to certify an institution or facility operated specifically for training fire protection personnel recruits.

Texas Government Code, §419.028 is affected by the new sections.

§427.201. Minimum Standards for Distance Training Provider.

(a) The following definition is applicable to this subchapter only. Approved distance training is defined as fire training where instructors and students are in different locations or where content is instructed primarily using correspondence, video technology, audio technology, or computer-mediated delivery.

(b) A distance training provider must seek certification as a training facility in each discipline it intends to instruct.

(c) In order to become a commission approved distance training provider; the provider must submit a completed commission training facility application with supporting documentation and fee. Such application will include descriptions and addresses of where the distance training provider will have their course delivery and materials. A distance training provider must provide documentation of its ability to meet all minimum requirements for each discipline for which it seeks certification. The documentation must also identify how students and instructors will access resources as identified in the curriculum.

(d) All training must be submitted to the commission for approval at least 20 days prior to the starting date of the training.

(e) A distance training provider certified for the first time by the commission will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD to be utilized by the certified distance training provider's instructors. The distance training provider is responsible for ensuring that all subjects are taught as required by the curricula. Additional CD copies may be purchased from the commission or downloaded from the agency web site. Distance training providers that renew their certification will receive appropriate updates at no charge.

§427.203. Records.

(a) Training records shall be maintained by the distance training provider that reflect:

(1) Who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records); and

(2) Individual trainee test scores to include performance testing.

(3) Evidence to substantiate the test scores received by each trainee to include performance testing. Such records will include materials (completed tests and/or answer sheets, other documents, video or audio recording, etc.), and will provide identification of the examinee, identification of the evaluating field examiner, and the observer as defined in Chapter 439.

(b) All distance training provider records must be maintained by the distance training provider for commission review for a minimum of three years or in accordance with the requirement of the Texas State Library and Archives Commission, State and Local Records Management Division, whichever is greater.

(c) A master copy of tests will be maintained for review by commission representatives. The certified distance training provider shall maintain copies of all tests for a minimum of three years.

§427.205. Testing Procedures.

(a) A system for evaluating the effectiveness of the instruction and the comprehension of the trainee is required.

(b) If performance skills are part of the applicable curriculum, performance testing shall be done and records kept in accordance with §427.203 of this subchapter. This will ensure that each trainee has demonstrated an ability to perform competently and safely, individually or as a member of a team, all tasks and operations associated with the training.

(c) Performance testing should be used to the maximum extent practical. The performance skills contained in the applicable curriculum shall be used to satisfy performance skill requirements. Each trainee shall be prepared to demonstrate any performance skill before a commission representative as may be required in Chapter 439 of this title (relating to Examinations for Certification).

(d) Periodic written tests shall be administered at the ratio of one test per 50 hours of required training, or portion thereof. In addition to periodic tests, a comprehensive final test must be administered. A passing score shall be 70%. If a course is taught in phases, one comprehensive final test shall be administered at the completion of all phases.

(e) Periodic and final tests shall be in addition to the commission examination required in Chapter 439 of this title (relating to Examinations for Certification).

§427.207. Staff.

(a) A training officer of a distance training program, as a minimum, must possess an intermediate fire service instructor certification (refer to §425.5 of this title (relating to Intermediate Fire Service Instructor)). A newly appointed training officer must, as a minimum, possess an intermediate instructor certification within one year from date of appointment.

(b) A coordinator of a distance training program, as a minimum, must possess an intermediate fire education specialist certification (refer to §425.205 of this title (relating to Intermediate Fire Education Specialist)). A newly appointed coordinator must, as a minimum, possess an intermediate fire education specialist certification within one year from date of appointment.

(c) All distance instructors, except guest instructors, must possess fire instructor certification. Associate instructors may instruct in any curriculum and in any subject area he or she has been approved to instruct.

(d) The distance lead instructor, as a minimum, shall possess an intermediate fire instructor certification and be certified by the commission in the applicable curriculum.

(e) Guest instructors, including fire protection personnel used on a limited basis, are not required to be certified as instructors. A guest instructor is defined as an individual with special knowledge, skill, and expertise in a specific subject area who has the ability to enhance the effectiveness of the training. Guest instructors shall teach under the endorsement of the lead instructor.

(f) The distance training coordinator or lead instructor for fire officer training courses only, shall as a minimum, possess an associate instructor certification and a minimum of a bachelors degree in management or equivalent.

§427.209. General Information.

(a) All distance training providers shall meet these minimum requirements. No training credit will be recognized from a distance training provider that has not been certified by the commission. The commission shall take action on an application for certification of a distance training provider training facility provider within 30 days from receipt.

(b) Distance training providers conducting on-site programs shall ensure that all training is conducted in a controlled and safe manner so that trainees are not subjected to unnecessary risks. In addition, certified training facilities shall not put trainees at risk by requiring or allowing a trainee to perform the duties of fire protection personnel at actual uncontrolled emergency situations such as, but not limited to, structure fires, aircraft fires, wildland fires, hazardous materials incidents or dangerous rescue situations.

(c) A distance training provider may transport trainees to the site of an actual emergency for training purposes only if the following requirements are strictly adhered to:

(1) The trainees are kept in a group under the direct supervision of an ample number of qualified instructors to maintain accountability and ensure their safety;

(2) The trainees are kept outside of the emergency operations area; and

(3) The trainees' activities are restricted to observation only and trainees are not allowed to participate in emergency operations.

(d) Distance training providers are subject to inspection by the commission at any time during regular business hours. Distance training providers shall provide the commission with access to monitor the course in progress.

(e) The commission shall be notified, in writing, within 14 days of any change from the original status under which certification was issued.

(f) The commission may revoke the certification of training when the commission determines that the distance training provider:

(1) Fails to provide the quality of training and education for which the provider was approved;

(2) Fails to comply with commission rules and/or these minimum standards; or

(3) Fails to submit required reports in a timely manner or submits false reports to the commission.

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

Filed with the Office of the Secretary of State, on August 15, 2001.

TRD-200104750
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 239-4921

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 15. MEDICAID ELIGIBILITY
SUBCHAPTER E. INCOME

40 TAC §15.450

The Texas Department of Human Services (DHS) proposes to amend §15.450, concerning general principles concerning income, in its Medicaid Eligibility chapter. The purpose of the amendment is to comply with House Bill 154, in which the 77th Texas Legislature approved an increase in the personal needs allowance (PNA) for Medicaid clients in nursing facilities and ICF/MF facilities. The PNA increase to $60 per month is effective September 1, 2001. For Supplemental Security Income (SSI) clients who receive the $30 federal benefit rate, the state will supplement their incomes by $30 per month so that they will have $60 per month for personal use.

Jerry W. Friedman, Executive Deputy Commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for local governments as a result of enforcing or administering the section. There will be an effect on state government as a result of enforcing or administering this section.

The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of $6,545,292 in fiscal year (FY) 2002; $6,563,826 in FY 2003; $6,593,161 in FY 2004; $6,622,497 in FY 2005; and $6,651,833 in FY 2006.

Mr. Friedman 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 an additional $15 per month, a total of $60, for clients' personal use. There will be no effect on small or micro businesses as a result of enforcing or administering the section because the Medicaid vendor payment will increase to offset the amount retained by the client for personal use. 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 Judy Coker at (512) 438-3227 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-181, 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 authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.450. General Principles Concerning Income.

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

(h) A personal needs allowance (PNA) is an amount of a client's income that a client in an institutional setting may retain for his personal use. It will not be applied against the costs of medical assistance furnished in the facility. Clients in institutional settings may retain $60 [~~$45~~] per month for their personal use. In couple cases, each spouse may retain $60 [~~$45~~]. For SSI clients who receive the $30 reduced federal benefit, the state supplements their incomes by $30 [~~$15~~] per month to allow a total of $60 [~~$45~~] for personal needs. The effective date of the $60 [~~$45~~] PNA is September 1, 2001. [~~1999; prior to that date, the PNA was $30.~~]

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 August 17, 2001.

TRD-200104834
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 438-3734

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2322

The Texas Department of Human Services (DHS) proposes to amend §19.2322, concerning allocation, reallocation, and decertification requirements, in its Requirements for Medicaid-Certified Facilities chapter. The purpose of the amendment is to implement appropriations rider 38 passed by the 77th Legislature. Rider 38 directs DHS to create a program for Medicaid-eligible veterans that will enable those individuals to be placed in state veterans homes.

The proposed rule allows an exemption from the Medicaid nursing facility bed allocation rules for state veterans homes that are authorized and built under the auspices of the Texas Veterans Land Board. The exemption will allow the Texas Veterans

Land Board to receive the allocation of Medicaid beds if veterans homes meet the participation requirements of the Medicaid nursing facility program.

Jerry W. Friedman, Executive Deputy Commissioner, has determined that for the first five-year period the proposed section will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $146,042 in fiscal year (FY) 2002; $146,042 in FY 2003; $146,042 in FY 2004; $146,042 in FY 2005; and $146,042 in FY 2006. There will be no fiscal implications for local governments as a result of enforcing or administering the section.

Mr. Friedman 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 Medicaid-eligible veterans and qualified family members will be able to receive services in a state veterans home. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because the amendment allows Medicaid funds to be used for the care of Medicaid-eligible veterans and their family members. It is anticipated that most veterans and their family members served in these homes will transfer from veterans hospitals. There is no anticipated economic cost to persons who are required to comply with the proposed section. There also is no anticipated impact on local employment.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care-Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-193, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The proposal is available for public review at local offices of DHS. For further information, contact Susan Syler in DHS's Long Term Care-Policy Section at (512) 438- 3111.

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 authorizes the department to administer public and medical assistance programs.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042 and Government Code, §§531.033 and 531.021(b).

§19.2322. Allocation, Reallocation, and Decertification Requirements.

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

(e) Exemptions. If the NFO meets all criteria, DHS may grant the following exemptions from the policy stated in subsection (c) of this section.

(1)-(9) (No change.)

(10) State veterans homes. State veterans homes, authorized and built under the auspices of the Texas Veterans Land Board, must meet all requirements for Medicaid participation.

(f)-(j) (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 August 17, 2001.

TRD-200104814
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 438-3734

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CHAPTER 41. VENDOR FISCAL INTERMEDIARY PAYMENTS

40 TAC §41.114

The Texas Department of Human Services (DHS) proposes new §41.114, concerning vendor fiscal intermediary payment option, in its Vendor Fiscal Intermediary Payments chapter. The purpose of the new section is to create a vendor fiscal intermediary (VFI) payment model for programs that offer personal attendant services.

This proposal establishes the payment rate methodology used to determine the consumer payment rate. The consumer can use the methodology to pay a personal attendant, and use the VFI payment rate to pay for contracted VFI services. The sum of these two payment rates cannot exceed the payment rate for contracted providers who deliver services to clients who do not participate in the VFI option. This option will be made available in the Consumer-Managed Personal Attendant Services, Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Deaf- Blind with Multiple Disabilities, In-home and Family Support, Medically Dependent Children, Primary Home Care, and Family Care Services programs within DHS. The VFI model was piloted in DHS's Client Managed Attendant Services program and the Personal Attendant Services program of the Texas Rehabilitation Commission (TRC) under House Bill 2084 of the 75th Legislature. The pilot has been expanded to other Community Care for the Aged and Disabled (CCAD) programs under Senate Bill 1586 of the 76th Legislature, which directs the Health and Human Services Commission (HHSC) to expand this model to other HHSC community programs.

Jerry W. Friedman, Executive Deputy Commissioner, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Friedman also has determined that for 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 consumers enrolled in these programs will be able to determine the compensation of their attendants within an approved service plan budget that is based on the consumer payment rate. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because a limited number of consumers will take advantage of the VFI payment option. A contracted provider who

currently serves a consumer who decides to participate in the option can choose to continue providing some of the employer-related responsibilities, such as processing payroll and maintaining records for business tax filings at the VFI payment rate. 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 Carolyn Pratt at (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-202, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The proposal is available for public review at local offices of DHS. For further information, contact Carolyn Pratt in DHS's Rate Analysis Department at (512) 438-4057.

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 Human Resources Code, Title 2, Chapters 22 and 32, which authorize DHS to administer public and medical assistance programs; and under Texas Government Code §531.021(b), which provides HHSC with the authority to administer federal medical assistance funds.

The section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§41.114. Vendor Fiscal Intermediary Payment Option.

(a) The vendor fiscal intermediary (VFI) payment option is made available to eligible consumers in the In-home and Family Support, Primary Home Care (PHC), Family Care Services and Consumer-Managed Personal Assistance Services programs.

(b) The sum of the payment rate for the contracted VFI and the payment rate for the consumer must not exceed the hourly attendant compensation enhancement participant payment rate made to contracted providers in these programs. The payment rate for the contracted VFI is determined by modeling the estimated administrative cost to carry out the responsibilities of the VFI. The payment rate for the consumer is determined by subtracting the contracted VFI payment rate from the attendant compensation enhancement participation payment rate made to contracted providers in these programs.

(c) The VFI payment rate is paid to the VFI as a percentage of the amount expended and claimed to the Texas Department of Human Services.

(d) Consumers must expend on the average hourly compensation of attendants, an amount equal to the calculated consumer payment rate per hour of service divided by 1.07. Compensation includes salaries and wages, payroll taxes, workers' compensation, employee benefits/insurance, and mileage reimbursement.

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 August 17, 2001.

TRD-200104830

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 438-3734

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PART 9. TEXAS DEPARTMENT ON AGING

CHAPTER 260. AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS

40 TAC §260.4

The Texas Department on Aging proposes new §260.4, concerning Certification of Benefits Counselors Regarding the Preparation of Advanced Directives.

Section 260.4 is proposed in order to conform to the requirements of House Bill 1420 (HB 1420). HB 1420 was enacted during the 77th Legislative Session. In accordance with this bill, the "practice of law" does not include technical assistance, consultation, and documentation completion assistance relating to medical power of attorney or other advance directives under Chapter 166, Health and Safety Code or a designation of guardian before need arises under Section 679, Texas Probate Code when the assistance is provided by an employee or volunteer of an area agency on aging affiliated with the Texas Department on Aging who meets the identified requirements under the bill. HB 1420 requires the Texas Department on Aging by rule to develop certification procedures.

Barbara Zimmerman, Chief Fiscal Officer, 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 government as a result of enforcing or administering the new section.

Ms. Zimmerman also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to conform to the requirements of HB 1420, 77th Legislative Session. There will be no effect on small businesses. There will be no effect to individuals required to comply with the section as proposed.

Comments on the new rule may be submitted to Gary Jessee, Aging Network Policy Coordinator, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711. All comments must be written and delivered via mail, in person, or facsimile. E-mail and verbal comments cannot be accepted. All comments must be received within 30 calendar days following the date of publication of the proposed new rule in the *Texas Register*.

The new rule is proposed under Texas Government Code, §2161.003, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

Texas Government Code, §2161.003 is affected and implemented by this proposed action.

§260.4. Certification of Benefits Counselors Regarding the Preparation of Advanced Directives.

(a) To be certified to provide services pursuant to Texas Government Code §81.1011, a benefits counselor must meet the following requirements:

(1) Be an employee or volunteer of an area agency on aging affiliated with the Texas Department on Aging who provides benefits counseling services through an area agency on aging system of access and assistance to persons age 60 years and older and/or their family members or other caregivers, and

(2) Have received the training in providing technical advice, consultation, and assistance, described in subsection (b) of this section.

(b) The training referred to in subsection (a)(2) of this section must:

(1) Be approved by the Texas Department on Aging; and

(2) Include the following components:

(A) statutory, regulatory, and policy provisions applicable to advance directives in Texas;

(B) the use of letters, questionnaires, and checklists for gathering information to provide technical advice, consultation and document preparation for clients;

(C) conducting the client interview (including confidentiality and conflict of interest considerations);

(D) how to complete, sign, and witness, the Advance Directives provided for in the Texas Health and Safety Code, Chapter 166, and how to complete, sign, and witness, the Designation of Guardian Before Need Arises provided for in the Texas Probate Code §679;

(E) how revocation of the documents referred to in subparagraph (D) of this paragraph is accomplished; and

(F) proper procedures for filing and informing health care personnel about the documents referred to in subparagraph (D) of this paragraph.

(3) Include an assessment tool approved by the Texas Department on Aging that verifies that the employee or volunteer providing benefits counseling through an area agency on aging system of access and assistance has sufficient knowledge after the training described in paragraphs (1) and (2) of this subsection, to provide high quality services that meet the needs of clients for technical advice, consultation, and document preparation in regard to the Advance Directives in Texas Health and Safety Code, Chapter 166, and in regard to the Designation of Guardian Before Need Arises provided for in the Texas Probate Code §679. The assessment tool shall require a score of 70% correct answers as the minimum passing grade.

(c) The Texas Department on Aging shall certify an employee or volunteer providing benefits counseling through an area agency on aging system of access and assistance who has completed the training described in subsection (b)(1) and (2) of this section and who has completed the assessment tool with a score of 70% or higher to provide services under Texas Government Code §81.1011. Each area agency on aging has the discretion to decide whether the services authorized under Texas Government Code §81.1011, shall be offered by the area agency on aging.

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 August 16, 2001.

TRD-200104786

Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 424-6857

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PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning Definitions. The amendment will add a definition for a term which is used in the rules, but which is not defined. The definition for the Practice Act makes the reference current.

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

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

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701, augusta.gelfand@mail.capnet.state.tx.us

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code [~~Texas Civil Statutes, Article 8851~~].

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

(19) Face-to-face, real time--Refers to live interactions either in person or via telecommunications.

(20) [~~(19)~~] First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.

(21) [~~(20)~~] Health Care Condition--See Medical Condition

(22) [~~(21)~~] Investigation Committee--Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

(23) [~~(22)~~] Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

(24) [~~(23)~~] Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners rules. This test is an open book examination with multiple choice or true-false questions. The passing score is 70%.

(25) [~~(24)~~] License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(26) [~~(25)~~] Licensed Occupational Therapist (LOT)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapist in Texas.

(27) [~~(26)~~] Licensed Occupational Therapy Assistant (LOTA)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and who is required to practice under the general supervision of an OTR or LOT.

(28) [~~(27)~~] Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(29) [~~(28)~~] Monitored Services--The checking on the status/condition of students, patients, clients, equipment, programs, services, and staff in order to make appropriate adjustments and recommendations. Minimum contact for the purpose of monitoring will be one time a month.

(30) [~~(29)~~] NBCOT (formerly AOTCB)--National Board for Certification in Occupational Therapy (formerly American Occupational Therapy Certification Board).

(31) [~~(30)~~] Non-licensed Personnel--OT Aide or OT Orderly or other person not licensed by this board who provides support services to occupational therapists and occupational therapy assistants, and whose activities require on-the-job training and close personal supervision.

(32) [~~(31)~~] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.

(33) [~~(32)~~] Occupational Therapist (OT)--A person who holds a Temporary License to practice as an occupational therapist in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(34) [~~(33)~~] Occupational Therapist, Registered (OTR)--An alternate term for a Licensed Occupational Therapist. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapist in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(35) [~~(34)~~] Occupational Therapy--The use of purposeful activity or intervention to achieve functional outcomes. Achieving functional outcomes means to develop or facilitate restoration of the highest possible level of independence in interaction with the environment. Occupational Therapy provides services to individuals limited by physical injury or illness, a dysfunctional condition, cognitive impairment, psychosocial dysfunction, mental illness, a developmental or learning disability or an adverse environmental condition, whether due to trauma, illness or condition present at birth. Occupational therapy services include but are not limited to:

(A) The evaluation/assessment, treatment and education of or consultation with the individual, family or other persons;

(B) Interventions directed toward developing, improving or restoring daily living skills, work readiness or work performance, play skills or leisure capacities;

(C) Intervention methodologies to develop restore or maintain sensorimotor, oral-motor, perceptual or neuromuscular functioning; joint range of motion; emotional, motivational, cognitive or psychosocial components of performance.

(36) [~~(35)~~] Occupational Therapy Assistant (OTA)--A person who holds a Temporary License to practice as an occupational therapy assistant in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(37) [~~(36)~~] Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(38) [~~(37)~~] Occupational Therapy Practitioners-Occupational Therapists and Occupational Therapy Assistants licensed by this board.

(39) [~~(38)~~] Place(s) of Business--Any facility in which a licensee practices.

(40) [~~(39)~~] Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.

(41) [~~(40)~~] Recognized Educational Institution--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the American Occupational Therapy Association.

(42) [~~(41)~~] Regular License--A license issued by TBOTE to an applicant who has met the academic requirements and who has passed the Examination.

(43) [~~(42)~~] Rules--Refers to the TBOTE Rules.

(44) [~~(43)~~] Screening--A process or tool used to determine a potential need for occupational therapy interventions. This information may be compiled using observation, medical or other records, the interview process, self-reporting, and/or other documentation.

(45) [~~(44)~~] Supervision--See Chapter 373[~~-Supervision~~] of this title (relating to Supervision)

(46) [~~(45)~~] Temporary License--A license issued by TBOTE to an applicant who meets all the qualifications for a license except taking the first available Examination after completion of all education requirements.

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

Filed with the Office of the Secretary of State, on August 17, 2001.

TRD-200104805
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 305-6900

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CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS

40 TAC §374.4

The Texas Board of Occupational Therapy Examiners proposes a new §374.4, concerning Code of Ethics. The new section will add Code of Ethics to this chapter.

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

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the ethics expects for occupational therapy practitioners. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701, (512) 305-6900, or e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The new section is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 452 of the Occupations Code is affected by the new section.

§374.4. Code of Ethics.

(a) The Texas Board of Occupational Therapy Examiners Code of Ethics is a public statement of the values and principles used in promoting and maintaining high standards of behavior in occupational therapy within the state of Texas. The Code of Ethics is a set of principles that applies to occupational therapy practitioners. ("Practitioners" in this section are defined as those individuals licensed by this board or applicants for licensure with this board.)

(b) Any action that is in violation of the spirit and purpose of this Code shall be considered unethical. To ensure compliance with the Code, enforcement procedures are established by the board and enforced by the Investigation Committee and investigative staff. Submission of an application to, or acceptance of a license from, this board commits these individuals to adherence to the Code of Ethics and its enforcement procedures.

(c) Principle 1. Occupational therapy practitioners shall demonstrate a concern for the well being of the recipients of their services (beneficence).

(1) Occupational therapy practitioners shall provide services in fair and equitable manner. They shall recognize and appreciate the cultural components of economics, geography, race, ethnicity, religious and political factors, marital status, sexual orientation, and disability of all recipients of their services.

(2) Occupational therapy practitioners shall strive to ensure that fees are fair, reasonable, and commensurate with the service performed. When occupational therapy practitioners set fees, they shall set fees considering institutional, local, state, and federal requirements, and with due regard for the service recipient's ability to pay.

(3) Occupational therapy practitioners shall make every effort to advocate for recipients to obtain needed services through available means.

(d) Principle 2. Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the recipient of services or to his or her property (nonmaleficence).

(1) Occupational therapy practitioners shall maintain relationships that do not exploit the recipient of services sexually, physically, emotionally, financially, socially, or in any other manner.

(2) Occupational therapy practitioners shall avoid relationships or activities that interfere with professional judgement and objectivity.

(e) Principle 3. Occupational therapy practitioners shall respect the rights of the recipient and/or their surrogate(s) as well as the recipient's rights. (autonomy, privacy, confidentiality).

(1) Occupational therapy practitioners shall collaborate with service recipients or their surrogate(s) in setting goals and priorities throughout the intervention process.

(2) Occupational therapy practitioners shall fully inform the service recipients of the nature, risks, and potential outcomes of any interventions.

(3) Occupational therapy practitioners shall obtain informed consent from participants involved in research activities and indicate that they have fully informed and advised the participants of potential risks and outcomes. Occupational therapy practitioners shall endeavor to ensure that the participant(s) comprehend these risks and outcomes.

(4) Occupational therapy practitioners shall respect the individual's right to refuse professional services or involvement in research or educational activities.

(5) Occupational therapy practitioners shall protect all privileged confidential forms of written, verbal, and electronic communication grained from educational, practice, research, and investigational activities unless otherwise mandated by local, state, or federal regulations.

(f) Principle 4. Occupational therapy practitioners shall achieve and continually maintain high standards of competence (duties).

(1) Occupational therapy practitioners shall hold the appropriate state credentials for the services they provide.

(2) Occupational therapy practitioners shall take responsibility for maintaining and documenting competence by participating in professional development and educational activities.

(3) Occupational therapy practitioners shall critically examine and keep current with emerging knowledge relevant to their practice so they may perform their duties on the basis of accurate information.

(4) Occupational therapy practitioners shall protect service recipients by ensuring that duties assumed by or assigned to other occupational therapy practitioners match credentials, qualifications, experience, and scope of practice.

(5) Occupational therapy practitioners shall provide appropriate supervision to individuals for whom the practitioners have supervisory responsibility in accordance with board rule

(6) Occupational therapy practitioners shall refer to or consult with other service providers whenever such a referral or consultation would be helpful to the care of the recipient of service. The referral or consultation process should be done in collaboration with the recipient of service.

(g) Principle 5. Occupational therapy practitioners shall comply with the rules and laws of the state of Texas guiding the profession of occupational therapy (justice).

(1) Occupational therapy practitioners shall familiarize themselves with and seek to understand and abide by applicable Texas Board of Examiner's Practice Act and rules.

(2) Occupational therapy practitioners shall remain abreast of revision in those laws and rules that apply to the profession of occupational therapy and shall inform employers, employees, and colleagues of those changes.

(3) Occupational therapy practitioners shall require those they supervise in occupational therapy-related activities to adhere to the Code of Ethics.

(4) Occupational therapy practitioners shall take reasonable steps to ensure employers are aware of occupational therapy's ethical obligations as set forth in this Code of Ethics, and of the implications of those obligations for occupational therapy practice, education, and research.

(5) Occupational therapy practitioners shall accurately record and report in a timely manner all information related to professional activities.

(h) Principle 6. Occupational therapy practitioners shall provide accurate information about occupational therapy services (veracity).

(1) Occupational therapy practitioners shall accurately represent their credentials, qualification, education, experience, training, and competence. This is of particular importance for those to whom occupational therapy practitioners provide their services or with whom occupational therapy practitioners have a professional relationship.

(2) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.

(3) Occupational therapy practitioners shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, or unfair statements or claims.

(4) Occupational therapy practitioners shall accept the responsibility for their professional actions which reduce the public's trust in occupational therapy services those that perform those services.

(i) Principle 7. Occupational therapy practitioners shall treat colleagues and other professionals with fairness, discretion, and integrity (fidelity).

(1) Occupational therapy practitioners shall preserve, respect, and safeguard confidential information about colleagues and staff, unless otherwise mandated by national, state, or local laws.

(2) Occupational therapy practitioners shall accurately represent the qualifications, views, contributions, and findings of colleagues.

(3) Occupational therapy practitioners shall take adequate measures to discourage, prevent, expose, and correct any breaches of the Code of Ethics and report any breaches of the Code of Ethics to the board.

(4) Occupational therapy practitioners shall familiarize themselves with established rules, policies and procedures created by the Texas Board of Occupational Therapy Examiners for handling complaints.

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

Filed with the Office of the Secretary of State, on August 17, 2001.

TRD-200104804
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: September 30, 2001
For further information, please call: (512) 305-6900

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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 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 has withdrawn the emergency new §§19.160 - 19.164 which appeared in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2457) and were renewed in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5537).

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

TRD-200104793
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 5, 2001
For further information, please call: (512) 463-4075

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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 has withdrawn from consideration proposed amendments to §9.1 and §9.7 which appeared in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2459).

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104713
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 15, 2001
For further information, please call: (512) 475-3726

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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 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor reviewed the rules affecting the Criminal Justice Division grant processes and procedures with the goal of increasing efficiency and updating the rules to address changes in the administration process. The review disclosed that a number of the rules required further clarification and simplification. Therefore, the Office of the Governor amends and repeals these sections of the Texas Administrative Code identified below.

The Office of the Governor adopts amendments to Chapter 3, Subchapter A, §§3.1, 3.3, 3.5, 3.7, and 3.11; Subchapter B, §§3.51, 3.73, 3.75, 3.79, and 3.81; Subchapter C, §§3.713, 3.1403, and 3.1413; Subchapter D, §§3.2007; 3.2013, and 3.2021; Subchapter E, §§3.2507, 3.2511, 3.2513, and 3.2521; and Subchapter F, §3.2601 without changes as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5311). The revisions clarify existing provisions and add new general and fund-specific requirements.

The Office of the Governor adopts amendments to Chapter 3, Subchapter C, §3.703; and Subchapter E, §3.2501 with changes to the proposed text. For §3.703, the proposed rule changes included duplicative language in §3.703, subsection (a), paragraphs (6) and (14). The text of the adopted rule deletes paragraph (14). For §3.2501, the proposed text contained errors in capitalization. The text of the adopted rule changes *the* from uppercase to lowercase in subsection (a), paragraphs (1), (2), and (3).

The adopted amendments provide processes and procedures relating to grants made through the Criminal Justice Division and include, but are not limited to, general grant applicability and definitions, grant submission, selection, appeals and acceptance processes, community plans, grant budget requirements, confidential funds certification, pre-approval requirements for procurement, grant officials and grant adjustments, financial reports, program monitoring; and, fund-specific policies relating to criminal justice and victim grants. Subchapter A concerns General Grant Program Provisions. Subchapter B concerns General Grant Program Policies. Subchapter C concerns Fund-Specific Grant Policies. Subchapter D concerns Conditions of Grant Funding. Subchapter E concerns Administering Grants. Subchapter F concerns Program Monitoring and Audits.

The Office of the Governor repeals Chapter 3, Subchapter A, §3.13 and §3.15; Subchapter B, §3.57; Subchapter C, §§3.307, 3.507, 3.707, 3.807, 3.907, 3.1107, 3.1207, and 3.1507; and Subchapter F, §3.2605 and §3.2607 without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5311).

No public comments were received on either the amended or repealed rules.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

1 TAC §§3.1, 3.3, 3.5, 3.7, 3.11

The amendment and repeal of these rules are adopted under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amendments or repeals.

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

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 August 20, 2001.

TRD-200104856

David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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1 TAC §3.13, §3.15

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104867
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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SUBCHAPTER B. GENERAL GRANT PROGRAM POLICIES

DIVISION 1. ELIGIBILITY REQUIREMENTS

1 TAC §3.51

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

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 August 20, 2001.

TRD-200104857
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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1 TAC §3.57

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104868
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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DIVISION 2. GRANT BUDGET REQUIREMENTS

1 TAC §§3.73, 3.75, 3.79, 3.81

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The adopted rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

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 August 20, 2001.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

DIVISION 3. TITLE V DELINQUENCY PREVENTION

1 TAC §3.307

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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DIVISION 5. VICTIMS OF CRIME ACT FUND

1 TAC §3.507

The adoption of these rules is proposed under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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-200104870
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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DIVISION 7. TEXAS NARCOTICS CONTROL PROGRAM

1 TAC §3.703

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

§3.703. Project Requirements.

All projects must meet at least one of the following purpose areas.

(1) Multi-jurisdictional and multi-county task force projects that integrate federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, acquiring intelligence information, and facilitating multi-jurisdictional investigations. TNCP task forces must use the Texas Narcotics Information System (TNIS) and provide input of task force drug intelligence information into the System;

(2) projects designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivation;

(3) projects that will improve the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator projects, and gang related and low income housing drug control projects;

(4) law enforcement and prevention projects that address problems with gangs or youth who are at risk of becoming involved in gangs;

(5) financial investigation projects that target the identification of money-laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;

(6) projects that improve the operational effectiveness of the court process by expanding prosecution, defender, and judicial resources and by implementing court delay-reduction programs;

(7) criminal justice information systems, including automated fingerprint identification systems, that assist law enforcement, prosecution, courts and corrections' organizations;

(8) innovative projects that demonstrate new and different approaches to the enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

(9) drug control evaluation projects that state and local units of government may use to evaluate projects directed at state drug-control activities;

(10) projects to develop and implement antiterrorism training projects and to procure equipment for use by local law enforcement authorities;

(11) improving or developing forensic laboratory capability to analyze DNA samples;

(12) demand reduction education programs in which law enforcement officers participate;

(13) career criminal prosecution programs including the development of proposed model drug control legislation;

(14) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

(15) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(16) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(17) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(18) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, and enhancement of State and local forensic laboratories;

(19) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly; or

(20) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community.

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 August 20, 2001.

TRD-200104859
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
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For further information, please call: (512) 463-1919

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1 TAC §3.707

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104871
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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1 TAC §3.713

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

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-200104860
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 475-3155

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DIVISION 8. LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM

1 TAC §3.807

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104872
David Zimmerman
Assistant General Counsel
Office of the Governor
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Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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DIVISION 9. VIOLENCE AGAINST WOMEN ACT FUND

1 TAC §3.907

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104873
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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DIVISION 11. RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS GRANT PROGRAM

1 TAC §3.1107

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104874
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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DIVISION 12. JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT PROGRAM

1 TAC §3.1207

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104875

David Zimmerman
Assistant General Counsel
Office of the Governor
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Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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DIVISION 14. RURAL DOMESTIC VIOLENCE AND CHILD VICTIMIZATION ENFORCEMENT PROGRAM

1 TAC §3.1403, §3.1413

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

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 August 20, 2001.

TRD-200104862
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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DIVISION 15. CLOSED CIRCUIT TELEVISING OF TESTIMONY PROGRAM

1 TAC §3.1507

The adoption of this rule is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rule implements the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of this repealed rule.

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 August 20, 2001.

TRD-200104876
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §§3.2007, 3.2013, 3.2021

The adoption of these rules is proposed under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

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 August 20, 2001.

TRD-200104863
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §3.2501

The adoption of this rule is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of this amended rule.

§3.2501. Grant Officials.

Each grant must have three different persons designated to serve as grant officials:

(1) the project director. This person must be (at the applicant's option) an employee of the applicant agency or be from the contractor organization that will be responsible for project operation or monitoring and who will serve as the point-of-contact regarding the project's day-to-day operations. In Crime Stoppers Programs this person can be an employee of a law enforcement agency who will act as the coordinator;

(2) the financial officer. This person must be the chief financial officer of the applicant agency. A county auditor, city treasurer, comptroller, or the treasurer of a nonprofit corporation's board may serve as the project's financial officer; and

(3) the authorized official. This person must be authorized to apply for, accept, decline, or cancel the grant for the applicant agency. The executive director of a state agency, county judge, mayor, city manager, chairman of a nonprofit board, director of a community supervision and corrections department, or a designee authorized by the governing body in its resolution may serve as the authorized official.

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 August 20, 2001.

TRD-200104864
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

♦ ♦ ♦

1 TAC §§3.2507, 3.2511, 3.2513, 3.2521

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these amended rules.

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 August 20, 2001.

TRD-200104865
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §3.2601

The adoption of this rule is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of this amended rule.

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 August 20, 2001.

TRD-200104866
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

♦ ♦ ♦

1 TAC §3.2605, §3.2607

The adoption of these rules is under the Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement the Texas Government Code, Title 7, §772.066 (a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles or codes are affected by the adoption of these repealed rules.

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 August 20, 2001.

TRD-200104877

David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-1919

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 95. UNIFORM COMMERCIAL CODE

The Office of the Secretary of State adopts the repeals of §§95.100-95.117 A. General Provisions, §§95.200-95.207 B. Information Required for Indexing, §§95.300-95.304 C. Acceptance and Refusal of Documents, §§95.400-95.414 D. UCC Information Management System, §§95.440-95.450 E. EDI Documents, §§95.500-95.520 F. Filing and Data Entry Procedures, §§95.601-95.605 G. Search Requests and Reports, §§95.700-95.706 H. Other Notices of Liens, and §§95.800-95.803 I. Rulemaking Procedures, without changes to the proposed text as published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4327) and will not be republished.

The purpose of the repeals is to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

No comments were received regarding the repeal of the old rules.

The new sections provide current filing policies and procedures for the Uniform Commercial Code Section.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§95.100 - 95.117

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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-200104716
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER B. INFORMATION REQUIRED FOR INDEXING

1 TAC §§95.200 - 95.207

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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 August 15, 2001.

TRD-200104717
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER C. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §§95.300 - 95.304

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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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Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER D. UCC INFORMATION MANAGEMENT SYSTEM

1 TAC §§95.400- 95.414

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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-200104719
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
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Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER E. EDI DOCUMENTS

1 TAC §§95.440 - 95.450

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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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Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER F. FILING AND DATA ENTRY PROCEDURES

1 TAC §§95.500 - 95.520

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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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Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER G. SEARCH REQUESTS AND REPORTS

1 TAC §§95.601 - 95.605

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary

of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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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Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-4701

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SUBCHAPTER H. OTHER NOTICES OF LIENS

1 TAC §§95.700 - 75.706

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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-200104723
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER I. RULEMAKING PROCEDURE

1 TAC §§95.800 - 95.803

The repeals are adopted under §§9.401 - 9.412 Texas Business and Commerce Code, §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

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

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-200104724
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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CHAPTER 95. UNIFORM COMMERCIAL CODE

The Office of the Secretary of State adopts new §§95.100-95.117 A. General Provisions, §§95.200-95.207 B. Acceptance and Refusal of Documents, §§95.300-95.312 C. UCC Information Management System, §§95.350-95.358 D. EDI Documents, §§95.370-95.372 E. Direct On-line (SOSDirect) Data Entry Procedures, §§95.400-95.417 F. Filing and Data Entry Procedures, §§95.500-95.504 G. Search Requests and Reports, §§95.600-95.606 H. Other Notices of Liens, and §§95.700-95.703 I. Rulemaking Procedures. Section 95.111 is adopted with changes to subsections (c) and (g) in order to clarify the fee structure. Sections 95.100 - 95.110, §§95.112 - 95.117, §§95.200-95.207, §§95.300-95.312, §§95.350-95.358, §§95.370-95.372, §§95.400-95.417, §§95.500-95.504, §§95.600-95.606, and §§95.700-95.703 are adopted without changes to the proposed text as published in the June 15, 2001, issue of the *Texas Register* (26TexReg 4327).

The purpose of the new sections is to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

The new sections provide current filing policies and procedures for the Uniform Commercial Code Section.

No comments were received regarding adoption of the new rules.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§95.100 - 95.117

The new sections are adopted under §§9.501 - 9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01 - 35.09 Texas Business and Commerce Code, §§14.001 - 14.007 Texas Property Code, §128, Texas Agriculture Code, §188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35,

Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

§95.111. Filing Fees.

(a) Filing fee. The fee for filing and indexing a UCC document of one or two pages communicated on paper or in a paper-based format (including faxes) is pursuant to §9.525(a)(1), Texas Business and Commerce Code. If there are additional pages, the fee is pursuant to §9.525(a)(2), Texas Business and Commerce Code. But the fee for filing and indexing a UCC document communicated by a medium authorized by these rules which is other than on paper or in a paper-based format is pursuant to §9.525(a)(3), Texas Business and Commerce Code.

(b) Additional fees. In addition to fees set forth in §95.111(a) of this title, a fee pursuant to §9.525(b)(1), Texas Business and Commerce Code, shall be paid for an initial financing statement that indicates that it is filed in connection with a public-finance transaction and a fee pursuant to §9.525(b)(2), Texas Business and Commerce Code, shall be paid for an initial financing statement that indicates that it is filed in connection with a manufactured-home transaction.

(c) UCC search fee. The fee for responding to an information request communicated on paper or in a paper-based format is pursuant to §9.525(d)(1), Texas Business and Commerce Code. The fee for responding to an information request which was communicated by a medium as described in §95.350 et seq. of this title is $3 and by a medium as described in §95.370 et seq. of this title is $15. The fee for responding to a web inquiry which was communicated by a medium described in §95.370 et seq. of this title is $1.

(d) Certified copies. The fee for certified copies of records is pursuant to §552.261, Texas Government Code, and §71.8 of this title.

(e) Self-service pages. The fee for uncertified copies of records is pursuant to §552.261, Texas Government Code, and §71.8 of this title.

(f) Special fees for fax filings. The fee for filing and indexing a UCC document of one or two pages communicated on paper or in a paper-based format is pursuant to §9.525(a)(1), Texas Business and Commerce Code. If there are additional pages, the fee is pursuant to §9.525(a)(2), Texas Business and Commerce Code. The fee for expedite handling is pursuant to §405.032, Texas Government Code and the fee per acknowledgment page is pursuant to §405.031, Texas Government Code.

(g) Special fees for fax UCC searches. The fee for a responding to an information request communicated on paper or in a paper-based format is pursuant to §9.525(d)(1), Texas Business and Commerce Code. The fee for responding to an information request which was communicated by a medium as described in §95.350 et seq. of this title is $3 and by a medium as described in §95.370 et seq. of this title is $15. The fee for responding to a web inquiry which was communicated by a medium described in §95.370 et seq. of this title is $1. The fee for the fax service is pursuant to §405.032, Texas Government Code and §71.8 of this title.

(h) Master filing filing fee. The fee for a master filing delivered in a form pursuant to §9.512(f) and §9.514(d), Texas Business and Commerce Code, is pursuant to §9.525(f), Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104725
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §§95.200 - 95.207

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government 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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TRD-200104726
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER C. UCC INFORMATION MANAGEMENT SYSTEM

1 TAC §§95.300 - 95.312

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this adoption.

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

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TRD-200104727
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER D. EDI DOCUMENTS

1 TAC §§95.350 - 95.358

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this adoption.

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

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TRD-200104728
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER E. DIRECT ON-LINE (SOSDIRECT) DATA ENTRY PROCEDURES

1 TAC §§95.370 - 95.372

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this adoption.

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

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TRD-200104729
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER F. FILING AND DATA ENTRY PROCEDURES

1 TAC §§95.400 - 95.417

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this adoption.

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

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TRD-200104730
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER G. SEARCH REQUESTS AND REPORTS

1 TAC §§95.500 - 95.504

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188,

Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this adoption.

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

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Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER H. OTHER NOTICES OF LIENS

1 TAC §§95.600 - 95.606

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this adoption.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104732
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER I. RULEMAKING PROCEDURE

1 TAC §§95.700 - 95.703

The new sections are adopted under §§9.501-9.527 Texas Business and Commerce Code (effective July 1, 2001), §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.22 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other statutes, articles or codes are affected by this adoption.

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

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Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
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Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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CHAPTER 96. ELECTRIC UTILITY TRANSITION PROPERTY NOTICE FILINGS

The Office of the Secretary of State adopts the repeal of §§96.1 - 96.6, A. General Provisions, §§96.20 - 96.23, B. Duties of the Filing Officer, §§96.40 - 96.44, C. Standards for Review and Indexing, §§96.60 - 96.66, D. Filings, and §§96.80-96.82, E. Search and Information Requests, without changes to the proposed text as published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4327) and will not be republished.

The purpose of the repeals is to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

No comments were received regarding the repeal of the old rules.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§96.1 - 96.6

The repeal is adopted under §§9.401 - 9.412 Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104734

Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER B. DUTIES OF THE FILING OFFICER

1 TAC §§96.20 - 96.23

The repeal is adopted under §§9.401 - 9.412 Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104735
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER C. STANDARDS OF REVIEW AND INDEXING

1 TAC §§96.40 - 96.44

The repeal is adopted under §§9.401 - 9.412 Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104736
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER D. FILINGS

1 TAC §§96.60 - 96.66

The repeal is adopted under §§9.401 - 9.412 Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104737
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER E. SEARCH AND INFORMATION REQUESTS

1 TAC §§96.80 - 96.82

The repeal is adopted under §§9.401 - 9.412 Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104738
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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CHAPTER 96. ELECTRIC UTILITY TRANSITION PROPERTY NOTICE FILINGS

The Office of the Secretary of State adopts new §§96.1 - 96.6, A. General Provisions, §§96.20 - 96.23, B. Duties of the Filing Officer, §§96.40 - 96.44, C. Standards of Review and Indexing, §§96.60 - 96.66, D. Filings, and §§96.80 - 96.82, E. Search and Information Requests. Section 96.5 is adopted with changes to subsection (b) in order to clarify the fee structure. Sections 96.1 - 96.4, 96.6, 96.20 - 96.23, 96.40 - 96.44, 96.60 - 96.66, and 96.80 - 96.82 are adopted without changes to the proposed text as published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4327).

The purpose of the new sections is to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

The new sections provide current filing policies and procedures for the Uniform Commercial Code Section.

No comments were received regarding adoption of the new rules.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§96.1 - 96.6

The new sections are adopted under §§9.501 - 9.527 Texas Business and Commerce Code (effective July 1, 2001), which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code.

§96.5. Fees.

(a) The fee for filing and indexing a transition property notice document of one or two pages communicated on paper or in a paper-based format (including faxes) is pursuant to §9.525(a)(1), Texas Business and Commerce Code. If there are additional pages, the fee is pursuant to §9.525(a)(2), Texas Business and Commerce Code.

(b) The fee for responding to an information request which was communicated on paper or in a paper-based format is pursuant to §9.525(d)(1), Texas Business and Commerce Code. The fee for responding to an information request which was communicated by a medium as described in §95.350 et seq. of this title is $3 and by a medium as described in §95.370 et seq. of this title is $15. The fee for responding to a web inquiry which was communicated by a medium described in §95.370 et seq. of this title is $1.

(c) The fee for certified copies of transition property notice filings made in connection with an information request is pursuant to §552.261, Texas Government Code, and §71.8 of this title.

(d) The fee for uncertified copies of records is pursuant to §552.261, Texas Government Code, and §71.8 of this title.

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 August 15, 2001.

TRD-200104739
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER B. DUTIES OF THE FILING OFFICER

1 TAC §§96.20 - 96.23

The new sections are adopted under §§9.501 - 9.527 Texas Business and Commerce Code (effective July 1, 2001), which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104740
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER C. STANDARDS OF REVIEW AND INDEXING

1 TAC §§96.40 - 96.44

The new sections are adopted under §§9.501 - 9.527 Texas Business and Commerce Code (effective July 1, 2001), which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104741
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER D. FILINGS

1 TAC §§96.60 - 96.66

The new sections are adopted under §§9.501 - 9.527 Texas Business and Commerce Code (effective July 1, 2001), which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104742
Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER E. SEARCH AND INFORMATION REQUESTS

1 TAC §§96.80 - 96.82

The new sections are adopted under §§9.501 - 9.527 Texas Business and Commerce Code (effective July 1, 2001), which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on August 15, 2001.

TRD-200104743

Geoffrey Connor
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 4, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 463-5701

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.506

The Texas Health and Human Services Commission (HHSC) adopts new §355.506, concerning reimbursement methodology for the Consolidated Waiver program, in its Medicaid Reimbursement Rates chapter. New §355.506 is adopted without changes to the proposed text in the July 6, 2001 issue of the *Texas Register* (26 TexReg 4929) and will not be republished.

Justification for the new section is to establish a reimbursement methodology that defines how payment rates are determined for providers who contract to provide services in the Consolidated Waiver program.

The department received no comments regarding adoption of the new section.

The new section is adopted under Texas Government Code §531.033, which authorizes the commissioner of HHSC to adopt the rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The new section implements the Government Code, §531.033 and §531.021(b).

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 August 17, 2001.

TRD-200104835
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 438-3734

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER E. CREATION OF ERADICATION ZONES

4 TAC §3.117

The Texas Department of Agriculture (the department) adopts new §3.117, concerning the creation of a nonstatutory boll weevil eradication zone without changes to the text published in the July 13, 2001, *Texas Register* (26 TexReg 5174). The new section is adopted to create a new nonstatutory boll weevil eradication zone consisting of counties not currently located in a statutory zone created under Chapter 74, Subchapter D, §74.1021. New §3.117 designates, upon the request of a representation of cotton growers in Austin, Brazoria, Colorado, Fort Bend, Jackson, Matagorda, Wharton and Waller counties, the Upper Coastal Bend Boll Weevil Eradication Zone, in accordance with the Texas Agriculture Code, §74.1042. The new section is also adopted to provide cotton growers in the affected area with a local, efficient, and responsive eradication program to facilitate boll weevil eradication in Texas. The new section designates all of Austin, Brazoria, Colorado, Fort Bend, Jackson, Matagorda, Wharton counties and a portion of Waller County as the Upper Coastal Bend Boll Weevil Eradication Zone.

Comments received by the department on the proposal were provided in the course of five public hearings conducted by the department on the proposal in Rosenberg, Blessing, Edna and El Campo, Texas. Approximately 30 persons attended the hearings. The South Texas Cotton and Grain Association commented generally in favor of the proposal, as did individual cotton growers and others involved in the cotton industry in the affected area.

The new section is adopted under the Texas Agriculture Code, §74.1042, which provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed boll weevil eradication zone.

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 August 20, 2001.

TRD-200104861
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 9, 2001
Proposal publication date: July 13, 2001
For further information, please call: (512) 463-4075

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CHAPTER 19. QUARANTINES

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §§19.160 - 19.163

The Texas Department of Agriculture (the department) adopts new §§19.160-19.163, concerning a quarantine for the Diaprepes root weevil, *Diaprepes abbreviatus* (L), without

changes to the proposed text as published in the July 6, 2001 issue of the *Texas Register* (26 TexReg 4931).

The new sections are adopted to establish a quarantine to prevent the spread of the Diaprepes root weevil into other citrus and nursery growing areas of Texas and to 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, several adult and larvae of the Diaprepes root 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. As a result of the detections, the department adopted a quarantine on an emergency basis for the Diaprepes root weevil on March 16, 2001, which was published in the March 30, 2001 issue of the *Texas Register* (26 TexReg 2457).

New §19.160 defines the quarantined pest. New §19.161 designates quarantine areas based on the location of the Diaprepes root weevil detection and the known range of the pest outside Texas. New §19.162 lists the quarantined articles. New §19.163 identifies articles exempt from regulations, provides for restrictions on the movement of quarantined articles, defines treatment requirements and provisions for notification of property owners concerning the quarantine. Details for pest surveys to define the extent of the infestation and monitoring of affected properties are defined.

A public hearing was held by the Department on August 2, 2001 in San Juan, Texas to take public comment on the proposal. One oral comment was received from a representative of the Texas Citrus Mutual organization, which strongly supported the actions by the Department to eradicate the quarantined pest. The comment stated that by establishing a quarantine, the spread of Diaprepes root weevil into additional production areas can be stopped and the threat to other agricultural crops and the nursery industry can be eliminated.

The new sections are adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish quarantines against out-of-state diseases and pests; §71.002, which authorizes the department to establish quarantines against in-state diseases and pests; §71.003, which authorizes the department to establish quarantines around pest-free areas; §71.005, which authorizes the department to prevent the movement of quarantined articles or to establish safeguards that allow the movement of such articles; §71.007, which authorizes the department to provide for the destruction of trees or fruits, to provide for the cleaning or treatment of orchards, etc.; §71.0081, which authorizes the department to conduct vehicle inspections for insect pests or plant diseases; §71.009, which authorizes the department to seize, treat, or destroy certain quarantined articles; §71.0091, which provides additional authorization specific to citrus plants to seize, treat, or destroy certain quarantined articles; §73.002, which authorizes the department to use all constitutional means to protect the citrus industry; §73.004, which additionally authorizes the department to establish quarantines for pests or diseases of citrus plants; §73.010, which authorizes civil penalties and injunctive relief for violations of the state's laws governing the control of citrus diseases and pest; and §12.020 which authorizes the department to assess administrative penalties for violations of Chapter 71 or Chapter 73.

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 August 16, 2001.

TRD-200104794
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 5, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 463-4075

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CHAPTER 22. NURSERY PRODUCTS AND FLORAL ITEMS

4 TAC §§22.1, 22.4, 22.6

The Texas Department of Agriculture (the department) adopts an amendment to §22.1 concerning definitions used in Chapter 22, an amendment to §22.4 concerning stop-sale orders issued under the department's nursery/floral program, and new §22.6, concerning developing an integrated pest management (IPM) plan for entities holding nursery/floral program certificates. The amendments and new section are adopted without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5326).

The amendment to §22.1 is adopted to establish definitions for a plant pest, beneficial organism, and an IPM plan. The amendment to §22.4 is adopted to provide exceptions for the issuance of a stop-sale order as well as an appeals process for a stop-sale.

New §22.6 is adopted to establish requirements and procedures for implementing an IPM plan. IPM is a system of managing pests through the use of multiple control tactics and has been used in various production systems for more than 30 years. However with the loss of some pesticides and an increased concern about the environment, there has been an interest by producers to incorporate IPM practices into their production practices to better manage pests and diseases. In the Texas nursery/floral industry, the use of IPM practices is limited. These adopted rules will allow a producer, on a voluntary basis, to develop and implement an IPM plan for the production of nursery products and floral items. Producers who have an approved IPM plan will not be subject to a stop-sale order during production, when a plant pest is detected on plants, plant products, or plant production areas, and provided the plants are not subject to sale within 48 hours of the pest detection.

No written or oral comments were received on the proposal.

The amendments and new section are proposed in accordance with Texas Agriculture Code (the Code), §71.042, which provides the department with the authority to adopt rules for the immunity and protection of plants from diseases and insect pests; and §71.060 which provides the department with the authority to issue and enforce a stop-sale order.

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 August 20, 2001.

TRD-200104889
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 9, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-4075

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PART 13. PRESCRIBED BURNING BOARD

CHAPTER 225. GENERAL PROVISIONS

4 TAC §225.1

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, adopts new Chapter 225, §225.1, concerning definitions to be used in the Board's rules found in Title 4, Texas Administrative Code, Part 13, Chapter 226 (relating to Standards for Certified Prescribed Burn Managers), Chapter 227 (relating to Certification, Recertification, Renewal), Chapter 228 (relating to Training for Certified Prescribed Burn Managers) and Chapter 229 (relating to Educational and Professional Requirements for Lead Instructors), without changes to the proposal published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4934).

The Texas Natural Resources Code, Chapter 153 (Chapter 153), establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new section is adopted to implement Chapter 153 and to provide clear definitions to be used in implementation of the prescribed burn manager certification program.

No comments were received on the proposal.

New §225.1 is adopted under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

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 August 16, 2001.

TRD-200104795
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: September 5, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 463-4075

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CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §§226.1 - 226.5

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, adopts new Chapter 226, §§226.1 - 226.5, concerning standards for certified prescribed burn managers, without changes to the proposal published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4935).

The Texas Natural Resources Code, Chapter 153 (Chapter 153), establishes the Board and provides the Board with the authority to establish a voluntary certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new sections are adopted to implement Chapter 153 and amendments to Chapter 153 made by the enactment of House Bill 1080, 77th Legislature, 2001. In addition, the standards are adopted to provide assurance that prescribed burning is conducted in a controlled manner under specified environmental conditions, and in accordance with a written prescription plan. New §226.1 provides minimum requirements for conducting prescribed burning as a certified burn manager. New §226.2 provides personnel requirements for conducting a prescribed burn. New §226.3 provides notification requirements. New §226.4 provides minimum insurance requirements. New §226.5 provides for the development of a written prescribed burn plan.

No comments were received on the proposal.

New §226.1 - 226.5 are adopted under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

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 August 16, 2001.

TRD-200104796
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: September 5, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 463-4075

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CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, adopts new Chapter

227, §§227.1-227.8 and 227.10-227.16, concerning certification, recertification and renewal of a prescribed burn manager's certification, without changes to the proposal published in the July 6, 2001 issue of the *Texas Register* (26 TexReg 4936). The Texas Natural Resources Code, Chapter 153 (Chapter 153), establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new sections are adopted to implement Chapter 153. In addition, the new sections establish clear standards and requirements for certified burn managers which will ensure that prescribed burns will be conducted in an efficient and safe manner. New §227.1 establishes training requirements. New §227.2 sets forth minimum level of experience required for certification. New §227.3 provides that there shall be no grandfathering for purposes of certification of prescribed burn managers. New § provides an application process and sets a fee for certification. New §227.5 provides for proof of insurance by applicants. New §227.6 provides categories of certification. New §227.7 provides the term of certification. New §227.8 provides for reciprocity of certification by another state or federal agency. New §227.10 provides that certified burn managers must meet recertification requirements. New §227.11 provides for approved continuing education activities. New §227.12 provides procedures and requirements for approval of continuing education activities and assignment of credits. New §227.13 provides eligibility requirements for continuing education units. New §227.14 provides for suspension or denial of approval of continuing education activities. New §227.15 sets forth responsibilities of continuing education sponsors. New §227.16 sets forth responsibilities of certified prescribed burn managers in regards to recertification.

No comments were received on the proposal.

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §§227.1 - 227.8

New §§227.1- 227.8 are adopted under the Natural Resources Code (the Code) §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; the Code §153.048, which authorizes the Board to set a fee for certification; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

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-200104797

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture

Prescribed Burning Board

Effective date: September 5, 2001

Proposal publication date: July 6, 2001

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

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SUBCHAPTER B. CONTINUING EDUCATION FOR RECERTIFICATION/RENEWAL OF CERTIFICATION

4 TAC §§227.10 - 227.16

New §§227.10-227.16 are adopted under the Natural Resources Code (the Code) §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

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-200104798

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture

Prescribed Burning Board

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

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CHAPTER 228. TRAINING FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §§228.1 - 228.4

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, adopts new Chapter 228, §228.1 - 228.4, concerning training for certified prescribed burn managers, without changes to the proposal published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4939).

The Texas Natural Resources Code, Chapter 153 (Chapter 153), establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new sections are adopted to implement Chapter 153 and to provide clear training requirements to be used in implementation of the prescribed burn manager certification program. New §228.1 establishes the nature and content of training required for certification as a prescribed burn manager. New §228.2 sets forth the training requirements for certification. New §228.3 provides that training fees must be

paid directly to the trainer. New §228.4 provides that training must be approved by the board and that such approval is valid for only 12 months.

No comments were received on the proposal.

New §§228.1 - 228.4 are adopted under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

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 August 16, 2001.

TRD-200104799
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: September 5, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 463-4075

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CHAPTER 229. EDUCATIONAL AND PROFESSIONAL REQUIREMENTS FOR LEAD INSTRUCTORS

4 TAC §229.1

The Prescribed Burning Board (the Board), a board established within the Texas Department of Agriculture, adopts new Chapter 229, §229.1, concerning minimum educational and professional requirements for lead instructors, without changes to the proposal published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4940).

The Texas Natural Resources Code, Chapter 153 (Chapter 153), establishes the Board and provides the Board with the authority to establish a certification program for prescribed burn managers, including standards, training, educational and professional requirements for instructors, and minimum insurance requirements. The new section is adopted to implement Chapter 153 will ensure the use of experienced, qualified lead instructors to provide training for the prescribed burn manager certification program. New §229.1 establishes minimum requirements that must be met in order to be eligible to conduct a training course under the prescribed burn manager certification program as a lead instructor.

No comments were received on the proposal.

New §229.1 is adopted under the Natural Resources Code §153.046, which requires the Board to establish standards for prescribed burning, develop training for prescribed burn managers, establish standards for certification and recertification of prescribed burn managers, establish minimum education and professional requirements for instructors for the approved training curriculum, and establish minimum insurance requirements for certified prescribed burn managers; and, the Government Code, §2001.004, which requires a state agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

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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Prescribed Burning Board
Effective date: September 5, 2001
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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER E. INTEREST CHARGES IN LOANS

7 TAC §§1.501, 1.504, 1.505

The Finance Commission of Texas adopts amendments to 7 TAC §§1.501, 1.504, and 1.505 concerning interest charges on loans and refunds in precomputed loans. The amendments are adopted without changes to the proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4940).

The purpose of the amendments are to harmonize the provisions of Senate Bill 272, 77th Legislature, with the existing rule. Senate Bill 272 established a new alternative rate structure for Subchapter E loans and modified the appropriate refunding method for these loans. The amendments make technical changes to provide guidance on complying with Chapter 342, Subchapter E, as amended. Furthermore, the rule clarifies the appropriate methods for assessing default (late) charges in 7 TAC §1.504.

The agency received no written comments on this proposal.

The amendments are adopted under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

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

Filed with the Office of the Secretary of State on August 17, 2001.

TRD-200104817

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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7 TAC §1.503

The Finance Commission of Texas adopts new rule 7 TAC §1.503, concerning administrative loan fee.

The purpose of this new rule is to provide the procedures for assessing the administrative loan fee and incorporate technical changes made by Senate Bill 272, 77th Legislature. The new rule is adopted without changes to the proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4942).

The agency received no written comments on this proposal.

The new section is adopted under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

These rules affect new Chapter 342, Texas Finance Code.

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

Filed with the Office of the Secretary of State on August 17, 2001.

TRD-200104836
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §1.706

The Finance Commission of Texas adopts amendments to 7 TAC §1.706, concerning interest charges on loans and refunds in precomputed loans. The amendments are adopted without changes to the proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4940).

The purpose of the amendments are to harmonize the provisions of Senate Bill 272, 77th Legislature, with the existing rule. Senate Bill 272 established a new alternative rate structure for Subchapter E loans and modified the appropriate refunding method for these loans. The amendments make technical changes to provide guidance on complying with Chapter 342, Subchapter E, as amended. Furthermore, the rule clarifies the appropriate methods for assessing default (late) charges in 7 TAC §1.504.

The agency received no written comments on this proposal.

The amendments are adopted under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

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

Filed with the Office of the Secretary of State on August 17, 2001.

TRD-200104818
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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SUBCHAPTER H. REFUNDS IN PRECOMPUTED LOANS

7 TAC §§1.751, 1.754, 1.755

The Finance Commission of Texas adopts amendments to 7 TAC §§1.751, 1.754, and 1.755, concerning interest charges on loans and refunds in precomputed loans. The amendments are adopted without changes to the proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4940).

The purpose of the amendments are to harmonize the provisions of Senate Bill 272, 77th Legislature, with the existing rule. Senate Bill 272 established a new alternative rate structure for Subchapter E loans and modified the appropriate refunding method for these loans. The amendments make technical changes to provide guidance on complying with Chapter 342, Subchapter E, as amended. Furthermore, the rule clarifies the appropriate methods for assessing default (late) charges in 7 TAC §1.504.

The agency received no written comments on this proposal.

The amendments are adopted under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

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

Filed with the Office of the Secretary of State on August 17, 2001.

TRD-200104819
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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7 TAC §§1.753, 1.756, 1.757

The Finance Commission of Texas adopts the repeal of §§1.753, 1.756 and 1.757. The repeal is adopted without changes to the

proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4944).

This repeal is necessary because the sections have been rewritten and incorporated into proposed amendments to §1.754 and §1.755. The passage of Senate Bill 272, 77th Legislature required modification of all the provisions of §§1.753 - 1.757.

The agency received no written comments on this proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are Subchapter E and G of Chapter 342, Texas Finance Code and the rest of Title 4.

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 August 17, 2001.

TRD-200104816
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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7 TAC §1.758

The Finance Commission of Texas adopts an amendment to 7 TAC §1.758, concerning specific application to Subchapter F loans. The amendment is adopted without changes to the proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4945).

The purpose of the amendment is to harmonize the rule with the new language as enacted in House Bill 198, 77th Legislature. This legislative enactment provides that the acquisition charge on loans of $100 or more is earned at the time the loan is made and is not subject to refund.

The agency received no written comments on this proposal.

The amendment is adopted under the Texas Finance Code §11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

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

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TRD-200104820
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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SUBCHAPTER I. INSURANCE

7 TAC §1.807

The Finance Commission of Texas adopts an amendment to 7 TAC §1.807, concerning collateral protection insurance on loans authorized by Chapter 342.

The purpose of the amendment is to harmonize the rule with the new provisions of Senate Bill 707, 77th Legislature. Senate Bill 707 repealed the former provisions of the Credit Title relating to collateral protection insurance and replaced them with new provisions in Chapter 307. The amendment corrects the statutory reference. The amendment is adopted without changes to the proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4945).

The agency received no written comments on this proposal.

The amendment is adopted under the Texas Finance Code § 11.304 and §342.551, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

These rules affect Chapter 342, Texas Finance Code.

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

Filed with the Office of the Secretary of State on August 17, 2001.

TRD-200104821
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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CHAPTER 4. CURRENCY EXCHANGE

7 TAC §4.3

The Finance Commission of Texas (the commission) adopts an amendment to §4.3 concerning reporting and recordkeeping requirements applicable to currency transmission licensees under Finance Code, Chapter 153. The section is adopted without changes to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4946), and the text will not be republished.

Before amendment, §4.3(a) included within "currency exchange" a transaction in which a currency transmitter accepts currency of one government for transmission from Texas to another location and pays at the destination in the currency of another government. As amended, §4.3(a) implements the agency's determination that currency transmission transactions involving the receipt

of the currency of one government and payment in the currency of another government are not currency exchange transactions.

Before amendment, §4.3(e)(2) required that certain information be maintained for currency transmission transactions that exceed $1,000. The amendment to §4.3(e)(2) increases the threshold limit to $3,000, the same as the threshold amount imposed under the federal Bank Secrecy Act, 31 United States Code, §5313, and 31 Code of Federal Regulations, Part 103.

The commission received no comments regarding the proposal.

The amendment is adopted under the authority of Finance Code, §153.002, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 153, including rules relating to recordkeeping requirements.

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 August 17, 2001.

TRD-200104809
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 475-1300

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7 TAC §4.12

The Finance Commission of Texas (the commission) adopts an amendment to §4.12 concerning processing times for currency exchange license applications submitted to the Texas Department of Banking (department). The section is adopted without change to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4946), and the text will not be republished.

Section 4.12 implements the requirements of Government Code, §2005.003, pertaining to permit processing periods. During the past 12 months, the department's minimum, maximum, and median time for processing a currency exchange license application was 63 days, 228 days, and 114 days, respectively. Processing time is measured from the date the department received an initial application to the date of the final license decision. Disclosure of the minimum, maximum, and median processing time for an application is required by Government Code, §2005.003.

The amendment provides a more efficient, equitable, and predictable application process by clarifying the time for review of applications and conforming the processing times to the actual times required to review and evaluate an application. The amendment also provides for a finding of abandonment for applications not timely pursued.

The amendment to §4.12(b) changes the time from 10 days to 15 days for the department to notify the applicant that the application is complete or that additional information is required.

The commission received no comments regarding the proposal.

The amendment is adopted under Finance Code, §153.002, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 153, including rules relating to issuance of a license. Additional authority and applicable requirements are provided by Government Code, §2005.003.

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-200104810
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 475-1300

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CHAPTER 5. HOME LOANS

7 TAC §5.1

The Finance Commission of Texas adopts new rule 7 TAC §5.1, concerning required disclosures in connection with certain home loans.

The purpose of this section is to establish the required disclosures mandated in Senate Bill 1581, 77th Legislature, and to provide the means by which lenders may comply with the notice requirements of the Texas Finance Code, Section 343.102. Senate Bill 1581 primarily restricts certain mortgage lending practices or requires enhanced disclosure in connection with certain triggering events. There was a general agreement among the parties involved with Senate Bill 1581 that the interim period between the 77th and 78th Legislature would be used to study mortgage lending practices with an emphasis on identifying any types of pattern or practice that might require future legislative action. One benefit of the disclosure required by the rule is that it provides a source for consumers to contact state regulatory agencies to report complaints as well as providing an avenue for general information, housing counseling, and education. The state regulatory agencies may then collect and analyze data related to consumer contacts and complaints and report to the 78th Legislature regarding the effectiveness of the disclosure or identification of potential pattern or practices of concern. By statute the requirement to provide the notice on covered loans expires September 1, 2003. Compliance with this section is deemed compliance with these notice requirements.

The rule describes the applicability of the notice requirements, the actual content requirements of the notices, provisions relating to timing of delivery of the notice, and provisions relating to record retention.

The new rule is adopted with changes to the proposal as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4948).

The agency received several comments generally in support of the rule, but raising concerns over individual requirements of the rule proposal. The agency worked to resolve issues by consensus among interested parties; however, a few issues were not able to be resolved through consensus. Due to the limited time for implementation of the required disclosure by the legislation's September 1 effective date, the agency was faced with very little opportunity to work through some of these issues in advance of the initial proposal. In the initial proposal it was the Finance

Commission's intent to bring forward all of the various issues and during the comment period the interested parties could work through the issues with an opportunity for some modifications. The interested parties worked on the language and arrived at a draft that addressed many of the concerns of the parties and represented a workable product for the majority of lenders who would be required to distribute the notice. The working group was comprised of representatives of the following organizations:

Consumers Union

Citifinancial / Travelers Bank & Trust

Independent Bankers of Texas

Texas Association of Community Development Corporations

Texas Association of Mortgage Brokers

Texas Bankers Association

Texas Financial Services Association

Texas Low Income Housing Service

Texas Mortgage Bankers Association

Texas Savings and Community Bankers Association

Texas Department of Banking

Texas Office of Consumer Credit Commissioner (OCCC)

Texas Savings & Loan Department

A comment letter was also received from Bank of America requesting clarification on complying with the provision to distribute a list of HUD-approved counseling agencies and expressing concern over the text and content of the official notice.

There were five issues upon which the working group was unable to reach agreement, so the Finance Commission held a special meeting on July 20, 2001, to take testimony and deliberate on the policy issues and merits of the alternatives of these five issues. Members of the working group were present and given the opportunity to provide public comment. The five issues are discussed within the specific subsections of the rule that they affect.

Subsection (a) describes the purpose and applicability of the rule. At the Finance Commission July 20, 2001, meeting a representative from the Independent Bankers Association of Texas raised a question concerning the applicability of the section to adjustable rate mortgages. After discussion and deliberation, the Finance Commission made recommended amendments to this section to appropriately describe the types of adjustable rate mortgages that would be covered by the section. The amended language addresses adjustable rate mortgages in two ways: 1) an adjustable rate mortgage that may not initially bear a rate of 12%, but through a series of rates or steps specifies a fixed rate of 12% later in the contract would require disclosure and 2) a variable rate mortgage with a floating index that when applying the maximum margin increases to the floating index base at the time of application results in a rate of 12% or greater would also require disclosure. This method would eliminate the uncertainty surrounding the impact of the future volatility of interest rates in the general economy. This subsection is necessary to advise lenders concerning which mortgages loans are required to receive the notices required under Texas Finance Code §343.102.

Some concern was expressed over the types of transactions covered by this section of the statute and the proposed rule. Section 343.102, Texas Finance Code states that: "For a home loan with an interest rate of 12 percent or greater a year, when the lender makes the disclosure required under the Real Estate Settlement Procedures Act, as amended, for the good faith estimate, or if that Act does not apply, within three days after the date the application is made, the lender shall provide to the borrower..." The statutory language expressly provides that these provisions apply to "home loans." One commenter inquired if the disclosure requirements would apply to a retail installment sale of home improvements between a contractor and a home owner. The applicable statutes in the Texas Finance Code provide distinct differences between loans and retail installment sales. The transactions have different legal treatment and basis in statute. The rule does not specifically address or include retail installment sales within its application as the statute is expressly stated to apply to loans and not retail installment sales.

Subsection (b) details definitions that are necessary to ensure that terms are uniformly applied and used. The term application was drafted closely following the provisions of the Real Estate Settlement Procedures Act to ensure consistency among lenders in determining the timing of the disclosure the notice required by Texas Finance Code §343.102 and the delivery of the good faith estimate required under the Real Estate Settlement Procedures Act.

Subsection (c) contains the notice requirements. Subsection (c)(1) prescribes the content of the notice. Members of the working group arrived at a consensus on the content of the notice with two exceptions. Members of the working group have expressed strong feelings about the location and layout of the "official notice concerning high cost home loans." While the members have agreed on the content of the official notice, there was disagreement about its placement on the disclosure and use of the state seal in the official notice. The Finance Commission took testimony on these items. Consumers Union and Texas Low Income Housing Information Service favored placing the text box with the official notice information at the top of the page. Additionally, they recommended that the state seal accompany the official notice. Representatives from the Texas Bankers Association and the Independent Bankers Association of Texas, as well as other lending industry representatives voiced concern over the placement of the notice at the top and the use of the state seal, recommending placement of the notice at the bottom of the page. In citing their concern, these representatives expressed that the entirety of the disclosure was not "an official notice from the Finance Commission." The remainder of the disclosure addresses other statutorily required items of information, such as the availability of housing counseling. The banking representatives stated that they believed the disclosure would be misleading to consumers if the official notice text box were placed at the top of the page. The Finance Commission agrees with reasons stated by the banking representatives and adopts the rule with the official notice text box at the bottom of page. The Finance Commission agrees with the representatives from Consumers Union and Texas Low Income Housing Information Service that an accompanying state seal conveys the importance of the official notice and thus adopts the rule to include the state seal in the official notice text box.

Subsection (c)(3) provides that a lender may request an applicant to acknowledge receipt of the disclosure. The proposed rule required the lender to obtain the applicant's signature on the notice. Several parties, including the Texas Bankers Association and the Independent Bankers Association, offered comments in opposition to this section. Generally these commenters believed that the requirement to obtain a signature exceeds the statutory requirement and thus should not be adopted in the rule. The

commenters did acknowledge that the practice of obtaining an acknowledgment is a good business practice that many lenders would probably require as part of their loan procedures. The representative from Consumers Union expressed support for the proposed rule as well as an alternative proposed procedure that permitted the lender to obtain a statement acknowledging receipt of the disclosure at closing. The Finance Commission agrees with the comments from the lending industry that the rule should not require an acknowledgment and adopts the rule accordingly. The proposed rule also contained a subsection that required a retention period for authenticated acknowledgments. Since the adopted rule will not require an acknowledgment of the notice, there is no need for a subsection requiring retention of the authenticated acknowledgments.

Subsection (c)(4) in the proposed rule required that a lender provide a borrower with a list of the HUD-approved housing counseling agencies located in Texas. The statute requires that a lender distributes a list of the "nearest" housing counseling agencies. Some lenders expressed concern about the cumbersome nature of distributing the entire list, which at the time of rule proposal consisted of 122 agencies. Other lenders though expressed concern that the lender did not want to determine, with exact precision, which agencies were nearest the applicant's residence. The Finance Commission agrees with both concerns and adopts the rule to permit lender's flexibility in this area by supplementing the proposed rule with another option for providing the borrower with this required information. Subsection (c)(4) was amended to provide an alternative of providing the entire list for Texas or to provide a list of at least five agencies nearest the applicant's residence. The Texas Financial Services Association also suggested that the Office of Consumer Credit Commissioner publish a reformatted list of HUD-approved counselors quarterly, so that lenders have a consistent and concise list. The agency, as a matter of practice, plans to accommodate this request. Additionally, the Texas Financial Services Association suggests that lenders be able to add a disclaimer to the list of counselors. For example, the disclaimer might read: "The lender is not affiliated with any of the housing counseling agencies whose names are provided to you with this notice. The lender is not responsible for information or advice given by a housing counseling agency from which you may seek advice." The Finance Commission has no objection to the addition of this disclaimer to the notice, but does not believe that an amendment to the rule is necessary.

Subsection (c)(5) requires that a Spanish translation of the notice must be given if the transaction is conducted primarily in Spanish. The Independent Bankers Association, the Texas Bankers Association, and the Texas Mortgage Bankers Association disagree with the adoption of this subsection because they believe it exceeds the statutory authority in Senate Bill 1581. The Finance Commission believes that it is the appropriate public policy decision to require the notice to be given in Spanish when the borrower and the lender are conducting the transaction primarily in Spanish. Several provisions were added to the Finance Commission Agencies' responsibilities during the Sunset Process in 2000-2001 that require the agencies to ensure that contracts and publications are printed in Spanish as well as English. Specifically, Senate Bill 317 requires contracts to be in plain language, whether in English or in Spanish, and requires the Finance Commission to adopt rules providing model contract provisions and disclosures. The Finance Commission will provide the standard Spanish disclosure text. It is important to note that the rule does not prohibit a lender from giving a Spanish disclosure in every transaction, in addition to the English disclosure. Some lenders may choose to implement this type of disclosure with English on one side and Spanish on the other. Use of a disclosure of this type would comply with the rule.

Subsection (d) provides the procedures for delivery of the notice. The delivery procedures established in this section parallel the delivery procedures for other types of notices in mortgage loans, such as the good faith estimate or the 12-day notice for home equity loans.

Subsection (e) states that this rule will be considered for repeal or amendment in June 2003. As stated above, the statute requiring the disclosure expires September 1, 2003. Consumers Union and Texas Low Income Housing Information Service expressed a desire to urge the Finance Commission to continue the disclosure requirement beyond September 1, 2003, even if the statute expires. The lending industry groups generally expressed a desire to sunset the rule at the same time as the statute. The language added in this subsection merely informs the reader that the Finance Commission will reconsider this rule and the arguments of these parties in June 2003 rather than at this time.

The new section is adopted under the Texas Finance Code § 11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code and §343.102 which requires the Finance Commission to promulgate a high cost home loan notice.

These rules affect new Chapter 343, Texas Finance Code.

§5.1. Required Disclosures in Connection with Certain Home Loans.

(a) Purpose and Applicability.

(1) The purpose of this section is to provide the means by which lenders may comply with the notice requirements of the Finance Code, Section 343.102. Compliance with this section is deemed compliance with these notice requirements.

(2) This section applies to any mortgage application received on or after September 1, 2001, for each home loan that:

(A) is a fixed rate loan that has a contract interest rate of 12% or greater a year; or

(B) is an adjustable rate loan that:

(i) has a maximum fixed rate of interest pursuant to a schedule of steps or tiered rates that is 12% or greater a year; or

(ii) has a maximum variable rate of interest that when calculated upon the index's value at the time of application plus maximum margin increases may result in an interest rate of 12% or greater a year.

(b) Definitions.

(1) Application means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer generated. If the submission does not state or identify a specific property, the submission is not an application for the purposes of this section.

(2) Authenticate means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(3) Home Loan shall have the meaning given in Finance Code §343.001(2).

(4) Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien.

(c) Notice Requirements.

(1) Prescribed content. The notice must appear on a full, separate page with no text other than that provided in this section. The form of the notice shall be substantially similar to that provided by this section.
Figure: 7 TAC §5.1(c)(1)

(2) Notice Requirement. A lender shall deliver a notice for each home loan described in subsection (a)(2) of this section.

(3) Acknowledgement. A lender may request that the applicant authenticate the notice acknowledging applicant's timely receipt of the notice.

(4) List of housing counseling agencies.

(A) A lender must provide the applicant with either:

(i) a list of the Texas-located housing counseling agencies approved by the United States Department of Housing and Urban Development ("HUD"); or

(ii) a list of at least five HUD-approved housing counseling agencies nearest the applicant's residence.

(B) The list provided under subparagraph (A) of this paragraph must contain housing counseling agency information that is not more than 90 days old or if more than 90 days old, is the most recent information available from HUD.

(5) Spanish translation. A Spanish translation of the notice, provided by the Finance Commission, is required if the transaction is conducted primarily in Spanish.

(d) Delivery of notice.

(1) The notice shall be delivered to an applicant:

(A) on the date required for delivery of the Good Faith Estimate under the Real Estate Settlement Procedures Act;

(B) within three business days after application if the Real Estate Settlement Procedures Act does not apply to the covered mortgage loan; or

(C) within three business days of determining that the loan will be covered by this section, if on the date for delivery under subparagraph (A) or (B) of this paragraph the lender after reasonable diligence has not yet determined whether the home loan is a loan as described in subsection (a)(2) of this section.

(2) The notice must be delivered to an applicant at least one business day prior to closing.

(3) A mortgage broker may deliver the notice for the lender.

(4) Mail delivery. The notice may be delivered by placing it in the mail or with an overnight delivery service on the date required for delivery, addressed to the applicant at the given mailing address. An applicant is presumed to have received the notice within three business days of mailing with prepaid first-class postage or within one business day of deposit with an overnight delivery service.

(5) Electronic delivery. A lender may provide the required disclosure by electronic communication in compliance with state and federal law governing electronic signatures and electronic transactions (15 U.S.C. §7.001 *et seq.*; Tex. Bus.& Comm. Code §43.001 *et seq*). A consumer must affirmatively consent to receive the notice electronically. A lender that uses electronic communication to provide the disclosure shall:

(A) send the disclosure to the consumer's electronic address; or

(B) make the disclosure available at another location such as an Internet website; and

(i) alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address. The notice shall identify the account involved and the address of the Internet website or other location where the disclosure is available; and

(ii) make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(6) Denied Applications. If the application is denied before the time for delivery of the notice, the lender need not provide the denied borrower with notice.

(7) Multiple Applicants. In the case of multiple applicants for a home loan, it is only necessary for the lender to deliver the notice to one applicant.

(e) Sunset provision. This section will be considered for repeal or amendment in June 2003.

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 August 17, 2001.

TRD-200104841
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 936-7640

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 27. APPLICATIONS

7 TAC §27.1

The Finance Commission of Texas (the commission) adopts an amendment to §27.1 concerning application processing times and notices to applicants. This section is adopted without changes to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4949), and the text will not be republished.

The amendment removes sale of checks licenses from the application of this section. A new rule regarding sale of checks license applications is being adopted in this issue of the *Texas Register*. This change will place the sale of checks rule in the same chapter as other rules pertaining to sale of checks.

The commission received no comments regarding the proposal.

The amendment is adopted under Finance Code, §152.102(a), which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 152 "including rules relating to an application of a license." Additional authority

and applicable requirements are provided by Government Code, §2005.003.

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 August 17, 2001.

TRD-200104811
Everette D. Jobe
Certifying Official
Texas Department of Banking
Effective date: September 6, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 475-1300

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CHAPTER 29. SALE OF CHECKS ACT

7 TAC §29.4

The Finance Commission of Texas (the commission) adopts new §29.4 concerning processing times for sale of checks license applications submitted to the Texas Department of Banking (department). This section is adopted without changes to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4950), and the text will not be republished.

New §29.4 implements the requirements of Government Code, §2005.003, pertaining to permit processing periods under the Sale of Checks Act, Finance Code, Chapter 152. These requirements currently are met by an existing rule, §27.1, but it is amended in this issue of the *Texas Register* to permit placing the sale of checks provision in the same chapter as other rules pertaining to sale of checks.

Section 29.4 provides sale of checks license applicants an efficient, equitable, and predictable application process by specifying the time for review of applications and conforming the processing times to the actual times required to review and evaluate an application. The section also provides for a finding of abandonment for applications not timely pursued.

Disclosure of the minimum, maximum, and median processing time for an application is required by Government Code, §2005.003. During the past 12 months, the department's minimum, maximum, and median time for processing a sale of checks license application was 28 days, 92 days, and 67 days, respectively. Processing time is measured from the date the department received an initial application to the date of the final license decision.

Section 29.4(b), as compared to former §27.1, changes the time from 10 days to 15 days for the department to notify the applicant that the application is complete or that additional information if required.

The commission received no comments regarding the proposal.

Section 29.4 is adopted under Finance Code, §152.102, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 152, including rules relating to issuance of a license. Additional authority and applicable requirements are provided by Government Code, §2005.003.

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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Everette D. Jobe
Certifying Official
Texas Department of Banking
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For further information, please call: (512) 475-1300

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TITLE 22. EXAMINING BOARDS

PART 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

CHAPTER 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) by a majority vote of the committee on May 31, 2001, and with the approval of the Texas Board of Health (board), enters this order finally adopting amendments §§141.1 - 141.8, 141.11, and 141.13 - 141.17, and 141.19 - 141.22, repeal of existing §141.18 and new §141.18 concerning the regulation of fitters and dispensers of hearing instruments. Sections 141.2, 141.8, 141.16, and new §141.18 are adopted with changes to the proposed text as published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1955). Sections 141.1, 141.3 - 141.7, 141.11, 141.13 - 141.15, 141.17, 141.19 - 141.22, and the repeal of §141.18 are adopted without changes, and therefore will not be republished.

The amendments cover purpose; definitions; the committee; licensees and the committee; client information; application procedures; processing procedures; issuance of permits; filing of a bond; renewal of license; continuing education requirements; examination; condition of sale; complaints and violations; formal hearings; administrative penalties; informal disposition; suspension of a license for failure to pay child support; and code of ethics.

Government Code §2001.039 and the General Appropriations Act, Article IX, §§9-10.13, 76th Legislature, 1999, requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 141.1 - 141.22 have been reviewed and the committee has determined that reasons for adopting the sections continue to exist; however, revisions are being made to the rules. Sections 141.9 - 141.10 and 141.12 were proposed without changes in the proposed preamble and opened for comments and are adopted without changes because no needed revisions were identified during the review and no comments were received.

The committee published a Notice of Intention to Review for §§141.1 - 141.22 in the *Texas Register* on September 17, 1999 (24 TexReg 7773). No comments were received as a result of the publication of the notice.

A readoption notice concerning §§141.9 - 141.10 and 141.12 can be found in the Adopted Rules Review under the Rule Review of Agency Rules in the same issue of the *Texas Register*.

These sections delete language no longer needed; update existing rules to reflect changes in the profession; amend rules according to the codification of the Licensed Fitter and Dispenser of Hearing Instruments Act in the new Texas Occupations Code, Chapter 402; clarify, reorganize and simplify the rules and make typographical corrections.

Comments were received on the proposed rules during the comment period from the Texas Hearing Aid Association (THAA) and an individual, John Westmoreland of Waco, Texas.

Comments from the Texas Hearing Aid Association:

COMMENT: Concerning proposed §141.2 (17) and (18), THAA opposes the removal of the definition of "License" and "Licensee". Even though these terms may be defined by statute, having them clearly defined in the rules makes the rules easier to interpret for the licensees. Any set of rules should contain all statutory definitions so that reference to the statute is not required for proper compliance.

RESPONSE: The committee agrees and has reinserted the definitions of "License" and "Licensee" as new §141.2(18) and (19).

COMMENT: Concerning proposed §141.15(d)(2) that reads as follows: "If the examinee fails the examination the examinee must repeat the 160 hours of direct supervision." THAA supports the concept embodied by the proposed new rule, which is to protect the public against incompetent trainees. However, we respectfully request the committee consider limiting the repeated direct supervision to the portion of the exam that was failed by the trainee. Supervision is costly and time consuming. It makes no sense to require the trainee and the supervisor to return to direct supervision on those areas where the trainee has demonstrated adequate knowledge of the subject matter to properly and safely serve the general public. Returning the trainee to direct supervision only on the area of the exam that was failed allows both parties to concentrate their efforts on the inadequacies of the trainee. Retraining of that which has already been learned is inefficient and costly.

RESPONSE: The committee has considered the comment, however, due to the fact that the practical portion of the examination is rated as pass or fail, the trainee will be required to repeat the direct supervision. In addition, the committee has included an additional 10 hours of training and increased from 150 hours to 160 hours. No change was made as a result of these comments.

COMMENT: Concerning §141.15(d)(5) that reads as follows: "The examinee may take the examination no more than three times." HAA fully supports this proposed rule change. Persons failing the exam three times have proven they are not qualified to serve the hearing impaired, and should not be returned to temporary permit status.

RESPONSE: The committee agrees. No changes were made as a result of this comment.

COMMENT: Concerning proposed §141.16(b)(2) that reads as follows: "Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition to the licensee within the 30-day trial period ending 30 days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensee may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensee." THAA opposes the removal of the words "in good working order" as shown above. The purpose of the licensing committee is to promulgate rules that are fair and equal to both the general public and licensed dispensers. If this language is removed, the client has no responsibility to return the hearing instrument to the dispenser in good working order. Furthermore, this leaves the dispenser open for abuse by those who experience accidents with their hearing instruments that render them inoperable. For example, a client could accidentally step on his/her hearing instrument, rendering the instrument inoperable. By removing the above language in the current rule, the client could return the instrument to the dispenser within the 30-day trial period and receive a refund. The dispenser, on the other hand, suffers a huge loss when he/she did nothing wrong. The client bears some responsibility to properly maintain the instrument during a trial period during which the instrument can be returned. We urge the committee to leave this language in the current rule.

RESPONSE: The committee has considered the comment and prefers to keep the proposed language substitute of "in good working condition". The dispenser would not be harmed because these returned hearing instruments are returned to the manufacturer for credit. No changes were made as a result of these comments.

COMMENT: Concerning proposed §141.16(b)(3): "Should the hearing instrument(s) have to be repaired, remade or adjusted during the 30-day trial period, the 30-day trial period is suspended for one day for each 24 hour period that the hearing instrument(s) is not in the client's possession. The 30-day trial period resumes on the day the client reclaims the repaired, remade, or adjusted hearing instrument." THAA submits that no change in the current 30-day trial rule is needed or justified for the following reasons: (1) the current rule has worked very well for the industry. Proof of this can be measured by comparing the total number of complaints filed with the state licensing committee concerning returns with the total number of hearing aids sold. The result would be far less than 1%. Most industries would consider that an extremely successful complaint ratio. (2) All dispensers are familiar with the current rule, and most implement it without any problems or complaints from their customers. To change the rule would require an unnecessary campaign to reeducate all licensed dispensers on a new rule. Contracts would have to be rewritten and reprinted. This is not necessary when the current rule is working so well for both dispensers and consumers. (3) No matter what rule is adopted for returning hearing aids, the licensing committee will continue to receive complaints from the consuming public. Since the current rule has already demonstrated it generates very few complaints, it should remain unchanged. (4) It is very doubtful the committee could write a new rule that would reduce the number of complaints currently registered with this committee. (5) To date, the state licensing committee has resolved all complaints filed with the committee concerning returns. This proves the current rule works when consumers file legitimate complaints. (6) Some audiologists have complained that the existence of two rules, one for audiologists and one for dispensers causes problems in the workplace and confusion for customers. If audiologists have a problem with the dispenser rule, they should either adopt the dispenser rule, or

learn to live with two sets of rules in the workplace. Please remember, dispensers did not cause the licensing of these two professional groups to be divided into two separate groups with two sets of rules.

RESPONSE: The committee has considered the comments and believes it is in the consumer's best interest to have a "true" 30-day trial period, meaning 30 days of possession of the hearing instrument. Therefore, the language will remain as proposed. No changes were made as a result of the comments.

Comments from Mr. John Westmoreland:

COMMENT: Concerning proposed §141.15(d)(2), the number of hours to be repeated should be 150 not 160.

RESPONSE: In the event that the practical examination is failed, the committee has increased the number of temporary training permit hours from 150 to 160 to be repeated under direct supervision. No changes were made as a result of this comment.

COMMENT: Concerning proposed rule §141.16(b)(3), Mr. Westmoreland stated: "One of the reasons this was proposed was because the perception that the majority of complaints dealt with violation of abuse of the 30 day trial period. My research shows that the number of complaints dealing with this problem has virtually stopped, and that only one or two valid complaints have surfaced dating back one year. If the proposed change is enacted, the dispenser will incur an unnecessary amount of paperwork that is simply not needed. I believe it is wrong to chastise 99% of the dispensers because of the behavior of the other 1%. In the event that this item is approved for a rule change, please note that there is a problem with the last sentence. I believe the sentence should read, "If the hearing instrument is not picked up within five working days following client notification, the thirty day trial period resumes".

RESPONSE: The committee has considered the comment and believes it is in the consumer's best interest to have a "true" 30-day trial period, meaning 30 days of possession of the hearing instrument. Therefore, the language will remain as proposed. However, an editorial change in the last sentence was made to reflect that "the 30 day trail period resumes."

The following change was made due to a staff comment.

Change: Concerning §141.18(h)(3), a period was added at the end of the sentence.

22 TAC §§141.1 - 141.8, 141.11, 141.13 - 141.22

The amendments, repeal and new rule are adopted under the Texas Occupations Code, §402.102 which provides the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, subject to the Texas Board of Heath approval, the authority to adopt rules concerning the regulation of fitters and dispensers of hearing instruments.

§141.2. Definitions.

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

(1) Act -- Texas Occupations Code, Chapter 402, concerning the licensing of persons authorized to fit and dispense hearing instruments.

(2) Administrative Law Judge -- A judge employed by the State Office of Administrative Hearings.

(3) APA -- Administrative Procedure Act, the Government Code, Chapter 2001.

(4) Applicant -- A person who applies for licensure under the Act.

(5) Apprentice permit -- A permit issued by the committee to a person who meets the requirements of Texas Occupations Code, §402.207.

(6) Bill of sale -- See definition for "written contract for services."

(7) Board -- The Texas Board of Health.

(8) Committee -- The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(9) Contact hour -- A period of time equal to 55 minutes.

(10) Contract -- See definition for "written contract for services."

(11) Contested case -- A proceeding in accordance with Administrative Procedure Act (APA) in this chapter, including but not restricted to rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the committee after an opportunity for an adjudicative hearing.

(12) Continuing education -- Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.

(13) Department -- The Texas Department of Health.

(14) Direct supervision -- The physical presence with prompt evaluation, review and consultation of a supervisor anytime a temporary training permit holder is engaged in the act of fitting and dispensing of hearing instruments.

(15) Fitting and dispensing hearing instruments -- The measurement of human hearing by the use of an audiometer, or by any means, for the purpose of making selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instrument and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

(16) Formal hearing -- A hearing or proceeding in accordance with this chapter, including a "contested case" as defined in this section.

(17) Indirect supervision -- The daily evaluation, review, and prompt consultation of a supervisor anytime a permit holder is engaged in the act of fitting and dispensing hearing instruments.

(18) License -- A license issued by the committee under Texas Occupations Code, Chapter 402, and this chapter to a person authorized to fit and dispense hearing instruments.

(19) Licensee -- Any person licensed by the committee.

(20) Ownership of dispensing practice -- A person who owns, maintains, or operates an office or place of business where the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments shall be considered also to be engaged in the practice of fitting and dispensing of hearing instruments under this Act.

(21) Person -- An individual, corporation, partnership, or other legal entity.

(22) Sell or sale -- A transfer of title or the right to use by lease, bailment, or any other contract. For the purpose of Texas Occupations Code, §402.001(7), the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to the distributors for distribution and sale to persons licensed under Texas Occupations Code, §402.001(7), and this chapter.

(23) Selling of hearing instrument by mail -- Anytime a hearing instrument is not sold, fitted or dispensed in person by a licensee or permit holder.

(24) Sponsor -- Provider of a continuing education activity.

(25) Supervisor -- A supervisor is a person licensed by the committee as a licensed hearing instrument dispenser who:

(A) meets the qualifications established by Texas Occupations Code, §402.255 and this chapter;

(B) has an established place of business;

(C) is responsible for direct and indirect supervision and available for consultation and education of a temporary training permit holder; or

(D) is responsible for indirect supervision and available for consultation of an apprentice permit holder.

(26) Temporary training permit -- A permit issued by the committee to persons authorized to fit and dispense hearing instruments only under the direct or indirect supervision as appropriate of a person who holds a license under Texas Occupations Code, Chapter 402, and this chapter.

(27) Working days -- Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

(28) Written contract for services -- A written agreement or bill of sale, between the licensee and purchaser of a hearing instrument as set out in §141.16(c) of this title (relating to Conditions of Sale).

(29) 30-day trial period -- The period in which a person may cancel the purchase of a hearing instrument.

§141.8. Issuance of Permits.

(a) Temporary training permit.

(1) The training period begins on the date of the issuance of the temporary permit.

(2) The committee shall issue a temporary training permit to an applicant who:

(A) has filed an application form and temporary training permit fee; and

(B) has met all of the academic requirements for licensure.

(3) The temporary training must be done under the supervision of an individual who holds a valid license, from the committee, to fit and dispense hearing instruments in the State of Texas.

(4) A person shall obtain a temporary training permit prior to person receiving supervision.

(5) A temporary training permit holder shall maintain a valid temporary training permit during his or her supervised practicum experience

(6) The supervising fitter and dispenser of hearing instruments must submit a written notification of termination of supervision to the committee and the temporary training permit holder within 10 days of cessation of supervision. The committee notification of termination of supervision shall include:

(A) the name, temporary training permit number, and signature of the supervisor, and the name and license number of the supervisee;

(B) a statement that supervision has terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the temporary training permit holder has complied with the requirements of Texas Occupations Code, Chapter 402, (Act), and this chapter.

(7) The temporary training permit holder shall give written notice to the executive director of the transfer of supervision within 10 working days of change in supervisor.

(8) A temporary training permit holder shall be required to have at least 160 hours of directly supervised practicum that shall include the following:

(A) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry with both recorded and live voice with 15 of the required hours being with actual clients;

(B) 10 contact hours of masking;

(C) 25 client hours of hearing instrument evaluation including field measurements with recorded and live voice;

(D) 20 contact hours of instrument fittings with actual consumers;

(E) 10 contact hours of earmold orientation types, uses, and terminology;

(F) 5 contact hours of earmold impressions and otoscopic examinations of the ear;

(G) 15 contact hours of troubleshooting of defective hearing instruments;

(H) 20 contact hours of case history with actual consumers;

(I) 10 contact hours of the laws governing the licensing of persons fitting and dispensing hearing instruments and Federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments;

(J) 20 hours of supplemental work in one or more of the areas described in subparagraphs (A)-(H) of this paragraph.

(9) On completion of the 160 hours of directly supervised practicum under paragraph (8) of this subsection a temporary training permit holder shall complete the permit holder's training under the indirect supervision of the permit holder's supervisor.

(10) The dated and notarized signature of the supervisor or supervisors who can formally attest to the temporary permit holder's supervised experience.

(11) The supervised experience forms must be completed by the temporary permit holder and the supervisor or supervisors and contain:

(A) the name of the temporary permit holder;

(B) the name, address, and licensure status of the temporary permit holder's supervisor and supervisors;

(C) the name and address of the business or organization where the temporary permit holder practices;

(D) the inclusive dates of the supervised experience;

(E) the supervisor's notarized signature; and

(F) the temporary permit holder's notarized signature.

(b) Apprentice permit.

(1) A temporary training permit holder who has taken all parts of the examination given by the committee and has passed all parts of the examination with a score of 70% or greater shall be issued an apprentice permit to fit and dispense hearing instruments. An apprentice permit remains valid for one year unless it is extended by the committee for an additional period not to exceed six months.

(2) The committee shall issue an apprentice permit to an applicant who:

(A) has filed an application form and apprentice permit fee; and

(B) has taken and passed all parts of the examination with a score of 70% or greater.

(3) The supervisor shall periodically conduct a formal evaluation of the applicant's progress in the development of professional skills.

(4) A supervisor of an apprentice permit holder is responsible for services to the client that may be performed by the apprentice permit holder. The supervisor must ensure that all services provided are in compliance with the Act and this chapter.

(5) The apprenticeship must be done under the indirect supervision of an individual who holds a valid license to fit and dispense hearing instruments in the State of Texas.

(6) Prior to the issuance of an apprentice permit, the supervisor's affidavit form must be filed with the committee office.

(7) The apprentice permit holder shall complete 18 hours of classroom continuing education in one or more of the following approved subjects:

(A) basic physics of sound;

(B) structure and function of hearing instruments;

(C) fitting of hearing instruments;

(D) pure tone audiometry, including air conduction testing and bone conduction testing;

(E) live voice and recorded voice speech audiometry;

(F) masking when indicated for air conduction, bone conduction, and speech;

(G) recording and evaluation of audiogram and speech audiometry to determine the candidacy for hearing instruments;

(H) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(I) taking of earmold impressions;

(J) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(K) anatomy and physiology of the ear;

(L) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(M) use of an otoscope for the visual observation of the entire ear canal;

(N) laws, rules, and regulations of this state and the United States; and

(O) the proper procedures for sound level measurements.

(8) The supervisor must submit written notification of cessation of supervision to the committee and the apprentice permit holder within 10 days of cessation of supervision. Notification of termination of supervision shall include:

(A) the name and permit number of the apprentice, and the signature of the supervisor;

(B) a statement that supervision has been terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the apprentice permit holder have complied with the requirements of the Act and this chapter.

(9) The apprentice permit holder shall give written notice to the executive director of the transfer of supervision within 10 working days of change in supervisor.

(10) The dated and notarized signature of the supervisor or supervisors who can formally attest to the apprentice permit holder's supervised experience.

(11) The supervised experience forms must be completed by the apprentice permit holder and the supervisor or supervisors and contain:

(A) the name of the apprentice permit holder;

(B) the name, address, and licensure status of the apprentice permit holder's supervisor or supervisors;

(C) the name and address of the business or organization where the apprentice permit holder practices;

(D) the inclusive dates of the supervised experience;

(E) the supervisor's notarized signature; and

(F) the apprentice permit holder's notarized signature.

(c) Other conditions for supervised experience for temporary training permit or apprentice permit.

(1) A supervisor may not supervise more than two permit holders of any type at one time.

(2) A supervisor may delegate training activities to another eligible supervisor for the supervision of a temporary training permit holder. The supervisor shall be responsible for the day-to-day supervision of a trainee. The supervisor shall also be ultimately responsible for services provided to a client by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

§141.16. Conditions of Sale.

(a) Compliance with other state and federal regulations. A licensee or permit holder under Texas Occupations Code, Chapter 402, (Act) shall:

(1) adhere to the Federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations (CFR) §801.420 and §801.421;

(2) receive a written statement before selling a hearing instrument that is signed by a physician or surgeon duly licensed by the Texas State Board of Medical Examiners, one who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client is age 18 or older, the licensee may inform the client that the medical evaluation requirement may be waived as long as the licensee:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign a statement on the contract that says: "I have been advised by (licensee's or permit holder's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician or surgeon who specializes in diseases of the ear) before purchasing one or more hearing instruments. I do not wish to receive a medical evaluation before purchasing a hearing instrument";

(3) not sell a hearing instrument to a person under 18 years of age unless the prospective user, parent, guardian has presented to the licensee or permit holder a written statement signed by a licensed physician specializing in diseases of the ear that states that the client's hearing loss has been medically evaluated and the client may be considered a candidate for a hearing instrument. The evaluation must have taken place within the preceding six months; and

(4) advise clients who appear to have any of the following otologic conditions to consult promptly with a physician:

(A) visible, congenital or traumatic deformity of the ear;

(B) history of active drainage from the ear within the previous 90 days;

(C) history of sudden or rapidly progressive hearing loss within the previous 90 days;

(D) acute or chronic dizziness;

(E) unilateral hearing loss of sudden or recent onset within the previous 90 days;

(F) audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(G) visible evidence of significant cerumen accumulation or a foreign body in the ear canal; and

(H) pain or discomfort in the ear.

(b) Guidelines for a 30-day trial period.

(1) All clients shall be informed of a 30-day trial period by written contract for services and all charges associated with such trial period be included in this written contract for services, which shall include the name, address, and telephone number of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition to the licensee within the 30-day trial period ending 30 days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensee may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensee.

(3) Should the hearing instrument(s) have to be repaired, remade or adjusted during the 30-day trial period, the 30-day trial period is suspended for one day for each 24 hour period that the hearing instrument(s) is not in the client's possession. The 30-day trial period resumes on the day the client reclaims the repaired remade, or adjusted hearing instrument. If the hearing instrument is not picked up within five working days following client notification, the 30-day trial period resumes.

(c) Written contract for services to client - client protection. Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the licensee or permit holder shall provide the client with a signed, written contract for services containing the following:

(1) the date of sale;

(2) the make and model of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the licensee;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing instruments that any examination or representation made by a licensed fitter and dispenser of hearing instruments in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice";

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed fitter and dispenser of hearing instruments, you may contact the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, telephone 1-800-942-5540";

(9) the licensee's or permit holder's printed name, signature and license or permit number;

(10) the supervisory arrangement reflected on a written contract for services by signature of both the permit holder and licensee with both the permit holder's license number and the licensee's license number; and

(11) a serial number(s) and follow-up appointment within 30 days after the hearing instrument fitting shall be part of the patient records.

(d) Terms of sale.

(1) There shall be a full and complete disclosure of the cost of financing the purchase of hearing instruments.

(2) If the initial price of the hearing instrument(s) furnished is reduced by trade-in allowance or discount, the written contract for services shall conspicuously state:

(A) the initial price of the aid before trade-in allowance or discount;

(B) the amount of the trade-in allowance or discount; and

(C) the final price to the consumer.

(e) Record keeping.

(1) It is the licensee's responsibility to keep records on every client to whom the licensee renders service in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the fitting and dispensing of the hearing instrument(s) to the client. If other hearing instruments are subsequently fitted and dispensed to that client, cumulative records must be maintained for at least five years after the latest fitting and dispensing of the hearing instrument(s) to that client. The records must be available for the committee's inspection and will include but not be limited to the following:

(A) pertinent case history;

(B) source of referral and appropriate documents;

(C) medical evaluation or waiver of evaluation;

(D) copies of writing contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(E) a complete record of hearing tests, and services provided, including follow-up appointment within the 30-day trial period; and

(F) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(2) A complete record of tests shall be available for the client.

(f) Audiometers and audiometric testing devices.

(1) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute or as otherwise specified by the Texas Department of Health (department).

(2) Current audiometer or audiometric testing device calibration records shall be maintained with each audiometer or audiometric testing device. Audiometer or audiometric testing device calibration records and data shall be maintained for inspection by the department for a period of three years.

(g) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was not done in a stationary acoustical enclosure.

(2) Ambient noise level of location audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

(A) type(s) of equipment used to determine ambient noise level;

(B) model and serial number of equipment used to determine ambient noise level;

(C) date of last calibration of equipment used to determine ambient noise level; and

(D) the ambient noise level of the test environment.

(3) If audiometric testing is not conducted in a stationary acoustical enclosure, the test environment shall have a maximum allowable ambient noise level of 42 dBA.

(h) Audiometric testing conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was done in a stationary acoustical enclosure.

(2) A stationary acoustical enclosure includes, but is not limited to, an audiometric test room.

(A) An audiometric test room is any enclosed space in which a listener is located for the purpose of testing hearing. An audiometric test room may also be known as:

(i) an audiometric test area;

(ii) a hearing test space; or

(iii) a hearing test room.

(B) An example of an audiometric test room would be a prefabricated room known as:

(i) an audiometric test booth;

(ii) a suite; or

(iii) a sound treated room.

(C) The primary and necessary requirement of an audiometric test room is to ensure that the maximum permissible ambient noise levels established by the American National Standards Institute do not exceed the levels for audiometric test room for ears covered 250 - 8000 Hz. The levels are as follows:
Figure: 25 TAC §141.16 (h)(2)(C) (No change.)

§141.18. Formal Hearings.

(a) Purpose. This section covers the formal hearing procedures and practices that will be used by the committee in handling suspensions, revocation of license, denial of licenses, probating a license suspension, and reprimanding a licensee. Such hearing will be conducted pursuant to the contested case provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001 and will be held by the State Office of Administrative Hearings.

(b) Notice requirements.

(1) Notice of the hearing shall be given according to the notice requirements of APA.

(2) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(3) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.

(c) Parties to the hearing.

(1) The parties to the hearing shall be the applicant or licensee and the complaints subcommittee or executive director, as appropriate.

(2) A party may appear personally or be represented by counsel or both.

(d) Prehearing conferences.

(1) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(A) the formulation and simplification of issues;

(B) the necessity or desirability of amending the pleading;

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing.

(E) specifying the number of witnesses;

(F) the mutual exchange of prepared testimony and exhibits;

(G) the designation of parties; and

(H) other matters which may be expedite the hearing.

(2) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(3) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.

(e) Assessing the cost of a court reporter and the record of the hearing.

(1) In the event a court reporter is utilized in the making of the record of the proceedings, the committee shall bear the cost of the per diem or other appearance fee for such reporter.

(2) The committee may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The committee may pay the cost of the transcript or assess the cost to one or more parties.

(3) In the event a final decision of the committee is appealed to the district court wherein the committee is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the committee may require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the committee proceedings that is required to be transmitted to the reviewing court.

(f) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(g) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rules does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(h) Final orders or decisions.

(1) The final order or decision will be rendered by the committee. The committee is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(3) All final orders shall be signed by the executive director and the chairman of the committee; however, interim orders maybe issued by the Administrative Law Judge.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(i) Motion for rehearing. A motion for rehearing shall be governed by APA, Texas Government Code, §2001.146 and shall be addressed to the committee and filed with the executive director.

(j) Appeals. All appeals from final committee orders or decisions shall be governed by APA, Texas Government Code, Subchapter G, and communications regarding any appeal shall be to the executive director.

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 August 20, 2001.

TRD-200104902
Michael Shobe
Chairman
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments
Effective date: September 9, 2001
Proposal publication date: March 9, 2001
For further information, please call: (512) 458-7236

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22 TAC §141.18

The repeal is adopted under the Texas Occupations Code, §402.102 which provides the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, subject to the Texas Board of Heath approval, the authority to adopt rules concerning the regulation of fitters and dispensers of hearing instruments.

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-200104903
Michael Shobe
Chairman
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments
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For further information, please call: (512) 458-7236

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board adopts amendments to §273.4 without change to the proposed text published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4374).

The amendments raise the license renewal and corresponding late fees to provide funding for the appropriations made by the 77th Legislature.

No comments on the rule were received.

The amendments are adopted the authority of the Texas Optometry Act, Occupations Code, §351.152 which grants the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act.

The amendments affect the Texas Optometry Act, Occupations Code, §351.152.

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-200104878
Lois Ewald
Executive Director
Texas Optometry Board
Effective date: September 9, 2001
Proposal publication date: June 15, 2001
For further information, please call: (512) 305-8500

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CHAPTER 279. INTERPRETATIONS

22 TAC §§279.1 - 279.7, 279.12, 279.16

The Texas Optometry Board adopts the repeals of §§279.1 - 279.7, 279.12 and 279.16, without change to the proposed text published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4375).

The agency repeals §§279.1 - 279.7, 279.12 and 279.16, so that the text of the repealed sections may be placed in the new and amended rules proposed for this chapter.

No comments on the rule repeals were received.

The repeals of §§279.1 - 279.7, 279.12, and 279.16 is under the authority of the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The code that will be affected by this proposal is Chapter 351 of the Texas Occupations 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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Lois Ewald
Executive Director
Texas Optometry Board
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For further information, please call: (512) 305-8500

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22 TAC §§279.1 - 279.5, 279.9 279.11, 279.12, 279.14

The Texas Optometry Board adopts the following new rules without change. Which in addition to language from prior rules, contain a more specific title and updates to the citations in the Texas Occupations Code: new §279.1 concerning contact lens examinations, which contains sections from repealed §§279.2, 279.5, 279.7, and 279.14, and clarifies from prior language both when a follow-up visit is required and the method of notifying the patient; new §279.2 concerning contact lens prescriptions, contains sections from repealed §§279.1, 279.12, and 279.16, and clarifies from prior language the minimum required prescription period. The new rule also adds language clarifying statutory requirements in the Contact Lens Prescription Act regarding the mandatory two month prescription extension and the manner in which information must be transmitted when a medical condition prohibits the release of a prescription; new §279.3, concerning spectacle examinations, contains sections from repealed §§279.5, 279.7, and 279.14; new §279.4, concerning spectacle prescriptions, contains sections from repealed §§279.2, 279.5, 279.7, and 279.14; new §279.5, concerning dispensing ophthalmic materials, contains sections from repealed §279.3 and repealed subsections of §279.14; new §279.11, concerning books and records in the relationship with dispensing opticians, contains the language of repealed §279.6; and new §279.12, concerning separation of offices in the relationship with dispensing opticians, contains the language of repealed §279.4.

The agency amends §279.9, concerning advertising, to add the text from the repeal of §280.6 to the current rule to group advertising issues together and to add a more specific title. The agency amends §279.14, concerning patient files, to delete sections (b) through (e), which text is now contained in new §§279.1, 279.3, 279.5, and 279.9, and to add a more specific title.

The Texas Optometry Board (agency) received comments on the proposed rules in Chapter 279 from Representative Patricia Gray (Representative Gray), Texas Department of Health (TDH), Consumers Union (CU), and 1-800 Contacts, Incorporated (1-800).

General Comments Concerning Intent of Law

Representative Gray made general comments that the proposed reorganization of Chapter 279 did not address the intent of the Contact Lens Prescription Act (Chapter 353 of the Texas Occupations Code) and should be withdrawn. The agency disagrees that the rules should be withdrawn. As stated in the preamble to the proposed rules, the agency proposed the reorganization in order to place matters concerning the same subject matter in the same rule. Only a few changes in the actual language of the rules were proposed, and these changes comply with the intent of the Contact Lens Prescription Act (CLPA) and the Texas Optometry Act (TOA) as set out by the clear language of these statutes. The language that is unchanged also complies with the clear language of these acts.

Comments Regarding New Proposed §279.1

Several comments concerned the requirement of a follow-up visit in order to obtain a contact lens prescription. A commenter (CU) stated that the change in the language to clarify that a follow-up examination is only required when medically indicated addresses many complaints made to the agency and more fully complies with the intent of the CLPA. The agency agrees that the changes clarify that follow-up visits may not always be required for the proper prescribing of contact lenses.

TDH commented that "medically indicated" is ambiguous and should be more narrowly defined. The agency disagrees

with this comment. The term is sufficiently clear such that optometrists will be able to determine when a follow-up visit may be required. The term is similarly definitive as the statutory terms "ocular health" and "medical condition" in §353.157 of the CLPA.

Representative Gray commented that the proposed rules should establish standards of practice regarding follow-up visits so that they are only necessary for health reasons. The agency disagrees with this comment since the change in the rule language clearly establishes a health standard for the necessity of follow-up visits.

Unrelated to the language regarding follow-up visits, TDH also made general comments that subsection (d) does not mirror the provisions of the CLPA, but the commenter did not make any specific comments as to how this subsection did not further the intent of the CLPA. The agency disagrees with the comments. Subsection (d) is based solely on the disciplinary authority of the TOA and has no relationship to the CLPA.

Comments Regarding New Proposed §279.2

Several comments were made concerning the faxing or telephoning of a contact lens prescription. The language of the rule closely tracks the language in §353.104 (a) of the CLPA that allows a prescriber to transmit a contact lens prescription by telephone or facsimile for an emergency refill. Commenters (Representative Gray, CU, 1-800, and possibly TDH which addresses this issue in comments to proposed §279.4, but mentions contact lens prescriptions) stated that the CLPA does not restrict telephoned or facsimile prescriptions to only those situations where an emergency refill is required, and that the restriction placed by the agency's rules does not comply with realities of today's health system and the needs of consumers. The agency disagrees with these comments. The CLPA establishes a clear and comprehensive system of dispensing contact lenses in which the original signed prescription is an integral component. Section 353.103 requires the dispenser to note on the original prescription the number of lenses dispensed when a partial dispensing is made, and to return the original to the customer after making a copy for the dispenser's records. When a complete dispensing of the number of lenses is made, the original is retained by the dispenser so that the customer no longer has access to a prescription which has expired due to the number of authorized lenses having been dispensed. A special provision is made, however, so that in an emergency the telephoning or faxing of a prescription is permitted. The language of the rule accurately reflects the system established by the clear language of the CLPA.

However, because of the passage of Senate Bill 393, 77th Legislature, the agency does agree with commenters (Representative Gray and 1-800 in comments to §279.4) that state law, effective January 1, 2002, gives equal effect to electronic transmissions of a signature and the original signature provided that the electronic signature satisfies certain safeguards. Therefore, the agency is proposing amendments to §279.2 and §279.4 that will allow the faxing and computer transmission of contact lens and other ophthalmic prescriptions after the effective date of Senate Bill 393. These amendments will be proposed in action separate from the adoption of these rules.

Comments were also made regarding the definition of "emergency." Commenter CU stated that the agency's interpretation that the two month extension of the contact lens prescription can only be faxed or telephoned in an emergency is contrary to the law. The agency disagrees and points to the clear language of the CLPA which allows the extension to be made by fax or telephone if the provisions of the emergency refill section are satisfied. CU stated that the rules should provide that an emergency is any situation where a patient does not have a prescription and needs one to be faxed or telephoned. 1-800 commented that an optometrist does not have the authority to determine when an emergency exists -- that only TDH had that authority. The agency disagrees with these comments. The CLPA does not define "emergency," but the term is commonly defined as an unforeseen turn of events requiring prompt action. The proposed rule does not enlarge the provisions of the CLPA.

TDH commented that the rule did not repeat every provision of the CLPA regarding the reasons that a prescriber may refuse to release a contact lens prescription. TDH also commented that the rule did not state that the prescriber may always release a prescription even if there is a legal reason justifying non-release. The commenter also stated that the rule does not require an optometrist to state the specific reason that a prescription is not being released. The agency disagrees with these comments. The rule requires that the optometrist give the patient the reason for not releasing the prescription. The provisions of the CLPA setting out the permissible reasons for not releasing a prescription are quite clear and do not require explanatory language. Each licensee of the agency has been furnished with a copy of the CLPA in addition to the agency's rules.

Commenter CU also stated that subsection (h) should contain language prohibiting a prescriber from requiring the patient to purchase a supply of contacts before a prescription will be issued. Representative Gray commented that rules should prohibit optometrists from requiring the "initial purchase" of contact lenses unless "medically necessary and so stated in writing." The agency agrees with these comments to the extent that the rule should clarify that an optometrist may only require the patient to buy contact lenses purchased by the optometrist for the fitting process. The agency is proposing an amendment with this clarifying language in action separate from the adoption of these rules to be published in the *Texas Register*. The agency disagrees with the remainder of these comments. The rule, in language that was not changed, allows the prescriber to charge for lenses used in the fitting process. The rule does not allow a prescriber to make the purchase of a contact lens a precondition to the release of a prescription. In the fitting process, the fit of the contact lens is evaluated so that damage to the cornea is prevented. Optometrists may have free samples of popular lenses that can be used in the fitting process. Such samples are based on the optometrist's purchase patterns as well as other restrictions imposed by the manufacturer. Frequently samples are unavailable, especially if the patient requires a non-disposable lens or a lens with uncommon parameters. The optometrist is required to purchase such a lens prior to its use in the fitting process. In some instances the manufacturer only supplies a lens in a multiple package, and the optometrist is required to purchase the package in order to have lenses to perform the fitting. The intent of the CLPA is not to prevent the prescriber from charging patients for lenses the optometrist is required to purchase to perform a medically competent examination.

Commenter Representative Gray also commented on the language of subsection (g) concerning proprietary lens brands and the relation of the language to the litigation involving contact lens manufacturers and several state attorney generals. Subsection (g) is unchanged from the amendments adopted and published in the March 30, 2001 issue of the *Texas Register*. The agency responded to comments in that issue regarding the difference

between private labels and proprietary lenses at (26 Tex.Reg. 2539). It is the agency's understanding that this was not an issue in the litigation involving contact lens manufacturers.

Comments regarding new proposed §279.4

The agency received comments from TDH and 1-800 stating that the requirement for an original written prescription for spectacles and other ophthalmic devices is "outdated," "archaic," and contrary to "modern life." The agency agrees that Senate Bill 393, 77th Legislature, effective January 1, 2002, gives equal effect to electronic transmissions of a signature and the original signature provided that the electronic signature satisfies certain safeguards. Therefore, the agency is proposing amendments to §279.2 and §279.4 that will allow the faxing and computer transmission of contact lens, spectacle and other ophthalmic prescriptions after the effective date of Senate Bill 393. These amendments will be proposed in action separate from the adoption of these rules.

TDH also commented that the agency should adopt rules establishing a reasonable time period for the release of a prescription and rules relating to a "patient's designated agent." The agency disagrees with these comments. The agency can determine on a case by case basis whether any complaints of delay violate the intent of the CLPA to release a prescription upon the request of a patient. In the future, should the agency receive a number of written complaints directly from patients regarding a delay in the release, the agency will consider proposing a rule at that time. The CLPA permits a patient to request delivery to another person, and allows the prescriber to charge for such a delivery, but there are no provisions in the CLPA regarding a "patient's designated agent." Therefore the agency is not proposing a rule on this matter.

Comments regarding new proposed §279.5

1-800 commented that the agency does not have the authority to adopt subsection (a), which is unchanged from proposed repealed §279.14 (e). The agency disagrees with this comment. §351.002 (6)(7) of the TOA defines the practice of optometry and therapeutic optometry. The definition includes the prescribing of medications, spectacles, contact lenses and ophthalmic devices.

Proposed §279.5 contains the text, unchanged except for updates to the citations to the TOA, of repealed §279.3 and §279.12, and a repealed subsection of §279.14.

Comments Requesting Agency to Propose Additional Rules or Sections

Representative Gray commented that the agency should propose rules to prevent a licensee from refusing to release a contact lens prescription because of an insurance claim regarding the patient which has not been paid to the licensee. The agency agrees with this comment to the extent that withholding a prescription because of an unpaid account assigned to an vision plan or provider plan would not comply with the intent of the CLPA. Therefore an amendment to §279.2 prohibiting such a withholding will be placed on the agenda for the next meeting of the agency. The agency received one written complaint concerning this situation in the last two fiscal years, and the licensee modified his procedure.

Representative Gray also commented that the agency should propose rules to require licensees to issue extra copies of prescriptions when lenses are torn or lost. In the last two fiscal years, the agency has received one written complaint regarding the issuance of extra copies of prescriptions and no complaints concerning copies when lenses are torn or lost. The CLPA does not authorize a rule requiring the release of multiple copies of a prescription, but an optometrist is free to honor the patient's request for an additional copy in these situations. The CLPA does allow for an emergency refill of a contact lens prescription.

New §§271.1 - 271.5, 271.11, 271.12, are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.005, 351.251, 351.353, 351.356, 351.357, 351.359, 351.364, 351.406, 351.453, 351.501, 351.602, 351.603, 351.606 and 351.607, and the Contact Lens Prescription Act, Texas Occupations Code, §§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 agency interprets §§351.005, 351.251, 351.356, 351.357, 351.406 and 351.607 to require a prescription for the dispensing of contact lenses and or spectacles and ophthalmic materials; §§351.005, 351.356 and 351.453 as defining the limits of an ophthalmic dispenser's authority; §351.353 as defining the steps required in an examination, §351.501 as authorizing the disciplining of licensees; §351.359 as defining the requirements of a spectacle prescription as well as, with the sections of the Contact Lens Prescription Act, defining the requirements of a contact lens prescription; §351.364 as defining the limits of the relationships of optometrists and dispensing opticians and §§351.602, 351.603, 351.606 and 351.607 as setting the penalties for dispensing without a prescription. Texas Occupations Code, Chapter 351, is affected by this adoption.

The amendments of §279.9 and §279.14 are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.352, 351.155 and 351.403. The amendments affect §§351.155, 351.352 and 351.403. 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 §351.155 and §351.403 as authorizing rules to prevent false, deceptive or misleading advertising and §351.352 as defining the contents of patient files and records and the responsibilities of optometrists for these files

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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Lois Ewald
Executive Director
Texas Optometry Board
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For further information, please call: (512) 305-8500

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CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.6

The Texas Optometry Board adopts the repeal of §280.6 as published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4379).

The repeal allows the placement of the text verbatim in proposed amendments to §279.9 in a proposed reorganization of Chapter 279.

No comments on the rule repeal were received.

The repeal of §280.6 is adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.155 and 351.403. The repeal affects §351.155 and §351.403.

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 §351.155 and §351.403 as authorizing rules to prevent false, deceptive or misleading advertising.

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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Lois Ewald
Executive Director
Texas Optometry Board
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For further information, please call: (512) 305-8500

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 34. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

25 TAC §34.3

On behalf of the State Medicaid director, the Texas Department of Health (department) adopts an amendment to §34.3, concerning the deinstitutionalization of children from nursing facilities into the Medically Dependent Children Program (MDCP) with changes to the proposed text as published in the July 13, 2001 issue of the *Texas Register* (26 TexReg 5197). The purpose of the amendment will redefine the population who may access existing MDCP services.

This section is amended in order to will allow the department to move eligible children from institutions to home and community settings, if the parents choose this option. The amendment to §34.3 refers to an agreement between the Texas Department of Human Services and the department to support the placement of current or prior resident children from Texas nursing facilities into permanent placement in their homes or community settings. The children targeted under this provision will have been in placement for continuous institutional long-term care purposes. The provision excludes institutional placements that are for respite purposes or the treatment of an acute condition.

The amendment to §34.3(c) resulted from the recognition that current MDCP deinstitutionalization rules are constraining, due to the four-month residency requirements. The amendments remove the four-month residency requirement.

No comments were received in regards to this proposal.

The department is making the following minor change due to staff comments to clarify the intent and improve the accuracy of the section.

Change: A punctuation change was made to proposed §34.3(c)(3)(B)

The amendment is adopted under the Social Security Act, §1915(c) relating to Medicaid Waiver programs for home or community based services; Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991), as amended by Chapter 747, Actions of the 73rd Legislature (1993) which authorizes the Texas Board of Health (board) to adopt rules necessary to administer the MDCP; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§34.3. Participant Eligibility Criteria.

(a) Applicant eligibility. To be an applicant of the Medically Dependent Children Program (MDCP), an individual must reside in Texas.

(b) Participant eligibility. To be a participant of the MDCP, an individual must:

(1) live in Texas;

(2) be under 21;

(3) be Medicaid eligible;

(4) participate in no other §1915(c) Medicaid waiver program;

(5) meet the medical necessity criteria for nursing facility care. Each applicant's/participant's medical necessity criteria must be assessed on the client assessment review and evaluation form. Reevaluations are performed at a minimum every 12 months using the same process;

(6) have a physician's signed approval attesting that the authorized and other specified services are necessary to avoid institutional placement and are appropriate to meet the participant's needs in the home. The physician-approved individual plan of care (IPC) must specify health-related care needs and must document waiver services, non-waiver Medicaid services, and any other home and community-based services, as well as services and supports provided by the primary caregiver(s);

(7) have an IPC which documents the Texas Department of Health's (department's) plan to authorize and the participant's plan to utilize waiver services without an interruption in service delivery of more than 60 days;

(8) have an approved IPC for which the projected annual cost for waiver services does not exceed the established annual waiver service cost allowance. The allocation for direct care waiver services (respite services and adjunct supports) for participants who are age 20 will be prorated for the participant's remaining eligibility period. The department may grant exceptions to the cost allowance for respite services or adjunct supports on a temporary basis when extenuating circumstances preclude the development or implementation of an IPC within the cost allowance. In such cases, approval will depend upon the department's review of the circumstances of the request; upon the availability of other resources, including family, volunteer, or community resources; and upon the waiver program's financial status. The department may deny requests for exceptions to the annual cost allowance

if vacancies in the waiver are frozen, if the program anticipates a budgetary shortfall, if the primary caregiver does not participate in identifying and pursuing other possible resources which must be used prior to waiver services, or if the request does not demonstrate that extenuating circumstances exist. A reduction in the annual cost allowance does not in itself constitute an extenuating circumstance. Following a review of the circumstances, the department will determine which category of exceptional funding is appropriate, as described in subparagraphs (A) and (B) of this paragraph. The specific amount approved within a given category will be based on a budget developed to address the extenuating circumstances. Once approved, continuation of funding for each approved exception to the cost allowance is subject to periodic review and renewal.

(A) Category A. The department may grant an exception to a participant's annual cost allowance not to exceed 10% of the participant's annual cost allowance if the existing extenuating circumstances will likely be resolved within six months.

(B) Category B. The department may grant an exception to the participant's annual cost allowance under one or more of the special circumstances described in clauses (i)-(iv) of this subparagraph. The total amount allowable for exceptions under Category B may not exceed $5,000. Special circumstances include:

(i) the caregiving ability of the participant's sole primary caregiver is expected to be affected significantly for more than six months due to a disability or illness of the caregiver;

(ii) the caregiving ability of the participant's primary caregiver is expected to be affected significantly for more than six months due to a disability or illness of one of the participant's siblings, parents, grandparents, or other member of the participant's household; or due to the recent loss of another primary caregiver;

(iii) the participant's primary caregiver needs additional services to support provider training during a transition from one type of provider to another. An exception under this circumstance may not exceed $1,000; and

(iv) the participant has a severe immunological disorder or a similar medical condition which would make child care in a group setting a life-threatening situation; and

(9) meet the following requirements:

(A) the applicant or participant must be eligible for supplemental security income (SSI) benefits in the community; or

(B) the applicant or participant must meet SSI disability criteria and must:

(i) meet the institutional income and resource criteria established for the Texas Medicaid Program; or

(ii) be an individual under 19 years of age for whom the Texas Department of Protective and Regulatory Services (PRS) assumes financial responsibility, in whole or in part (not to exceed Level II foster care payment), and who is being cared for in:

(I) a family foster home which is licensed or certified and supervised by PRS; or

(II) a family foster home which is licensed or certified and supervised by a licensed public or private nonprofit child-placing agency; or

(iii) be a member of a family which receives full Medicaid benefits as a result of qualifying for temporary assistance to needy families (TANF); or

(iv) qualify under other Medicaid Type Programs covered under the waiver.

(c) Deinstitutionalization.

(1) For purposes of this section, "deinstitutionalization" refers to an interagency agreement between the Texas Department of Human Services and the Texas Department of Health to support the permanent placement of current and previous resident children of Texas nursing facilities into their homes and community settings. The children targeted under this provision will have been in placement for continuous institutional long-term care purposes.

(2) "Placement for continuous institutional long term care purposes," refers to placement and subsequent residence in an institution for the purpose of meeting a registrant's ongoing needs when the child's needs cannot be met in the home on an ongoing basis. This excludes respite placements and placements for treatment of acute episodes.

(3) An MDCP interest/waiting list registrant may be considered for deinstitutionalization into MDCP at any time since September 1, 1995 if the registrant:

(A) has resided in a Texas nursing facility for continuous institutional long term care purposes; or

(B) has resided in another Texas institution, (i.e., an ICF-MR, hospital, long-term acute care setting), for continuous institutional long term care purposes, followed by residence in a Texas nursing facility;

(C) has been determined to be Medicaid eligible; and

(D) has met all of the criteria in subsection (b) of this section.

(4) The names of qualified individuals applying for nursing facility deinstitutionalization shall be maintained on a waiting list separate from that for other MDCP registrants.

(5) An individual applying for nursing facility deinstitutionalization under MDCP shall become eligible for waiver services under this subsection if:

(A) a vacancy designated for qualified individuals under this subsection exists within the waiver; and

(B) the individual's Texas Index for Level of Effort (TILE) funding is available to be allocated for home and community-base services.

(d) Applicant/participant choice. An eligible applicant or participant and his parent or guardian or both must be provided the option of:

(1) participating in the waiver program as specified in the IPC;

(2) being placed in institutional care; or

(3) refusing both options specified in paragraphs (1) and (2) of this subsection.

(e) Waiting lists. Participants in the waiver program are selected from the MDCP waiting list, which is maintained on a first-come, first-served basis. The names of Medicaid-eligible, qualified individuals who complete the MDCP pre-application registration process and who are residents of a Texas nursing facility as described in subsection (c) of this section are maintained on a separate waiting list for nursing facility deinstitutionalization. Their participation in the waiver will not delay the entry of individuals who are not residents of a Texas

nursing facility and whose names are maintained on the regular MDCP waiting list. A registrant's waiting list status is assured unless:

(1) the pre-application registration materials clearly indicate the individual does not qualify as a candidate for the waiver program; or

(2) the family or the registrant requests that the registrant's name be removed from the waiting list.

(f) Medicaid eligibility date. A participant's Medicaid eligibility under the waiver is contingent upon the actual delivery of waiver services. For participants eligible for Medicaid only through this waiver, the effective date of Medicaid coverage coincides with the date the participant actually receives waiver services.

(g) Application deadline. If a registrant fails to complete and return all required application materials within 35 calendar days from the date of the application transmittal letter, the registrant's potential application shall be closed. In such a case, the registrant's name may be re-entered at the end of the waiting list, upon request. Exceptions may be made following a review of special circumstances.

(h) Eligibility denial and exceptions. Unless an exception is made following a review of special circumstances, waiver eligibility shall be denied or terminated if:

(1) waiver services are not utilized as described in the IPC, unless:

(A) the participant is hospitalized;

(B) the planned waiver service provider is temporarily unable to comply with the participant's IPC;

(C) a replacement waiver service provider is being sought; or

(D) other non-waiver, non-Medicaid resources are being used temporarily;

(2) the applicant/participant's primary caregiver fails to return a signed IPC within the specified time frame, not to exceed 30 days from transmittal of the unsigned document;

(3) the applicant/participant's primary caregiver does not participate in the eligibility determination process, the care planning process, or the implementation of the IPC;

(4) the applicant/participant's primary caregiver does not comply with the responsibilities enumerated in a departmental form which he/she has signed; or

(5) the IPC, inclusive of MDCP services, does not reflect a routine direct care contribution by the primary caregiver(s).

(i) Reduction in services. Waiver services may be reduced when:

(1) the need for waiver services decreases as determined during the care planning process;

(2) non-waiver resources become available;

(3) the primary caregiver does not participate fully in the care planning process;

(4) the participant's TILE score changes in such a way that the participant's annual cost allowance decreases;

(5) the rate(s) paid to MDCP providers increase and the participant's IPC is already at the maximum annual cost allowance;

(6) a time-limited exception to the annual cost allowance expires; or

(7) MDCP expenditures and budgetary considerations and constraints indicate that cost reduction is necessary.

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 August 17, 2001.

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CHAPTER 123. RESPIRATORY CARE PRACTITIONER CERTIFICATION

25 TAC §§123.1 - 123.15

The Respiratory Care Practitioner Certification Program (advisory committee) with the approval of the Texas Board of Health (board) adopts amendments to §§123.1 - 123.14 and new §123.15 concerning the regulation and certification of respiratory care practitioners. Sections 123.2, 123.6, 123.9,123.10, and 123.14 adopted with changes to the proposed text as published in the March 16, 2001, issue of the *Texas Register* (26 TexReg 2102). Sections 123.1, 123.3 - 123.5, 123.7 - 123.8, 123.11 - 123.13, and 123.15 are adopted without changes and those sections will not be republished.

Specifically the amendments cover the purpose and scope; definitions, advisory committee, fees, exemptions, application requirements and procedures, types of certificates and temporary permits and applicant eligibility, examination, certificate renewal, continuing education requirements, changes of name or address, and violations, complaints and subsequent actions. The adopted new section covers informal disposition.

The Government Code, §2001.39 requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Title 25 Texas Administrative Code (TAC), Chapter 123 which includes §§123.1-123.14, has been revised in its entirety and the advisory committee and staff has determined that reasons for adopting the sections continue to exist.

The Notice of Intention to Review the sections as required by Government Code, §2001.039 was published in the *Texas Register* on December 17, 1999 (24 TexReg 11542). No comments were received in response to the notice.

No comments were received during the comment period on the proposed amendments.

Due to staff comments, minor editorial changes to §§123.2, 123.6, 123.9, 123.10, and 123.14 were made to improve the accuracy of the sections.

The amendments and new section are adopted under Texas Occupations Code, §604.052, which requires the Respiratory Care Practitioners Certification Program to adopt rules, with the approval of the Texas Board of Health; and the Health and Safety

Code §12.001, that are reasonably necessary to properly perform its duties under this Act.

§123.2. Definitions.

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

(1) AARC--The American Association for Respiratory Care and its predecessor or successor organizations.

(2) Act--Texas Occupations Code, Chapter 604; and Texas Revised Civil Statutes portions of 4512l, as amended.

(3) Administrator--The department employee designated as the administrator of certification activities authorized by the Act.

(4) Advisory committee--The Respiratory Care Practitioners Advisory Committee.

(5) Aides/orderlies--Health care workers who perform routine tasks under the direct supervision of a practitioner such as transporting patients, assembling treatment equipment, preparing work areas, and other assigned duties. Aides/orderlies may not perform respiratory care procedures.

(6) AMA--The American Medical Association.

(7) Applicant--A person who applies to the Texas Department of Health for a certificate or temporary permit.

(8) Appropriate educational agency--The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as the Committee on Respiratory Care (COARC) and its predecessor or successor organization.

(9) Board--The Texas Board of Health.

(10) BME--Texas State Board of Medical Examiners.

(11) Certificate--A respiratory care practitioner certificate issued by the Texas Department of Health.

(12) Commissioner--The commissioner of the Texas Department of Health.

(13) Delegated authority--As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157 and the rules pertaining thereto adopted by the BME.

(14) Department--The Texas Department of Health.

(15) Diagnostic--Of or relating to or used in the art or act of identifying a disease or disorder.

(16) Educational accrediting body--The Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization which approves respiratory care education programs.

(17) Formally trained--Completion of an organized educational activity which:

(A) includes supervised and directed instruction specific to the respiratory care procedures to be performed by the individual;

(B) includes specific objectives, activities, and an evaluation of competency; and

(C) is supervised and directed by another individual qualified to provide the training and supervision.

(18) NBRC--The National Board for Respiratory Care, Inc., and its predecessor or successor organizations.

(19) Palliative--Serving to moderate the intensity of pain or other disease process.

(20) Practice--Engaging in respiratory care as a clinician, educator, or consultant.

(21) Qualified medical director--A physician licensed and in good standing with the BME, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems who is actively engaged in the practice of medicine. This physician must be a member of the active medical staff of a health care facility, agency or organization who supervises the provision of respiratory care.

(22) Respiratory care--The treatment, management, control, diagnostic evaluation, and care of inpatients or outpatients who have deficiencies and abnormalities associated with the cardiorespiratory system. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted here as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

(23) Respiratory care education program--

(A) a program in respiratory care approved by the educational accrediting body;

(B) a program approved by an appropriate education agency and working toward becoming an approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an approved program in respiratory care; or

(C) a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.

(24) Respiratory care practitioner (RCP)--A person permitted or certified under the Act to practice respiratory care.

(25) Respiratory care procedure--Respiratory care provided by the therapeutic and diagnostic use of medical gases, humidifiers, and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring or treating, as ordered by the patient's physician, the cardiorespiratory system. These procedures include:

(A) administration of medical gases - such as nitric oxide, helium and carbon dioxide;

(B) providing ventilatory assistance and ventilatory control - including high frequency oscillatory ventilation and high frequency jet ventilation;

(C) providing artificial airways - including insertion, maintenance and removal;

(D) performing pulmonary function testing - including neonatal and pediatric studies;

(E) hyperbaric oxygen therapy;

(F) monitoring - including pulse oximeter, end-tidal carbon dioxide and apnea monitoring;

(G) extracorporeal membrane oxygenation (ECMO);

(H) patient assessment, respiratory patient care planning; and

(I) implementation of respiratory care protocols.

(26) Respiratory therapist--A person permitted or certified under the Act to practice respiratory care.

(27) Temporary permit--A permit issued in accordance with §123.7(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.

(28) Therapeutic--Of or relating to the treatment of disorders by remedial agents or methods.

(29) Under the direction--Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

§123.6. Application Requirements and Procedures.

(a) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.

(2) The department shall not consider an application as officially submitted until the applicant pays the application fee and the fee clears the appropriate financial institution. The fee must accompany the application form.

(3) The administrator shall send 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 days after the date of the notice shall be invalid.

(b) Required application materials.

(1) Application form. The application form shall contain:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and these sections and agrees to abide by them;

(C) the applicant's permission to the department to seek any information or references it deems fit to determine the applicant's qualifications;

(D) a statement that the applicant, if issued a certificate or temporary permit, shall return the certificate or temporary permit and identification card(s) to the department upon the revocation or suspension of the certificate or temporary permit;

(E) a statement that the applicant understands that fees submitted are nonrefundable;

(F) a statement that the applicant understands that materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a certificate or permit, or the revocation of a certificate or permit issued;

(H) a statement that if issued a certificate or permit the practitioner shall keep the department advised of his or her current mailing address; and

(I) the signature of the applicant which has been dated;

(J) a full-face color photograph signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two year period prior to application to the department and the minimum size is one and one-half inches by one and one-half inches.

(2) Educational records. Applicants for a certificate, who were not certified or registered in respiratory care by the NBRC on or before September 1, 1985, or a temporary permit must submit:

(A) a photocopy which has been notarized as a true and exact copy of an unaltered:

(i) an official diploma or official transcript indicating graduation from high school;

(ii) certificate of high school equivalency issued by the appropriate educational agency; or

(iii) official transcript from an accredited college or university indicating that the applicant received a high school diploma or equivalency or was awarded an associate, baccalaureate, or post-baccalaureate degree; and

(B) a photocopy which has been notarized as a true and exact copy of an unaltered certificate of completion from a respiratory care education program. The certificate must contain:

(i) name and number of the program (exactly as listed with the educational accrediting body);

(ii) name of the graduate;

(iii) exact day and month individual is recognized as a program graduate;

(iv) accreditation statement; and

(v) signatures of the medical director, program director and administrative official; or

(C) an expected graduation statement signed by the program director. Within 30 days of the completion date noted in the statement, the department must receive either:

(i) a notarized copy of the certificate of completion, as set out in subparagraph (B) of this paragraph; or

(ii) a notarized statement signed by the program director indicating that the applicant officially completed the program but the certificate is not available within 30 days of the completion date.

(3) Examination results.

(A) If the applicant is making application for a temporary permit, an examination score release form shall be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the board.

(B) If an applicant for a regular certificate is:

(i) recognized as certified respiratory therapist or registered respiratory therapist by the NBRC at the time of application, a photocopy of the certificate issued by NBRC shall be submitted in lieu of examination results; or

(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the application shall be disapproved.

(4) Employment/experience documentation report form. Persons applying for any certificate or permit who are not recognized as a certified respiratory therapist or registered respiratory therapist by the NBRC and who are licensed, registered, or otherwise regulated in another state, territory, or country at the time of application must submit with their applications a properly completed employment/experience documentation report form signed by their medical director as defined in §123.2 of this title (relating to Definitions), attesting that the applicant is currently practicing, or has practiced respiratory care within the 12-month period immediately preceding application to the department.

(5) Medical direction requirement. If the applicant is practicing respiratory care in Texas at the time of application to the department, the applicant shall obtain on the application form the signature and the license number of the qualified medical director as defined in §123.2 of this title (relating to Definitions) or other Texas licensed physician directing the provision of respiratory care services.

(c) Information/Documentation form. Persons applying for any certificate or permit who are licensed, registered, or otherwise regulated in any profession at the time of application to the department must submit with their applications a properly completed information/documentation form signed by an agency official. The signature must be notarized if the agency does not have or does not affix its official seal on the form.

(d) Application processing.

(1) Time periods. The department shall comply with the following procedures in processing applications for a permit or certificate.

(A) The following periods of time shall 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 as follows:

(i) letter of acceptance of application for permit or certification--14 working days. The notice of acceptance may include a statement that an application for temporary permit received more than 45 days from the date of the applicant's graduation will be held pending until the applicant is within 45 days of graduation; and

(ii) letter of application deficiency-14 working days.

(B) 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 the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval-14 working days; and

(ii) letter of denial of permit or certificate-180 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made to the program administrator. If the program administrator 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.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year, another public or private entity relied upon by the department in the application process caused the delay, or any other condition exists giving the department good cause for exceeding the time period.

(3) Appeal. If a request reimbursement under paragraph (2) of this subsection is denied by the program administrator, the applicant may appeal to the commissioner of health for a timely, resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department 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 program administrator shall 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 of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant 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 shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of licensure renewals are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case haring runs from the date the department receives a written request for a hearing and ends when the decision of the department 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.

(e) Application approval.

(1) The administrator shall be responsible for reviewing all applications.

(2) The administrator shall approve all applications which are in compliance with subsections (a)-(c) of this section and which properly document applicant eligibility, unless the application is disapproved under the provisions of subsection (f) of this section.

(f) Disapproved applications.

(1) The department shall disapprove the application if the person:

(A) has not completed the requirements in subsection (b) of this section;

(B) has failed to pass the examination prescribed by the board as set out in §123.8 of this title (relating to Examination) during the period for which the temporary certificate, or temporary permit or temporary permit extension, was valid, if applicable;

(C) has failed to remit any applicable fees required in §123.4 of this title (relating to Fees);

(D) has failed or refused to properly complete or submit any application form(s) or endorsement(s), or presented false information on the application form, or any other form or document required by the department to verify the applicant's qualifications;

(E) has been in violation of the Act, §123.14 of this title (relating to Violations, Complaints, and Subsequent Actions), the code of ethics as set out in §123.12 of this title (relating to Professional and Ethical Standards), or any other applicable provision of this chapter;

(F) has been convicted of a felony or misdemeanor, if the crime directly relates to the duties and responsibilities of a respiratory care practitioner as set out in §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners);

(G) holds a license, certification, or registration to practice respiratory care in another state or jurisdiction and that license, certification, or registration has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons to the person's professional competence or conduct which could adversely affect the health and welfare of a patient;

(H) is not currently practicing, or has not practiced within the 12-month period preceding the date of application, respiratory care, as set out in §123.7(d)(1)(B) of this title (relating to Types of Certificates and Temporary Permits and Applicant Eligibility); or

(I) has submitted a copy of a National Board for Respiratory Care, Inc. (NBRC) certificate in lieu of examination results in accordance with subsection (b)(3)(B)(i) of this section, but is not recognized by the NBRC as a certified respiratory therapist or registered respiratory therapist.

(2) If after review the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the Administrative Procedure Act, Texas Government Code ?2001, et seq. Within 10 days after receipt of the written notice, the applicant shall give written notice to the administrator that the applicant either waives the hearing, or wants the hearing. Receipt of the written notice is deemed to occur on the tenth day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the administrator that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the department shall disapprove the application.

(3) An applicant whose application has been disapproved under paragraph (1)(E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication. The date of disapproval is the effective date of a disapproval order signed by the commissioner of health.

§123.9. Certificate Renewal.

(a) General. Except as provided by subsection (b) of this section, a practitioner shall renew the certificate annually. A practitioner shall renew the certificate annually.

(1) The renewal date of a certificate shall be the last day of the practitioner's birth month.

(2) Each practitioner shall be responsible for renewing the certificate on or before the expiration date and shall not be excused from paying reinstatement fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or reinstatement.

(3) The department may not renew the certificate or permit of the practitioner who is in violation of the Act or board rules at the time of application for renewal.

(4) The department shall deny renewal of a certificate or permit if renewal is prohibited by the Education Code, §57.491, concerning guaranteed student loan defaults.

(b) Staggered renewals. The department shall use a staggered system for certificate renewals.

(c) Certificate renewal.

(1) At least 30 days prior to the expiration date of a person's certificate, the department shall send notice to the practitioner of the expiration date of the certificate, the amount of the renewal fee due, and a renewal form which the practitioner must complete and return to the department with the required renewal fee.

(2) The renewal form for all practitioners shall require the provision of the preferred mailing address, primary employment address and telephone number, and category of employment, misdemeanor and felony convictions, statement concerning status with The National Board for Respiratory Care, Inc., and continuing education completed. If the applicant is practicing as a respiratory care practitioner at the time of renewal the name, signature and license number of the physician directing the provision of respiratory care and the physician's institutional affiliation(s), if any, shall be provided on the renewal form if requested by the department.

(3) A practitioner has renewed the certificate when the department has received the completed renewal form, continuing education as set out in §123.10 if this title (relating to Continuing Education Requirements), and the required renewal fee on or prior to the expiration date of the certificate. The postmark date shall be considered as the date of mailing.

(4) The department shall issue identification cards for the current renewal period to a practitioner who has met all requirements for renewal.

(d) Late renewal or reapplication.

(1) A person whose certificate has expired may renew the certificate by submitting to the department the renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements) completed since the last renewal, and if respiratory care procedures were performed after the certificate expired, a notarized statement indicating how the person complied with the Act, §604.003.

(A) If renewal is requested from one day up to 90 days after expiration, the applicant shall submit a fee that is equal to one and one half times the renewal fee, as set out in §123.4 of this title (relating to Fees).

(B) If renewal is requested more than 90 days after expiration but less than one year after expiration, the applicant shall submit a fee that is equal to two times the renewal fee, as set out in §123.4 of this title.

(C) If the person received a 90-day extension of the person's certificate pursuant to §123.10(f) of this title (relating to Continuing Education Requirements), the expiration date under subparagraphs (A)-(B) of this paragraph is the expiration date of the person's last annual certificate.

(D) After the certificate is renewed, the next continuing education reporting period starts on the date the certificate is renewed and continues until the next expiration date.

(2) The department shall inform a person who has not renewed a certificate by the expiration date of the amount of the fee required for renewal, the continuing education required for renewal, and the date the certificate expired.

(3) A person whose certificate has been expired for one year or more may apply for a new certificate by complying with the then-current requirements for obtaining a certificate.

(4) After a certificate is expired and until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act.

(5) A person who fails to renew a certificate within one year may obtain a new certificate without examination if the person:

(A) pays a fee that is equal to two times the renewal fee;

(B) is currently certified as a respiratory care practitioner in another state;

(C) has been practicing respiratory care in the state where the certification is held for the two years preceding the date of application for renewal; and

(D) submits proof of completion of the continuing education requirements as set out in §123.10 of this title within the 12 month period preceding the date of application for a new certificate.

(e) Renewal Processing.

(1) The department shall issue a certificate renewal within 14 days after receipt of documentation of all renewal requirements.

(2) The reimbursement of fees, appeals, and contested cases relating to renewals shall be governed by the provisions of §123.6(d)(2)-(4) of this title (relating to Application Requirements and Procedures).

(f) Military duty. If a practitioner fails to timely renew his or her permit or certificate because the practitioner is or was on active duty with the armed forces of the United States of America, serving outside the State of Texas, the practitioner may renew the permit or certificate pursuant to this subsection.

(1) Renewal of the permit or certificate may be requested by the practitioner, the practitioner's spouse, or an individual having power of attorney from the practitioner. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the permit or certificate.

(3) A copy of the official orders or other official military documentation showing that the practitioner is or was on active duty, serving outside the State of Texas, shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the practitioner shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A practitoner renewing under this subsection shall pay the renewal fee.

(6) A practitioner renewing under this subsection shall submit proof of having earned any clock hours of continuing education prior to being called to active duty serving outside the State of Texas and no further continuing education hours shall be required for renewal.

(g) Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status must be postmarked prior to the expiration of the practitioner's annual certificate. No refund will be made of any fees paid prior to application for inactive status.

(1) A person on inactive status is not required to pay the annual renewal fee.

(2) A person on inactive status may not perform any activities regulated under this Act. Practice as a respiratory care practitioner in any capacity for compensation or as a volunteer is prohibited, and the person may not use the title respiratory care practitioner while on inactive status.

(3) A person on inactive status is not required to complete the requirements in accordance with §123.10 of this title (relating to Continuing Education Requirements), except as provided in paragraph (4)(D) of this subsection.

(4) If a person on inactive status desires to reenter active practice, the person shall:

(A) notify the department in writing;

(B) complete appropriate forms;

(C) pay a renewal fee for the current renewal period plus a reinstatement fee equal to one-half the renewal fee; and

(D) submit to the department proof of successful completion, within 12-month period prior to reentering active status, of the continuing education hours as set out in §123.10 of this title.

(5) A person in compliance with this subsection is not subject to subsection (d) of this section.

(h) Expiration of certificate. A person whose certificate has expired may not use the title or represent or imply that he has the title of certified respiratory care practitioner, respiratory care practitioner, or respiratory therapist, or use the letters RCP, and may not use any facsimile of those titles in any manner. Until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act.

§123.10. Continuing Education Requirements.

(a) General. Continuing education requirements for renewal shall be fulfilled each renewal year.

(1) The initial period shall begin with the date the department issues the certificate and end on the last day of the birth month at the time of the second renewal.

(2) At the time the certificate is mailed, each practitioner shall be notified of the beginning and ending dates of the continuing education period.

(3) A practitioner must complete 12 hours of continuing education acceptable to the department during each renewal year.

(4) A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(b) Types of acceptable continuing education. Continuing education must be in skills relevant to the practice of respiratory care and must have a direct benefit to patients and clients and shall be acceptable if the experience falls in one or more of the following categories:

(1) respiratory care course work seminars, workshops, review sessions, or other organized educational programs completed at or though any respiratory care education program;

(2) participation in any program (e.g., in-service educational training programs, institutes, seminars, workshops and conferences) which is:

(A) directly related to the profession of respiratory care;

(B) instructor directed; and

(C) approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations or offered by a federal, state, or local government entity. A list approved by the advisory committee is available from the department upon request;

(3) instruction or teaching in programs set out in paragraphs (1) and (2) of this subsection, provided that such instruction or teaching is not a part of, or required as a part of, one's employment, or;

(4) up to four credit hours during each renewal period of self-directed Internet-based or computer-based studies, including a post-test, which meets the requirements described in paragraphs (2)(A) and (2)(C) of this subsection.

(c) Determination of clock hours. The department shall credit continuing education experiences as follows.

(1) Completion of course work at or through a respiratory care educational program as set out in subsection (b)(1) of this section shall be credited on the basis of 15 clock hours for each semester hour successfully completed for credit or audit, evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs, activities, workshops, seminars, sessions, etc., which meet the criteria of subsections (b)(1) or (2) of this section shall be credited on a one-for-one basis with one clock hour for each clock hour spent in the continuing education activity.

(3) Teaching in programs which meet the department's criteria as set out in subsection (b)(3) of this section shall be credited on the basis of two clock hours for each hour actually taught.

(4) Passing the certified respiratory therapist recredentialing examination shall be credited on the basis of ten clock hours.

(5) Passing the written registry examination for advanced respiratory therapy practitioners for credentialing or recredentialing shall be credited on the basis of nine clock hours.

(6) Passing the registered respiratory therapist clinical simulation examination for credentialing or recredentialing shall be credited on the basis of nine clock hours.

(7) Passing the National Board for Respiratory Care, Inc. (NBRC) pediatric specialty examination shall be credited on the basis of ten clock hours.

(8) Successful completion of the initial course in advanced cardiac life-support, pediatric advanced life-support, the neonatal advanced life-support course, basic trauma life-support, or pre-hospital trauma life-support shall be credited on the basis of 12 clock hours. Recertification courses shall be credited for the number of hours actually completed during the recertification course, but shall not count for more than 12 hours.

(9) Passing the certification examination for entry level pulmonary function technologists or the registry examination for advanced pulmonary function technologists for credentialing shall be credited on the basis of ten clock hours.

(10) Passing the registration examination offered by the Board of Registered Polysomnographic Technologists shall be credited on the basis of ten clock hours.

(d) Reporting of continuing education. Each practitioner shall be responsible for reporting to the department the continuing education activities completed.

(1) A practitioner shall report the number of hours of continuing education completed during the renewal period. If requested by the department, each practitioner shall submit proof of completion of the required continuing education activity to the department at the time of certificate renewal, or at other times as directed by the department. However, if an extension has been granted in accordance with subsection (f) of this section, the practitioner shall file the continuing education hours immediately following completion of the activity.

(2) If required by the department, each continuing education activity filed by a practitioner must be accompanied by appropriate documentation of the continuing education claimed as follows:

(A) for a program attended, signed certification by a program leader or instructor of the practitioner's participation in the program by certificate, or letter on letterhead of the sponsoring agency, or official continuing education validation form or official transcript of the sponsoring agency accompanied by a brochure, agenda, program, or other applicable information, indicating content of the program;

(B) for teaching or instruction in approved programs, a letter on sponsoring agency's letterhead giving name of program, location, dates, and subjects taught, and giving total clock hours of teaching or instruction;

(C) for completion of course work at or through respiratory care education programs, a certificate of successful completion or an official transcript.

(e) Activities unacceptable as continuing education. The department may not grant continuing education credit to any practitioner for:

(1) education incidental to the regular professional activities of a practitioner such as learning occurring from experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization;

(3) any program or activity which is not approved in accordance with subsection (b)(2) of this section;

(4) any experience which does not fit the types of acceptable continuing education in subsection (b) of this section;

(5) any continuing education activity completed before or after the renewal year for which the continuing education credit is submitted except as allowed under subsection (f)(1) of this section;

(6) self-study continuing education programs or activities except those set out in subsection (b)(4) of this section; or

(7) activities which have been completed more than once during the continuing education period.

(f) Failure to complete required continuing education.

(1) A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a) of this section may be granted up to a 90-day extension to a reporting period if the renewal fee and continuing education extension fee is paid on or prior to the expiration date. The 90-day extension is the maximum that may be granted and there will be no exceptions.

(A) Following the receipt of the current renewal form, renewal fee and continuing education extension fee, the department shall issue identification cards valid for a 90-day period beginning with the day following the expiration date of the practitioner's annual certificate and a written notice that the continuing education period has been extended.

(B) If the deficiency is made up prior to the end of the extension, the department will notify the practitioner that the next reporting period commences on the day following the completion of the credits to correct the deficiency. The new reporting period shall end on the next renewal date. In other words, whenever an extension is granted, the time is borrowed from the next reporting period.

(C) If an excess number of credits were earned during an extension, the excess will be credited toward the new reporting period.

(D) A practitioner may not receive another extension at the end of the 90-day extension.

(2) A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a) of this section and who has not completed the continuing education requirement during the 90-day extension shall return the certificate and identification cards to the department and shall not advertise or represent himself or herself as a respiratory care practitioner in any manner. The person may renew the certificate or reapply for a new certificate in accordance with §123.9(d) of this title (relating to Certificate Renewal).

(g) Other miscellaneous provisions.

(1) Audiovisual programs may be accepted by the department if such a program represents one of the instructional methods or strategies rather than constituting the entire program and provided the program meets the criteria as set out in subsection (b) of this section.

(2) A practitioner who also holds a current license, registration, or certification in another health care profession or a current license, registration, or certification as a respiratory care practitioner in another state, territory, or country may satisfy the continuing education requirements for renewal in Texas with hours counted toward renewal of another license, registration, or certification as long as all of the hours meet all of the requirements of this section.

(3) Hardships will be considered and granted by the department on a case by case basis.

(4) The department may conduct random audits of continuing education completed by practitioners to determine compliance with this section.

(5) No continuing education hours may be carried over from one renewal period to another renewal period unless the hours were earned during a continuing education extension as set out in subsection (f) of this section.

§123.14. Violations, Complaints, and Subsequent Actions.

(a) General. This section establishes standards relating to:

(1) offenses and prohibited actions under Texas Occupations Code, §604.102 which result in the penalty of a Class B misdemeanor;

(2) violations which result in disciplinary actions;

(3) procedures for filing complaints alleging violations and prohibited actions under the Act or rules; and

(4) the department's investigation of complaints and the department's and commissioner's actions, on behalf of the board, when offenses and prohibited actions and violations have occurred.

(b) Types of offenses and prohibited actions. A person is guilty of a Class B misdemeanor if:

(1) a person intentionally or knowingly represents oneself as able to practice respiratory care or represents oneself as a respiratory care practitioner unless the person holds a certificate or permit issued under the Act;

(2) a person who is not permitted or certified under the Act as a respiratory care practitioner or whose temporary permit or certificate has been suspended or revoked uses in connection with his or her practice the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," "respiratory therapy technician," or the letters "RCP" or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner. Such a person may not in any way, either orally, in writing, in print, or by sign, directly or by implication, represent himself or herself as a respiratory care practitioner;

(3) a person practices respiratory care other than under the direction of a qualified medical director or other physician licensed by the Board of Medical Examiners (BME);

(4) a person sells, fraudulently obtains, or furnishes any respiratory care diploma, certificate, permit, or record;

(5) a person practices respiratory care under a respiratory care diploma, certificate, permit, or record illegally or fraudulently obtained or issued;

(6) a person practices respiratory care during the time that person's certificate or permit is suspended, revoked, or expired;

(7) a person conducts a formal respiratory care education program for the preparation of respiratory care personnel unless the program is approved by the department;

(8) a person employs another person who does not hold a certificate or permit to practice respiratory care in the capacity of a respiratory care practitioner;

(9) a person who holds a certificate or permit to practice respiratory care practices medicine, as defined by the Medical Practice Act, Texas Occupations Code, Chapter 157 without holding an appropriate license issued by the BME; or

(10) a person otherwise violates Texas Occupations Code, §§604.002, 604.102, 604.351, or 604.352.

(c) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Act or that a certificate or permit holder has violated the Act or a this chapter.

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against a practitioner or other person shall notify the administrator. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. (Mailing address: 1100 West 49th Street, Austin, Texas 78756-3183, Phone: 512-834-6632.

(3) Upon receipt of a complaint the administrator or the administrator's designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the administrator or the administrator's designee before further action can be taken. If the complaint is made by a visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the administrator or the administrator's designee before further action may be taken. Copies of the complaint form may be obtained from

the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183.

(4) Anonymous complaints shall be investigated by the administrator or the administrator's designee, provided sufficient information is submitted.

(d) Investigation of complaints.

(1) The administrator and the department are responsible for handling complaints.

(2) The administrator, or his or her designee, shall make the initial investigation and report the findings to the director of Professional Licensing and Certification Division or his or her designee, or the director or designee of its successor.

(e) The department's action.

(1) The department shall take one or more actions described in this section.

(2) The department may determine that an allegation is groundless and dismiss the complaint.

(3) The department may determine that a practitioner has violated the Act or a board rule and may institute disciplinary action in accordance with subsection (f) of this section.

(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, the complainant, and the accused party.

(f) Disciplinary actions.

(1) The department may reprimand a practitioner or initiate action to deny, suspend, suspend on an emergency basis, probate, not renew, or revoke a certificate or a temporary permit.

(2) The department may take disciplinary action if it determines that a person who holds a certificate or temporary permit is in violation of §123.12 of this title (relating to Professional and Ethical Standards).

(3) The department may also take action under §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners).

(4) The department shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

(A) the severity of the offense;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since the date of the violation;

(E) the number and type of previous disciplinary cases filed against the respiratory care practitioner (RCP);

(F) the length of time the RCP has performed respiratory care procedures;

(G) the actual damage, physical or otherwise, to the patient, if applicable;

(H) the deterrent effect of the penalty imposed;

(I) the effect of the penalty upon the livelihood of the RCP;

(J) any efforts for rehabilitation; and

(K) any other mitigating or aggravating circumstances.

(g) Formal hearing.

(1) The formal hearing shall be conducted according to the Administrative Procedure Act (APA), Texas Government Code Chapter 2001.

(2) Prior to institution of formal proceedings to revoke or suspend a permit or certificate, the program administrator shall give written notice to the permit or certificate holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the administrator shall give the practitioner written notice for the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the practitioner must give written notice to the administrator that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt.

(A) If the practitioner fails to request a hearing, the practitioner is deemed to have waived the hearing. If the hearing has been waived, the department shall recommend to the commissioner that the proposed action be taken.

(B) If the practitioner requests a hearing within 10 days after receiving the notice of opportunity for hearing, APA, Texas Government Code §2001.

(h) Final action.

(1) If the department suspends a certificate or permit, the suspension remains in effect until the administrator or the department determines that the reasons for suspension no longer exist. The practitioner whose certificate or permit has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The administrator or the department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate or permit holder shall return the certificate or permit and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the administrator or the department determines that the reasons for suspension have been removed.

(4) If the department suspends a temporary permit and the suspension is in effect at the time of the expiration of the temporary permit, the former temporary permit holder must reapply in order to obtain a new temporary permit. The department may not issue a new temporary permit until the administrator or the department determines that the reasons for suspension have been removed.

(5) A person whose application is denied or whose temporary permit or certificate is revoked or surrendered is ineligible for a temporary permit or certificate under this Act for one year from the date of the denial or revocation or surrender.

(6) Upon revocation or nonrenewal, the former certificate or permit holder shall return the certificate or permit and any identification card(s) to the department.

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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Susan Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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CHAPTER 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§143.1 - 143.20

The Texas Department of Health (department) adopts amendments to §§143.1-143.14 and 143.16-143.20, the repeal of §143.15 and new §143.15 concerning the regulation and certification of persons performing radiologic procedures. Sections 143.1-143.2, 143.4-143.12, 143.14 and 143.17 are adopted with changes to the proposed text as published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1979). Sections 143.3, 143.13, 143.15-143.16, and 143.18-143.20 are adopted without changes, and therefore the sections will not be republished. The repeal is adopted without changes, and therefore will not be republished.

Specifically the amendments cover purpose and scope; definitions; medical radiologic technologist advisory committee; fees; applicability; application requirements and procedures; types of certificates and applicant eligibility; examinations; standards for the approval of curricula and instructors; certificate issuance, renewals, and late renewals; continuing education requirements; changes of name and address; certifying persons with criminal backgrounds; disciplinary actions; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; hardship exemptions; and alternate training requirements. The repeal covers alternate eligibility requirements. The new section proposed covers advertising or competitive bidding.

The Government Code §2001.39 requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Title 25 Texas Administrative Code (TAC), Chapter 143 which includes §§143.1-143.20 has been reviewed in its entirety and the department has determined that reasons for adopting the sections continue to exist.

The Notice of Intention to Review the sections as required by Government Code, §2001.039 was published in the *Texas Register* on September 8, 2000 (25 TexReg 9018). No comments were received in response to the notice.

The amendments satisfy the requirements of Government Code, §2001.039 that requires each state agency to consider for readoption of each rule adopted by that agency, amends the rules pursuant to the codification of the Medical Radiologic Technologist Certification Act into the new Texas Occupations code, Chapter 601, implement provisions of House Bill (HB) 2085 and HB 2636, 76th Legislature, 1999; delete language that is no longer necessary; add a definition for a provisional medical radiologic technologist; add fees for application and renewal of non-certified technicians, hardship exemptions and returned checks; add formal hearing requirements; and update and clarify existing language. The repeal of §143.15 allows for adoption of new §143.15 implementing provisions of HB 2085 concerning advertising or competitive bidding.

The following comments were received concerning the proposed amendments. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §143.7(b), a comment was received noting that the title radiation therapy technologist has been changed to radiation therapist and that the American Registry of Clinical Radiography Technologists is no longer in existence.

Response: The department agrees and has changed radiation therapy technologist to radiation therapist and has deleted the reference to American Registry of Clinical Radiography Technologists. The change to radiation therapist is also being made in §§143.7(d)(2), 143.7(f)(1) and 143.8(b).

Comment: Concerning §143.7(b), a comment was received recommending current registration not just for radiographers registered with the American Registry of Radiologic Technologists but for all persons who are and were nationally certified.

Response: The department agrees and has made the suggested changes.

Comment: Concerning §143.7(f)(1), one commenter noted that the Committee on Allied Health Education and Accreditation (CAHEA) had been replaced and suggested wording using completion of a course of study that is accredited by the United States Department of Education.

Response: The department agrees and has added language that includes courses of study in radiography, radiation therapy, or nuclear medicine technology that are accredited by the United State Department of Education including but not limited to the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT).

Comment: Concerning §143.8(f), one commenter suggested adding language to cover the pass or fail performance for the invasive cardiovascular and basic science examination so for the Cardiovascular Credentialing International examination since the passing score for that examination is 70 and not 75.

Response: The department agrees and has added language to address the scaled score to determine the pass or fail performance of the Cardiovascular Credentialing International examination as 70.

Comment: Concerning §143.9(h)(2)(C), one commenter requested changing the language to clearly indicate that the applicable content of the limited certification program be equal to the general certificate curriculum.

Response: The department agrees and appropriate language has been added to the subparagraph.

Comment: Concerning §143.11, one commenter requested that all 24 hours of continuing education be satisfied by online testing, directed reading or self-study and not require 12 instructor directed hours of continuing education.

Response: The department disagrees. The department feels that instructor directed hours of continuing education is needed.

In the proposed amendments the number of instructor directed hours had been reduced to three, but the advisory committee recommended that classroom experience of instructor directed hours not be reduced to three but to remain at 12. Language has been added to require only 50% (12 hours) of the 24 hours be satisfied through verifiable independent self study. Adding the language to only 12 hours of self study requires the re-numbering of paragraphs in subsection (a) beginning with paragraph (6) and in (g) beginning with paragraph (5).

Comment: Concerning proposed §143.11(a)(7), one commenter recommended deleting submission of a current and active annual registration with the Nuclear Medicine Technology Certification Board (NMTCB) to satisfy the continuing education requirement since continuing education is not required to hold a current and active annual registration with the NMTCB.

Response: The department agrees with the commenter and has deleted reference to NMTCB in new §143.11(a)(8).

Comment: Concerning §143.11(d)(4) and (5) and §143.11(g)(9) and (10), a commenter suggested that it would be more appropriate to allow six hours of teaching and/or developing and publishing a manuscript for continuing education. The recommendation would raise the total hours to 25% of the total 24 needed to renew.

Response: The department agrees and has made changes to subsection (d) paragraphs (4) and (5) and to subsection (g) paragraphs (9) and (10) to reflect six hours of continuing education which would be acceptable for teaching and/or developing and publishing a manuscript during a continuing education period.

Comment: Concerning §143.14(c)(14), one commenter recommended the addition of the Cardiovascular Credentialing International to the credentialing agency or organizations recognized by the department for qualifying medical radiologic technologists.

Response: The department agrees and has added Cardiovascular Credentialing International to the list.

The following minor changes are being made due to staff comments to correct the citation for the Texas Occupations Code. Other minor editorial changes were made to §§143.2; 143.7(h)(1) - (2) and (i), 143.9(b)(2); 143.11(c)(2), (g)(9) and (i)(6). Editorial changes to delete acronyms were made to §§143.2(8), (10), (25), (27), (33); 143.5(b)(2), 143.5(c)(1)-(2) and (4); 143.9(g)(1)(C) and 143.17(a)(1)(C).

Change: Concerning §§143.1(a) and 143.2(1), changes were made to delete references to Texas Civil Statutes, Article 4512m.

Change: Concerning §143.4(b)(10) and (11), language was deleted requesting a specific fee amount for an examination and added language that the fee amount charged for an examination is set by contract with the examining board.

Change: Concerning §143.6, all reference of notarization was removed to simply the application process.

Change: Concerning §143.6(a)(5), citation was changed from §143.10(f) to §143.10(e) to reference the correct subsection.

Change: Concerning §143.7(c)(6), reference added to include provisional license to the list of certificates that can be issued.

Change: Concerning §143.10(e), language has been added requiring submission of supporting documentation to satisfy continuing education requirements when persons request late renewal of their certificate. Without the additional language a current and active registration with the American Registry of Radiologic Technologist could be submitted.

Change: Concerning §143.11(d)(4), language was added to clarify that if teaching is considered part of one's employment then continuing education credit would not be acceptable for that teaching.

Change: Concerning §143.11(j)(2), language was added to include for partial continuing education exemption all forms of non-ionizing advanced level examinations offered by the American Registry of Radiologic Technologists

Change: Concerning §143.12(c), language on the necessity of having documentation notarized when requesting a name change was deleted.

Change: Since §143.15, concerning Alternate Eligibility Requirements is repealed, language has been added to §143.7(f)(5), to allow examination for state certification purposes only.

Change: Concerning §142.17(c)(1)(C), make correction in reference of a state agency.

The comments on the proposed rules received by the department during the comment period were submitted by the American Registry of Radiologic Technologists. In addition, numerous individuals commented. All commenters were not against the rules in their entirety; however, they expressed concerns, and suggested recommendations for change as discussed in the summary of comments.

The amendments and new section are adopted under the Medical Radiologic Technologist Certification Act, §601.052, Texas Occupations Code, which provides the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; and the Texas Health and Safety code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner for health.

§143.1. Purpose and Scope.

(a) Purpose. These sections are intended to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(b) Scope. These sections cover definitions; the Medical Radiologic Technologist Advisory Committee; fees; applicability (exceptions to certification); application requirements and procedures; types of certificates; examinations; standards for curricula and instructor approval; certificate renewal; continuing education requirements; changes of name or address; certifying persons with criminal backgrounds to be medical radiologic technologists; disciplinary actions; alternate eligibility requirements; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; hardship exemptions; and alternate training requirements.

§143.2. Definitions.

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

(1) Act--The Medical Radiologic Technologist Certification Act Texas Occupations Code, Chapter 601.

(2) Administrator--The department employee designated as the administrator of regulatory activities authorized by the Act.

(3) Applicant--A person who applies to the Texas Department of Health for a certificate or temporary certificate, general or limited or a provisional certificate.

(4) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(5) Board--The Texas Board of Health.

(6) Cardiovascular (CV)--Limited to radiologic procedures involving the use of contrast media and or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system

(7) Certificate--A medical radiologic technologist certificate, general, limited or provisional, unless the wording specifically refers to one or the other, issued by the Texas Department of Health.

(8) Chiropractor--A person licensed by the Texas State Board of Chiropractic Examiners to practice chiropractic.

(9) Committee--The Medical Radiologic Technologist Advisory Committee.

(10) Dentist--A person licensed by the Texas State Board of Dental Examiners to practice dentistry.

(11) Department--The Texas Department of Health.

(12) Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(2)(B).

(13) Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(14) Fluorography--Hard copy of a fluoroscopic image; also known as spot films.

(15) General certification--An authorization to perform radiologic procedures.

(16) Instructor--An individual approved by the department to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(17) Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(18) Limited Medical Radiologic Technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular.

(19) Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for medical reasons.

(20) Mobile radiography--Includes mobile x-ray equipment and portable x-ray equipment.

(21) Mobile x-ray equipment--Equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.

(22) NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(23) Non-Certified Technician (NCT)--A person who has completed a training program and who is listed in the registry. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(24) Pediatric--A person within the age range of fetus to age 18 or otherwise required by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(25) Physician--A person licensed by the Texas State Board of Medical Examiners to practice medicine.

(26) Physician assistant--A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(27) Podiatrist--A person licensed by the Texas State Board of Podiatric Medical Examiners to practice podiatry.

(28) Portable x-ray equipment--Equipment designed to be hand-carried.

(29) Practitioner--A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons for medical reasons.

(30) Provisional medical radiologic technologist (PMRT) --An authorization to perform radiologic procedures not to exceed 180 days for individuals currently licensed or certified in another jurisdiction.

(31) Radiation--Ionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures.

(32) Radiologic procedure--Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic x-rays or nuclear medicine procedures) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of ionizing radiation.

(33) Registered nurse--A person licensed by the Board of Nurse Examiners to practice professional nursing.

(34) Registry--A list of names and other identifying information of non-certified technicians.

(35) Sponsoring institution--A hospital, educational, or other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(36) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(37) Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(38) TRCR--Texas Regulations for the Control of Radiation, 25 Texas Administrative Code, Chapter 289 of this title. The regulations are available from the Standards Branch, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189 (phone 1-512-834-6688).

§143.4. Fees.

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a certificate is issued. All fees shall be submitted in the form of a personal check, certified check

or a money order, if paid by mail. If submitted in person, cash may be accepted by the department's cashier. All fees are nonrefundable.

(b) The schedule of fees is as follows:

(1) application and initial certification fee--$75;

(2) biennial certificate renewal fee--$40;

(3) one to 90-day late renewal fee-- one and one half of the normally required renewal fee;

(4) 91-day to one year late renewal fee--two times the normally required renewal fee;

(5) certificate and/or identification card replacement or duplicate fee--$20;

(6) general certificate to limited certificate conversion fee--$20;

(7) temporary certificate fee--$25;

(8) temporary certificate and/or identification card replacement or duplicate fee--$20;

(9) general examination fee--the fee for the examination as set by contract with the examining body;

(10) chiropractic examination fee-the fee for the examination as set by contract with the examining board;

(11) skull, chest, spine, extremities or podiatric examination fee--the fee for the examination as set by contract with the examining board;

(12) upgrade of a temporary certificate to a renewable certificate, limited or general--$25;

(13) limited instructor approval fee--$50;

(14) limited curriculum application fee--$450 per year per course of study;

(15) site visit fee--a fee equal to the round trip travel expenses including meals and lodging of the inspection committee members, not to exceed $1,000;

(16) training program application fee--$350 (the application fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(17) training program amendment fee--$40 (the amendment fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(18) training program renewal fee--$150 (the renewal fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(19) limited curriculum amendment fee -- $40;

(20) annual limited curriculum approval fee for general certificate programs--$225;

(21) non-certified technician application fee--$25;

(22) non-certified technician renewal fee--$25;

(23) non-certified technician late renewal fee--$50;

(24) hardship exemption application fee--$25;

(25) provisional certificate fee--$75;

(26) return check fee--$25.

§143.5. Applicability of Chapter; Exemptions.

(a) Except as specifically exempted by subsections (b) and (c) of this section, the provisions of the Act and this chapter apply to any person representing that he or she performs radiologic procedures.

(b) This chapter does not prohibit the performance of a radiologic procedure by the following:

(1) A person who is a practitioner and performs the procedure in the course and scope of the profession for which that person holds the license; or

(2) a person who performs a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography and under the instruction or direction of a dentist, if the person and the dentist are in compliance with rules adopted under the Act, §§601.251 and 601.252 by the Texas State Board of Dental Examiners.

(c) This chapter does not prohibit the performance of a radiologic procedure which has not been identified as dangerous or hazardous under §143.16 of this title (relating to Dangerous or Hazardous Procedures) by the following:

(1) a person who has successfully completed a training program for non-certified technicians (NCT), in accordance with §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) and who performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §§601.251 - 601.253, by the Texas State Board of Chiropractic Examiners, Texas State Board of Medical Examiners, Texas State Board of Nurse Examiners, or Texas State Board of Podiatry Examiners;

(2) a person who has successfully completed a training program for NCTs, in accordance with §143.17 of this title and who performs the procedure in a hospital that participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Healthcare Organizations;

(3) students of medicine, osteopathic medicine, podiatry or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with paragraph (1) of this subsection;

(4) a person who performs only in-vitro clinical or laboratory testing procedures as described in the Texas Regulations for the Control of Radiation;

(5) a student enrolled in a radiologic technology program which meets the requirements of §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) or §143.17 of this title who is performing radiologic procedures in an academic or clinical setting as part of the program; or

(6) a person who performs radiologic procedures for a period of not more than ten days, while enrolled in and as a part of continuing education activities which meet the minimum standards set out in §143.11 of this title (relating to Continuing Education Requirements) and who is licensed or otherwise registered as a medical radiologic technologist in or by another state, District of Columbia, a territory of the United States, the American Registry of Radiologic Technologists (ARRT), the Nuclear Medicine Technology Certification Board (NMTCB), the Board of Registry of the American Society of Clinical Pathologists, the Canadian Association of Medical Radiologic Technologists, the British Society of Radiographers, the Australian Institute of Radiography, or the Society of Radiographers of South Africa; or

(7) a person who performs the procedure in a hospital, federally qualified health center (FQHC), or for a practitioner, if a hardship exemption was granted to the hospital, FQHC or practitioner by

the department during the previous 12-month period under §143.19 of this title (relating to Hardship Exemptions).

§143.6. Application Requirements and Procedures For Examination and Certification.

(a) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.

(2) The department shall not consider an application as officially submitted until the applicant pays the correct fee in accordance with §143.4 of this title. The correct fee must accompany the application form.

(3) The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(4) Applications will be accepted for a temporary certificate from students not more than 28 calendar days prior to the date of graduation from an approved medical radiologic technologist education program.

(5) A certificate may be reinstated only in accordance with §143.10(e) of this title.

(b) Required application materials.

(1) The application form shall contain the following items:

(A) specific information regarding personal data, social security number, birth date, current and previous places of employment, other state licenses and certificates held, misdemeanor and felony convictions, and educational and training background;

(B) a statement that the applicant has read the Texas Medical Radiologic Technologist Certification Act (the Act) and this chapter and agrees to abide by them;

(C) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(D) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, surrender or suspension of the certificate;

(E) a statement that the applicant understands that the fees submitted are nonrefundable unless the processing time is exceeded without good cause as set out in subsection (e)(1) of this section;

(F) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;

(H) a statement that the applicant shall advise the department of his or her current mailing address within 30 days of any change of address;

(I) the signature of the applicant which has been dated; and

(J) a full-face color photo signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two-year period prior to application to the department and the minimum size is 1-1/2 inches by 1-1/2 inches.

(2) Applicants for a certificate who do not qualify under the provisions of §143.7(b) of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following additional documents:

(A) if the applicant is not a graduate of or expected to graduate within 28 calendar days from a general certificate program in accordance with §143.9(a) of this title (relating to Standards for the Approval of Curricula and Instructors), a photocopy which has been notarized as a true and exact copy of an unaltered official diploma or official transcript indicating graduation from high school; a certificate of high school equivalency issued by the appropriate educational agency; or an official transcript from an accredited college or university indicating that the applicant received a high school diploma or the equivalency or was awarded an associate, baccalaureate, or post-baccalaureate degree; and

(B) at least one of the items set out as follows:

(i) a photocopy of an unaltered certificate of completion from an approved medical radiologic technologist educational program in accordance with §143.9 of this title. The certificate must contain the following items: name of the program; name of the graduate; the exact day and month applicant is recognized as a program graduate; and the signature of the program director or his designate;

(ii) an original letter or other notification from either the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technology Certification Board (NMTCB) that the applicant is considered examination eligible; or

(iii) if applying prior to graduation, from an approved medical radiologic program in accordance with §143.9 of this title, an expected graduation statement signed by the program director or registrar. Within 30 days of the completion date noted in the graduation statement, the department must receive:

(I) a photocopy of the certificate of completion or letter on letterhead indicating graduation, containing the items set out in clause (i) of this subparagraph; or

(II) a statement signed by the program director or registrar indicating that the applicant officially completed the program.

(3) Persons applying under the provisions of §143.7(d)(5) of this title must submit to the department a properly completed other license/registration documentation report form which has been completed and signed by an authorized representative of the governmental agency which issued the license or other form of registration. A photocopy of the license or other form of registration in medical radiologic technology issued by the government of another state, District of Columbia, or territory of the United States shall be submitted by the applicant.

(c) Application approval.

(1) The administrator shall be responsible for reviewing all applications.

(2) The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this section and §143.7 of this title;

(B) has failed to pass the examination prescribed in §143.8 of this title (relating to Examinations);

(C) has failed to remit any required fees;

(D) has failed or refused to properly complete or submit any application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(E) has obtained or attempted to obtain a certificate issued under the Act by bribery or fraud;

(F) has made or filed a false report or record made in the person's capacity as a medical radiologic technologist;

(G) has intentionally or negligently failed to file a report or record required by law;

(H) has intentionally obstructed or induced another to intentionally obstruct the filing of a report or record required by law;

(I) has engaged in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the board in §143.14 of this title (relating to Violations and Subsequent Actions);

(J) has developed an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;

(K) has failed to report to the department the violation of the Act by another person;

(L) has employed, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(M) has violated a provision of the Act, a rule adopted under the Act, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(N) has had a certificate revoked, suspended, or otherwise subjected to adverse action or been denied a certificate by another certification authority in another state, territory, or country; or

(O) has been convicted of, pled nolo contendere to, or received deferred adjudication for a crime which directly relates to the practice of radiologic technology.

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing in accordance with the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). Within ten days after receipt of the written notice, the applicant shall give written notice to the administrator to waive or request the hearing. If the applicant fails to respond within ten days after receipt of the notice of opportunity or if the applicant notifies the administrator that the hearing be waived, the department shall disapprove the application.

(3) An applicant whose application has been disapproved under paragraph (1)(D)-(O) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit a current application, the certification fee and proof, satisfactory to the department, of compliance with the then current requirements of this chapter and the provisions of the Act.

(e) Application processing.

(1) The department shall comply with the following procedures in processing applications for a certificate.

(A) The following periods of time shall 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 as follows:

(i) letter of acceptance of application for certification--21 days. The notice of acceptance may include a statement that an application for temporary certificate received more than 28 calendar days from the date of the applicant's graduation will be held pending until the applicant is within 28 calendar days of graduation; and

(ii) letter of application deficiency--21 days.

(B) 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 the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval--42 days; and

(ii) letter of denial of certificate--90 days.

(2) The department shall comply with the following procedures in processing refunds of fees paid to the department.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator 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.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for certification or renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists that gives the department good cause for exceeding the time period.

(3) If a request for reimbursement under paragraph (2) of this subsection is denied by the administrator, the applicant may appeal to the commissioner of health for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department 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 administrator shall 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 of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant, 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 shall be made.

(4) The time periods for contested cases related to the denial of certification or renewal are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within three to six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§143.7. Types of Certificates and Applicant Eligibility.

(a) General.

(1) The department shall issue general certificates, limited certificates, temporary certificates (general or limited) or provisional certificates.

(2) Certificates and identification cards shall bear the signature of the commissioner of the department.

(3) Any certificate or identification card(s) issued by the department remains the property of the department and shall be surrendered to the department on demand.

(4) A person certified as an MRT, LMRT or PMRT shall carry or display the original certificate or current identification card at the place of employment. Photocopies shall not be carried or displayed.

(5) A person certified as an MRT, LMRT, or PMRT shall only allow his or her certificate to be copied for the purpose of verification by employers, licensing boards, professional organizations and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the board's office in writing or by phone to verify certification.

(6) No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) No one shall make any alteration on any certificate or identification card issued by the department.

(b) Special provisions for persons who are nationally certified. Upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue a general certificate to a person who is currently registered by the American Registry of Radiologic Technologists (ARRT) as a radiographer, is currently registered by the ARRT as a radiation therapist, or is currently registered by the ARRT or is currently certified by the Nuclear Medicine Technologist Certification Board (NMTCB) as a nuclear medicine technologist.

(c) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsection (b) of this section:

(1) graduation from high school or its equivalent as determined by the Texas Education Agency;

(2) attainment of 18 years of age;

(3) freedom from physical or mental impairment which interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of patients;

(4) submission of a satisfactory completed application on a form supplied by the department;

(5) payment of the required fees; and

(6) eligibility for the specific certificate requested as set out in subsections (d), (e), (f), (g), (h) or (i), of this section.

(d) Medical radiologic technologist. To qualify for a general certificate an applicant shall meet at least one of the following requirements :

(1) possess current national certification as a registered technologist by the ARRT;

(2) have successfully completed the ARRT's examination in radiography, radiation therapy, or nuclear medicine technology;

(3) possess current national certification as a certified nuclear medicine technologist by the NMTCB;

(4) have successfully completed the NMTCB's examination in nuclear medicine technology; or

(5) be currently licensed or otherwise registered as a medical radiologic technologist in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas certification.

(e) Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (c) of this section.

(1) The limited categories shall be as follows: skull; chest; spine; extremities; chiropractic; podiatry; and cardiovascular.

(2) Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, mobile radiography, nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and/or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(4) To qualify for a certificate as an LMRT an applicant must provide satisfactory documentary evidence to the department of the following:

(A) the successful completion of a limited course of study as set out in §143.9 of this title and the successful completion of the appropriate limited examination in accordance with §143.8 of this title;

(B) current licensure or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America whose requirements are more stringent than or substantially equivalent to the requirements for the Texas limited certificate at the time of application to the department; or

(C) current general certification as an MRT issued by the department. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested. The request shall be postmarked on or before the certificate expiration date and shall be accompanied by the general certificate and the certificate and/or identification card replacement fee.

(f) Temporary medical radiologic technologist (general). To qualify as a temporary medical radiologic technologist (general), an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (c) of this section. For the general temporary certificate, an applicant must:

(1) have successfully completed or be within 28 calendar days of successful completion of a course of study in radiography, radiation therapy, or nuclear medicine technology which is accredited by the United States Department of Education including but not limited to the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT);

(2) be approved by the ARRT as examination eligible;

(3) be approved by the NMTCB as examination eligible;

(4) be currently licensed or otherwise registered as an MRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the department or;

(5) have completed education, training and clinical experience which is equivalent to that of a accredited educational program in radiography as listed in paragraph (1) of this subsection. An applicant who meets this requirement is eligible to be examined for state certification purposes only.

(g) Temporary limited medical radiologic technologist. The applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (c) of this section. The applicant must:

(1) have successfully completed or be within 28 calendar days of successful completion of a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, which is approved in accordance with §143.9(b) of this title (relating to Standards for the Approval of Curricula and Instructors);

(2) be currently enrolled in a course of study in a general certificate program approved in accordance with §143.9(a) of this title and have been issued a certificate of completion by the program signifying that the person has completed classroom instruction, clinical instruction, evaluations and competency testing in all areas included in the limited curriculum, as set out in §143.9(d) of this title; or

(3) be currently licensed or otherwise registered as an LMRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the department.

(h) Special provisions for technologists on active military duty. An MRT or LMRT whose certificate has expired and was not renewed under §143.10(g) of this title may file a complete application for another certificate of the same type as that which expired.

(1) The application shall be on official department forms and be filed with the application and initial certification fee.

(2) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(3) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified.

(4) An application is subject to disapproval in accordance with §143.6(d) of this title.

(5) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

(i) Provisional medical radiologic technologist. A provisional certificate may be issued to an applicant who is currently licensed or certified in another jurisdiction and who:

(1) has been licensed or certified in good standing as a medical radiologic technologist for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(2) has passed a national or other examination recognized by the department relating to the practice of radiologic technology; and

(3) is sponsored by a medical radiologic technologist certified by the department under this Act with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

§143.8. Examinations.

(a) Examination eligibility.

(1) Holders of temporary certificates, limited or general may take the appropriate examination provided the person complies with the requirements of the Act and this chapter.

(2) Persons who qualify under §143.7(b), (d), (e) or (i) of this title are not required to be reexamined for state certification.

(b) Approved examination for the general certificate. A general certificate shall be issued upon successful completion of the Nuclear Medicine Technology Certification Board (NMTCB) examination or the appropriate examination of the American Registry of Radiologic Technologists (ARRT). The three disciplines are radiography, nuclear medicine technology, and radiation therapy. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the general temporary certificate holder.

(c) Approved examination for the limited certificate. An approval letter requesting the limited certification fee shall be issued upon successful completion of the appropriate examination, as follows:

(1) skull--the ARRT examination for the limited scope of practice in radiography (skull);

(2) chest--the ARRT examination for the limited scope of practice in radiography (chest);

(3) spine--the ARRT examination for the limited scope of practice in radiography (spine);

(4) extremities--the ARRT examination for the limited scope of practice in radiography (extremities);

(5) chiropractic--the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(6) podiatric--the ARRT examination for the limited scope of practice in radiography (podiatry); or

(7) cardiovascular--the Cardiovascular Credentialing International invasive registry examination.

(d) Applicants approved for the limited certification examination will be allowed three attempts to pass the examination. The three attempts must be made within a three-year period of time. When either

three unsuccessful attempts have been made or three years have expired, the individual is no longer considered eligible under this section. To be eligible for an additional examination the applicant must submit documentation indicating completion of remedial activities. The fourth attempt must occur within the one-year period following the third unsuccessful attempt. Those failing the fourth attempt, or waiting longer than one year following the third unsuccessful attempt, shall only become eligible by re-entering and completing an approved limited certification program. Upon the applicant's successful completion of the examination, the department shall issue an approval letter for the limited certificate.

(e) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the agency or organization administering the examination(s) for the department to each person issued any temporary certificate.

(f) Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75. For the cardiovascular limited certificate, the Cardiovascular Credentialing International examinations (Cardiovascular Science Examination and/or the Invasive Registry Examination as required to obtain the Registered Cardiovascular Invasive Specialist RCIS credential) the scaled score to determine pass or fail performance shall be 70.

(g) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the department or the agency or organization administering the examinations prescribed by the department.

(h) Examination Results.

(1) Notification to examinees. Results of an examination prescribed by the department but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the department.

(3) Deadlines. The department shall notify each examinee of the examination results within 14 days of the date the department receives the results.

(i) Refunds. Examination fee refunds will be in accordance with policies and procedures of the department or the agency or organization prescribed by the department to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

§143.9. Standards for the Approval of Curricula and Instructors.

(a) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by the United States Department of Education including but not limited to the Joint Review Committee on Education in Nuclear Medicine Technology (JRCNMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT).

(b) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must:

(1) be accredited by the JRCERT to offer a limited curriculum in radiologic technology;

(2) be accredited by the Joint Review Committee on Education in Cardiovascular Technology (JRCCVT) to offer a curriculum in invasive cardiovascular technology;

(3) be accredited by JRCERT under subsection (b) of this section; or

(4) be approved by the department and be offered within the geographic limits of the State of Texas. Subsections (c)-(g) of this section apply only to department-approved programs.

(c) Application procedures for limited certificate programs which are not accredited by JRCERT or JRCCVT. An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institutions program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(1) All official application forms must be notarized and shall be accompanied by the application fee in accordance with §143.4 of this title.

(2) An original and four copies of the entire application and supporting documentation must be submitted in three-ring binders with all pages clearly legible and consecutively numbered. Each application binder must contain a table of contents and must be divided with tabs identified to correspond with the items listed in this section. If any item is inapplicable, a page shall be included behind the tab for that item with a statement explaining the inapplicability.

(3) Narrative materials must be typed, double-spaced, and clearly legible. All signatures on the official forms and supporting documentation must be originals. Photocopied signatures will not be accepted.

(4) Notices will be mailed to applicants informing the applicant of the completeness or within 60 days of receipt of the application in the department. Applications which are received incomplete may cause postponement of the program starting date. The time of receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying the application is 120 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees, as set out in §143.6 (e)(2) and (3) of this title.

(5) If the application is revised or supplemented during the review process, the applicant shall submit an original and four copies of a transmittal letter plus an original and three copies of the revision or supplement. If a page is to be revised, the complete new page must be submitted with the changed item/information clearly marked on five copies.

(6) The application shall include:

(A) the anticipated dates of the program or course of study;

(B) the daily hours of the program or course of study;

(C) the location, mailing address, phone and facsimile numbers of the program;

(D) a list of instructors approved by the department, in accordance with subsection (f) of this section, and any other persons responsible for the conduct of the program including management and administrative personnel. The list must indicate what courses each will

teach or instruct or the area(s) of responsibility for the non-instructional staff;

(E) a list of clinical facilities, written agreements on forms prescribed by the department from clinical facilities signed by the program director and the chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the department has accepted the additional clinical facility in accordance with paragraph (10) of this subsection. The items are:

(i) the number and types (name brands and model numbers) of radiologic equipment to be utilized in the limited curriculum;

(ii) a copy of the current registration(s) for the radiologic equipment from the department's Bureau of Radiation Control;

(iii) the number and location(s) of examination rooms available;

(iv) whether or not the clinical facility is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by the department is required;

(v) an acknowledgement that students may only perform radiologic procedures under supervision of a practitioner, a limited medical radiologic technologist (LMRT) employed at the clinical facility or medical radiologic technologist (MRT) employed at the clinical facility;

(vi) copies of the current identification cards issued by the department to the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures;

(vii) an acknowledgment that the students in a limited curriculum program in the categories of skull, chest, spine, abdomen, extremities, chiropractic or podiatric shall not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum; and

(viii) an acknowledgment that the students in a limited curriculum program in the cardiovascular category shall not perform mammography, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. Such students may only perform radiologic procedures of the cardiovascular system which involve the use of contrast media and fluoroscopic equipment.

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration and by which the program director shall administer the program. The admission requirements shall include the minimum eligibility requirements for certification in accordance with §143.7(c)(1)-(2) of this title.

(G) the name of the program director who is an approved instructor in accordance with subsection (f) of this section, and who has not less than three years of education or teaching experience in the appropriate field or practice;

(H) a letter of acknowledgement and a photocopy of the current Texas license from a practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection and who shall be known as the designated medical director. The practitioner shall work in consultation with the program director in developing goals and objectives and in implementing and assuring the quality of the program;

(I) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32, and 19 Texas Administrative Code, Chapter 175, or verification of accreditation by the Texas Higher Education Coordinating Board; and

(J) the correct number of students to be enrolled in each cycle of the program, and if more than one cycle will be conducted concurrently, the maximum number of students to be enrolled at any one time.

(7) All applications must identify the type of curriculum according to the limited categories in accordance with §143.7(e) of this title. Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (d) of this section. If the curriculum differs from that set out in subsection (d) of this section, a typed comparison in table format clearly indicating how the curriculum differs from the required curriculum, including the number of hours for each topic or unit of instruction, shall be included.

(8) In making application to the department, the program director shall agree in writing to:

(A) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in the supervision of the students in the clinical environment;

(B) provide on-site instruction and direction by a practitioner for students when performing radiologic procedures on human beings;

(C) prohibit students from being assigned to any situation where they would be required to apply radiation to a human being while not under the on-site instruction or direction of a practitioner;

(D) prohibit intentional exposure to human beings from any source of radiation except for medically prescribed diagnostic purposes;

(E) provide appropriate facilities, sufficient volume of procedures, and a variety of diagnostic radiologic procedures to properly conduct the course. Facilities, agencies, or organizations utilized in the program shall be accredited or certified and licensed by the appropriate agencies. Equipment and radioactive materials utilized in the program shall be used only in facilities registered or licensed by the department's Bureau of Radiation Control;

(F) keep an accurate record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;

(G) issue to each student, upon successful completion of the program, a written statement in the form of a diploma or certificate of completion, which shall include the program's name, the student's name, the date of completion, the categories of instruction, and the signatures of the program director or independent sponsor and medical director/program advisor;

(H) permit site inspections by departmental representatives to determine compliance and conformity with the provision of this section. In lieu of a site inspection, the department may accept the most recent site visit report from a recognized accrediting body set out in subsection (b)(1) of this section;

(I) understand and recognize that the graduates' success rate on the prescribed examination will be monitored by the department and utilized as a criteria for rescinding approval. In addition to this criteria, the department may rescind approval in accordance with §143.14 of this title; and

(J) comply with the Texas Regulations for the Control of Radiation, including but not limited to, personnel monitoring devices for each student upon the commencement of the clinical instruction and clinical experience.

(9) A site visit may be necessary to grant approval of the program. If a site visit is required, a site visit fee must be paid in accordance with §143.4 of this title.

(10) Following program approval, a written request(s) for amendment(s) shall be submitted to and approved by the department in advance of taking the anticipated action. The request to add or drop an instructor, clinical site, category of instruction, program director or other change, shall be accompanied by the limited curriculum program amendment application and fee in accordance with §143.4 of this title.

(d) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least 132 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, and chiropractic, and not less than 66 clock hours of basic theory instruction for podiatric is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curriculum are completed simultaneously or to add a category to a temporary limited or limited certificate. Pediatric instruction shall be included in the hours of training. The following subject areas and minimum number of hours (in parentheses) must be included in all programs and must be instructor directed. The recommended clock hours for each shall be:

(A) radiation protection for the patient, self, and others (40);

(B) radiographic equipment including safety standards, operation, and maintenance (15);

(C) image production and evaluation (35);

(D) applied human anatomy and radiologic procedures (20);

(E) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid (10);

(F) medical terminology (6); and

(G) medical ethics and law (6); and

(2) a clinical practicum for each category of limited curriculum including pediatrics is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner and an MRT or LMRT in accordance with the following chart.

Figure: 25 TAC §143.9(d)(2)

(A) The clinical instruction must be concurrent with the classroom instruction, as set out in paragraph (1) of this subsection.

(B) The clinical experience must commence immediately following the clinical instruction and be completed within 180 days of the starting date of the clinical experience. Variances from this must be approved in advance by the department and must demonstrate good cause. A request for a variance must be submitted in writing to the administrator. For the purposes of this section, a normal pregnancy or medical disability shall constitute good cause.

(C) For the skull category, the 100 hours of clinical experience must include a minimum of 4 independently performed procedures to include the skull (posterior/anterior, anterior/posterior, lateral and occipital), paranasal sinuses, facial bones, and the mandible. At least one procedure must be the mandible. The mandible procedure may be completed by simulation with 90% accuracy. Only one student shall receive credit for any one radiologic procedure performed.

(D) The program director shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the student has or has not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 days of completion of the clinical experience. Students who successfully complete the required clinical experience may be required to submit such documentation to the department if applying for a temporary limited certificate with an expected graduation statement, as set out in §143.6(b)(2)(B)(iii) of this title. Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures. For cardiovascular, persons who makes the final evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing cardiovascular procedures.

(e) Limited certificate educational program approval.

(1) Provided the requirements are met, the sponsoring institution shall receive a letter from the department indicating approval of the educational program in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The applicant shall be notified in accordance with §113.1 of this title.

(3) If approval is proposed to be denied, the applicant shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title. If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(f) Instructor approval for limited certificate programs.

(1) All persons who plan to or who will provide instruction and training in the limited certificate courses of study or programs shall:

(A) submit a completed application form prescribed by the department;

(B) submit the prescribed application fee in accordance with §143.4 of this title;

(C) document the appropriate instructor qualifications in accordance with subsection (g) of this section.

(2) Guest lecturers who are not full or part-time employees of the sponsoring institution are not required to apply for instructor approval.

(3) Within 21 days of receipt of the application in the department, a notice will be mailed informing the applicant of the completeness or deficiency of the application. The time of receipt of the last item necessary to complete the application to the date of issuance of a written notice approving or denying the application is 42 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees paid as set out in §143.6(e)(2) and (3) of this title.

(4) An applicant who is not approved by the department shall be given an opportunity to request a formal hearing within ten days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title. If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(g) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and not less than six months classroom or clinical experience teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT);

(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training; or

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas State Board of Chiropractic Examiners, Texas State Board of Medical Examiners, or Texas State Board of Podiatry Examiners, the Texas Department of Human Services, and the United States Department of Health and Human Services.

(2) A limited medical radiologic technologist may not teach, train, or provide clinical instruction in a program or course of study different from the technologist's current level of certification. An LMRT who holds a limited certificate in spine radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.

(h) Application procedures for limited certificate programs accredited by JRCERT or JRCCVT.

(1) Application shall be made by the program director on official forms available from the department.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the limited curriculum application fee, in accordance with §143.4 of this title;

(B) a copy of the current accreditation issued to the program by the JRCERT or JRCCVT;

(C) a description in narrative and/or table format clearly indicating that the applicable content of the limited certificate program curriculum be equal to the general certificate curriculum; and

(D) an agreement to allow the department to conduct an administrative audit of the program to determine compliance with this section.

§143.10. Certificate Issuance, Renewals, and Late Renewals.

(a) Issuance of certificates.

(1) The department shall send each applicant whose application has been approved a general, limited or provisional certificate with an expiration date and a certificate number. An identification card shall be included with the general certificate.

(2) The department shall replace a lost, damaged, or destroyed certificate or identification card(s) upon a written request and payment of the replacement fee. Requests shall include a statement detailing the loss or destruction of the original certificate and/or identification card(s), or be accompanied by the damaged certificate or card(s).

(b) Temporary certificates.

(1) The department shall send each applicant whose application has been approved for the temporary certificate (general or limited) an appropriate temporary certificate which shall expire one year from the date of issue.

(2) The department shall send with the temporary certificate information regarding examinations and examination application deadlines.

(3) All temporary certificates are not subject to renewals or extensions for any reason. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(c) Certificates. The initial general or limited certificate is valid through the medical radiologic technologist's (MRT's) or limited medical radiologic technologist's (LMRT's) next birth month; however, when the next birth month occurs within six months, the certificate shall be issued for that period plus the next full year in order to establish a staggered renewal system.

(d) Certificate renewal. Each MRT or LMRT shall renew the certificate biennially on or before the last day of the MRT's or LMRT's birth month.

(1) Each MRT is responsible for renewing the certificate before the expiration date and shall not be excused from paying late fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or late renewal.

(2) At least 60 days prior to the expiration of an MRT's or LMRT's certificate, the department shall send notice to the MRT or LMRT at the address in the department's records at the time the notice is sent, of the expiration date of the certificate, the amount of renewal fee due, and a renewal form which the MRT or LMRT must complete and return to the department with the required renewal fee.

(3) The renewal form shall require the provision of the MRT's or LMRT's preferred mailing address, primary employment address and phone number, information regarding misdemeanor and felony convictions (if any since initial certification or last renewal), and continuing education completed in accordance with §143.11 of this title. The renewal form must be signed and dated by the renewal applicant.

(4) The MRT or LMRT has renewed the certificate when the renewal form and required renewal fee are mailed on or before the expiration date of the certificate and received by the administrator. The postmarked date shall be considered the date of mailing. The processing times and procedures set out in §143.6(e) of this title shall apply to renewals.

(5) The department is not responsible for lost, misdirected, or undelivered renewal application forms, fees, renewal certificates, or renewal identification cards.

(6) The department shall issue renewal identification cards for the current renewal period to an MRT or LMRT who has met all the requirements for renewal. The cards shall be sent to the preferred

mailing address provided on the renewal application form. The renewal cards shall be issued for a two-year period except when a certificate is renewed in accordance with paragraph (7) of this subsection or subsection (e) of this section.

(7) The department shall issue renewal identification cards to an MRT or LMRT who complies with paragraph (4) of this subsection but who fails to complete the continuing education requirements for recertification as set out in §143.11 of this title. The renewal identification cards shall expire 120 days after the last day of the MRT's or LMRT's birth month. If the deficiency is corrected and proof of completion of the continuing education requirements is sent to the department within the 120-day period, the department shall issue a renewal identification card which expires on the last day of the MRT's or LMRT's next birth month plus one year. An MRT or LMRT who does not correct the deficiency within 120 days shall not be allowed to extend or renew the certificate.

(8) The department shall deny renewal of a certificate if required by the Education Code, §57.491, concerning defaults on guaranteed student loans.

(9) The department may not renew the certificate of an MRT or LMRT who is in violation of the Act or this chapter at the time of renewal.

(e) Late renewals.

(1) A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal form, completed continuing education report forms including supporting documentation (if required), and the late renewal fee. An active annual registration or credential card issued by the American Registry of Radiologic Technologists does not constitute supporting documentation. A certificate issued under this subsection shall expire two years from the date the previous certificate expired, not including a 120-day certificate issued in accordance with subsection (d)(7) of this section.

(A) If the certificate has been expired for 90 days or less, a person may renew the certificate by paying the one to 90-day late renewal fee.

(B) If the certificate has been expired for over 90 days but not more than one year, a person may renew the certificate by paying the 91-day to one-year late renewal fee.

(C) A person must comply with the continuing education requirements for renewal as set out in §143.11 of this title before the late renewal is effective. A person is not eligible for a 120-day certificate as described in subsection (d)(7) of this section.

(2) The late renewal is effective if it is mailed to the department or personally delivered by the MRT or LMRT or his/her agent to the department not more than one year after certificate expiration. If mailed, the postmark date shall be considered the date of mailing. A postage metered date is not considered as a postmark. A certificate not renewed within one year after expiration cannot be renewed.

(3) A person whose certificate has expired may not administer a radiologic procedure during the one-year period in violation of the Act. A person may not use a title that implies certification while the certificate is expired.

(4) A person whose certificate has been expired for more than one year may apply for another certificate by meeting the then-current requirements of the Act and this chapter which apply to all new applicants.

(f) Expired certificates. The department, using the last address known, shall attempt to inform each MRT or LMRT who has not timely renewed a certificate, after a period of more than 10 days after the expiration of the certificate that the certificate has automatically expired. A person whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

(g) Active duty. If an MRT or LMRT is called to or on active duty with the armed forces of the United States and so long as the MRT or LMRT does not administer a radiologic procedure in a setting outside of the active duty responsibilities during the time the MRT or LMRT is on active duty, the MRT or LMRT shall not be required to complete any continuing education activities during the renewal period in which the MRT or LMRT was on active duty.

(1) Renewal of the certificate may be requested by the MRT or LMRT, a spouse, or an individual having power of attorney from the MRT or LMRT. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) A copy of the official orders or other official military documentation showing that the MRT or LMRT was on active duty for any portion of the renewal period shall be filed with the department along with the renewal form.

(3) An affidavit stating that the MRT or LMRT has not administered a radiologic procedure in a setting outside of the MRT or LMRT's active duty responsibilities during the time of active duty shall be filed with the department along with the renewal form. The affidavit may be executed by the MRT or LMRT, a spouse, or an individual having power of attorney from the MRT or LMRT.

(4) A copy of the power of attorney from the MRT or LMRT shall be filed with the department along with the renewal form if the individual having power of attorney executes any of the documents required by this subsection.

(5) A certificate covered by this subsection may be renewed in accordance with subsection (e) of this section. The 60-day late fee shall be waived for a renewal under this subsection.

(6) An MRT or LMRT on active duty with the United States armed forces serving outside the State of Texas may request renewal of the certificate at any time before or after the expiration of the certificate. An MRT or LMRT on active duty serving within the State of Texas may request renewal before the expiration of the certificate or under subsection (e) of this section. An MRT or LMRT on active duty serving within the State of Texas who does not renew under subsection (e) of this section may file a complete application for another certificate in accordance with §143.7(h) of this title.

§143.11. Continuing Education Requirements.

(a) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's or LMRT's birth month and ending on the last day of each MRT's or LMRT's birth month two years thereafter.

(1) The initial continuing education period shall begin on the first day of the MRT's or LMRT's first biennial renewal period. Each subsequent period shall begin on the first day of the next biennial renewal period.

(2) An MRT must complete 24 contact hours of continuing education acceptable to the department during each biennial renewal period.

(3) An LMRT must complete 12 contact hours of continuing education acceptable to the department during each biennial renewal period. The continuing education activities must be general radiation health and safety topics or related to the categories of limited certificate held.

(4) Each MRT or LMRT shall be notified of the continuing education requirements with the first biennial renewal certificate sent by the department.

(5) At least 50% of the required number of hours shall be satisfied by attendance and participation in instructor-directed activities.

(6) No more than 50% of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, or a combination thereof which meet the requirements set out in subsection (d) of this section.

(7) An MRT or LMRT who also holds a current Texas license/registration/certification in another health profession may satisfy the continuing education requirement for renewal of the MRT or LMRT with hours counted toward renewal of the other license, registration, or certification provided the hours meet all the requirements of this section.

(8) An MRT or LMRT who holds a current and active annual registration or credential card issued by the American Registry of Radiologic Technologists (ARRT) indicating that the MRT is in good standing and not on probation satisfies the continuing education requirement for renewal of the general or limited certificate provided the hours accepted by the agency or organization which issued the card were completed not more than one year prior to the expiration of the MRT or LMRT certificate and meet or exceed the requirements set out in paragraph (5) of this section and subsection (b) of this section. The department shall be able to verify the status of the card presented by the MRT or LMRT electronically or by other means acceptable to the department. The department may review documentation of the continuing education activities in accordance with subsection (e) of this section.

(9) A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(10) Persons who hold temporary certificates, either general or limited, are not subject to these continuing education requirements.

(b) Content. All continuing education activities should provide for the professional growth of the technologist.

(1) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radiopharmaceutics, pharmaceutics, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(2) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(3) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purpose of the section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(c) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and:

(1) is offered for semester hour or quarter hour credit by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools and is directly or indirectly related to the disciplines of radiologic technology as specified in subsection (a) of this section; or

(2) is offered for continuing education credit by an institution accredited by the Joint Review Committee on Education in Radiologic Technology (JRCERT), Joint Review Committee on Education in Nuclear Medicine Technology (JRCNMT), Joint Review Committee on Education in Cardiovascular Technology (JTCCVT), or the Council on Chiropractic Education (CCE) and is directly or indirectly related to the disciplines of radiologic technology; or

(3) is an educational activity which meets the following criteria:

(A) the content meets the requirements set out in subsection (b) of this section; and

(B) is approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations, or offered by a federal, state, or local governmental entity. A list is available from the department upon request.

(d) Additional acceptable activities. The additional activities for which continuing education credit will be awarded are as follows:

(1) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(2) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(A) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(B) six hours credit during a renewal period for an advanced cardiac life support course;

(3) attendance and participation in tumor conferences (limited to six hours), inservice education and training offered or sponsored by Joint Commission on Accreditation of Healthcare Organizations

(JCAHO)-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(4) teaching in a program described in subsection (c) of this section with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of six hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(5) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the department the MRT must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(e) Reporting of continuing education. Each MRT or LMRT is responsible for and shall complete and file with the department at the time of renewal or to be considered for renewal when in an extension, a continuing education report form approved by the department listing the title, date and number of hours for each activity for which credit is claimed. In the alternative, a technologist may request an exemption as set out in subsection (i) of this section or may submit a copy of the technologist's current and active annual registration or credential card indicating that the technologist is in good standing and not on probation in accordance with subsection (a)(8) of this section, with a signed statement that the technologist completed during the renewal period at least 50% of the required number of hours of continuing education directly related to the performance of a procedure utilizing ionizing radiation for medical purposes and that no more than 50% of the required number of hours shall be verifiable independent self-study activities.

(1) At the time of renewal or at other times determined by the department, the department will select a random sample of technologists to verify compliance with the continuing education requirements. The technologists selected in the random sample shall submit at the time of renewal or within 30 days following notification from the department:

(A) documentation of participation in and completion of continuing education acceptable to the department; and

(B) any additional information or documentation deemed necessary by the department to verify the technologist's compliance with the continuing education requirements.

(2) The department shall notify the technologist of the results of the verification process.

(3) If the department determines that the technologist failed to successfully complete the continuing education requirements, the technologist shall be granted a 120-day extension period in which to complete the continuing education hours needed to fulfill the requirements.

(f) Determination of contact hour credits. The department shall credit continuing education experiences and activities as follows.

(1) Semester hour or quarter hour credits as set in subsection (c)(1) of this section shall be credited on the basis of 15 contact hour credits for each semester hour and 10 contact hour credits for each quarter hour successfully completed with a grade of "C" or better, evidenced by an official transcript.

(2) Activities or experiences as set out in subsection (c)(2) and (3) of this section shall be credited on a one-for-one basis with one contact hour credit for each contact hour of attendance and participation. Credit will be accepted only in whole hour or half-hour increments. Minutes in excess of whole or half-hour increments shall not be aggregated for additional credit.

(g) Activities unacceptable as continuing education. The department shall not grant credit for:

(1) education incidental to the regular professional activities of an MRT or LMRT such as learning from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional association, society, or other organization;

(3) any activities completed before or after the two-year continuing education period for which the credit is submitted;

(4) verifiable independent study activities which have no post-test or other measurement or evaluation instrument provided;

(5) verifiable independent study activities as set out in subsection (a)(6) of this section which exceed 50% of the clock hour requirements;

(6) learning activities indirectly related to radiologic technology as set out in subsection (b)(3) of this section which exceed 50% of the contact hour requirements;

(7) learning activities which are related to non-ionizing forms of radiation as set out in subsection (b)(2) of this section which exceed 50% of the contact hour requirements;

(8) any activities or experiences which do not meet the criteria set out in subsection (a), (b), (c) or (d) of this section;

(9) activities in accordance with subsection (d)(1) and (2) of this section which are repeated during the renewal period;

(10) activities in accordance with subsection (d)(4) of this section in excess of the one-time credit per topic of instruction or in excess of a total of six contact hours during a continuing education period;

(11) activities in accordance with subsection (d)(5) of this section in excess of six contact hours during a continuing education period; or

(12) activities that are an employment requirement or concerning specific institutional policies and procedures.

(h) Failure to complete the required continuing education.

(1) An MRT or LMRT who has failed to complete the requirements for continuing education may be granted a 120-day certificate as described in §143.10(d)(7) of this title. The 120-day extension is the maximum that shall be granted and there will be no exceptions, nor may an additional extension period be granted.

(2) The next continuing education reporting period shall commence on the day following the completion of continuing education credits to correct the deficiency and shall end two years from the date the previous renewal period ended. The extension period is borrowed from the next reporting period.

(3) An MRT or LMRT who has not corrected the deficiency by the expiration date of the 120-day certificate shall be considered as noncompliant with the renewal requirements and may no longer perform radiologic procedures under the expired certificate.

(4) A person may renew late under §143.10(e) of this title after all the continuing education requirements have been met. A person who renews late is not eligible for a 120-day extension.

(i) Exemptions. The department will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(1) a technologist completes and forwards to the department a sworn affidavit indicating retirement status for the entire renewal period for which the exemption is requested. A technologist who has been granted this exemption and who desires to resume performing radiologic procedures shall be required to accrue continuing education hours. These hours shall be accrued immediately following the technologist's return to performing radiologic procedures to satisfy the continuing education requirements for renewal in accordance with subsection (a) of this section;

(2) a technologist completes and forwards to the department a sworn affidavit indicating that the technologist is employed but does not perform radiologic procedures for the entire renewal period. A technologist who has been granted this exemption and who desires to resume performing radiologic procedures shall be required to accrue continuing education hours. These hours shall accrue immediately following the technologist's return to performing radiologic procedures to satisfy the continuing education requirements for renewal in accordance with subsection (a) of this section;

(3) a technologist shows reasons of health, certified by a licensed physician, that prevent compliance with the continuing education requirement for the entire renewal period. A technologist must complete and forward to the department a sworn affidavit and provide documentation that clearly establishes the period of disability and resulting physical limitations;

(4) a technologist submits a sworn statement and shows reason which prevents compliance and the reason is acceptable to the department;

(5) a technologist is called to or on active duty with the armed forces of the United States for the entire renewal period and so long as the technologist does not administer a radiologic procedure in a setting outside of the active duty responsibilities during the time on active duty. The technologist must file a copy of orders to active military duty with the department; or

(6) a technologist submits proof of successful completion of an advanced level examination or an entry level examination in another discipline of radiologic technology administered or approved by the ARRT during the renewal period. All examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes.

(j) Partial exemption. The department may consider granting an exemption for one-half of the continuing education requirement if the technologist submits proof of successful completion during the renewal period of an examination accepted by the department in a topic dealing with non-ionizing radiation. The balance of the hours must be directly related to the performance of a radiologic procedure utilizing ionizing radiation in accordance with subsection (b)(1) of this section. The following are examinations accepted by the department:

(1) the registry examination offered by the American Registry of Diagnostic Medical Sonographers; and

(2) the advanced-level examination in non-ionizing imaging offered by the ARRT.

(k) Denial of request for exemption. A technologist whose request for exemption is denied by the department may be granted a 120-day extension to complete the continuing education requirements and may request a hearing on the denial within 30 days after the date the department notified the technologist of the exemption denial. If no hearing is requested in writing within 30 days, the opportunity for hearing shall be waived.

(l) Record keeping. An MRT or LMRT shall be responsible for keeping, for a period of not less than two years, accurate and complete documentation or other records of continuing education reported to the department. An MRT or LMRT shall submit documentation of attendance and participation in continuing education activities upon written request by the department.

§143.12. Changes of Name and Address.

(a) The certificate holder shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 days of such change(s).

(b) Notification of address changes shall be made in writing including the name, mailing address, zip codes, and be mailed to the administrator.

(c) Before any certificate and identification cards will be issued by the department, notification of name changes must be mailed to the administrator and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The certificate holder shall submit a certified check or money order for the replacement fee, as set out in §143.4 of this title. Upon receipt of the new certificate and identification cards, the MRT or LMRT shall return the previously issued certificate and cards immediately to the department. If those items have been lost, destroyed, or are not available to return, a statement detailing the loss or destruction must be signed and submitted to the department.

§143.14. Disciplinary Actions.

(a) The department is authorized to take the following disciplinary actions for the violation of any provisions of the Medical Radiologic Technologist Certification Act (Act) or this chapter:

(1) suspension, revocation, or nonrenewal of a certificate;

(2) rescission of curriculum, training program, or instructor approval;

(3) denial of an application for certification or approval;

(4) assessment of a civil penalty in an amount not to exceed $1,000 for each separate violation of the Act;

(5) issuance of a reprimand; or

(6) placement of the offender's certificate on probation and requiring compliance with a requirement of the department, including submitting to medical or psychological treatment, meeting additional educational requirements, passing an examination, or working under the supervision of an MRT or other practitioner.

(b) The department may take disciplinary action against a person subject to the Act for:

(1) obtaining or attempting to obtain a certificate issued under the Act by bribery or fraud;

(2) making or filing a false report or record made in the person's capacity as an MRT;

(3) intentionally or negligently failing to file a report or record required by law;

(4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;

(5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the department;

(6) developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness;

(7) failing to report to the department the violation of the Act by another person;

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(9) violating a provision of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or

(11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

(c) Engaging in unprofessional conduct means the following:

(1) making any misleading, deceptive, or false representations in connection with service rendered;

(2) engaging in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol;

(3) performing a radiologic procedure on a patient or client which has not been authorized by a practitioner;

(4) aiding or abetting a person in violating the Act or rules adopted under the Act;

(5) any practice or omission that fails to conform to accepted principles and standards of the medical radiologic technology profession;

(6) performing a radiologic procedure which results in mental or physical injury to a patient or which creates an unreasonable risk that the patient may be mentally or physically harmed;

(7) misappropriating medications, supplies, equipment, or personal items of the patient, client or employer;

(8) performing or attempting to perform radiologic procedures in which the person is not trained by experience or education or in which the procedure is performed without appropriate supervision;

(9) performing or attempting to perform any medical procedure which relates to or is necessary for the performance of a radiologic procedure and for which the person is not trained by experience or education or when the procedure is performed without appropriate supervision;

(10) performing a radiologic procedure which is not within the scope of an LMRT's certificate, as set out in §143.7(e) of this title;

(11) disclosing confidential information concerning a patient or client except where required or allowed by law;

(12) failing to adequately supervise a person in the performance of radiologic procedures;

(13) providing false or misleading information on an application for employment to perform radiologic procedures;

(14) providing information which is false, misleading, or deceptive regarding the status of certification; registration with the American Registry of Radiologic Technologists, Cardiovascular Credentialing International, or Nuclear Medicine Technology Certification Board; or licensure by another country, state, territory, or the District of Columbia;

(15) discriminating on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical handicaps or economic status in the performance of radiologic procedures;

(16) impersonating or acting as a proxy for an examination candidate for any examination required for certification;

(17) acting as a proxy for an MRT or LMRT at any continuing education required under §143.11 of this title;

(18) obtaining, attempting to obtain, or assisting another to obtain certification or placement on the registry by bribery or fraud;

(19) making abusive, harassing or seductive remarks to a patient, client or co-worker in the workplace or engaging in sexual contact with a patient or client in the workplace;

(20) misleadingly, deceptively or falsely offering to provide education or training relating to radiologic technology;

(21) failing to complete the continuing education requirements for renewal as set out in §143.11 of this title;

(22) failing to document the continuing education requirements for renewal as required by the department;

(23) failing to cooperate with the department by not furnishing required documents or responding to a request for information or a subpoena issued by the department or the department's authorized representative;

(24) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by use of threats or harassment against any person;

(25) failing to follow appropriate safety standards or the Texas Regulations for the Control of Radiation in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(26) failing to adhere to universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(27) defaulting on a guaranteed student loan, as provided in the Education Code, §57.491;

(28) assaulting any person in connection with the practice of radiologic technology or in the workplace;

(29) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage to or from a person licensed, certified or registered by a state health care regulatory agency. The provisions of the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to MRTs and LMRTs;

(30) using or permitting or allowing the use of the person's name, certificate, or professional credentials in a way that the person knows, or with the exercise of reasonable diligence should know:

(A) violates the Act, this chapter or department rule relating to the performance of radiologic procedures; or

(B) is fraudulent, deceitful or misleading;

(31) knowingly allowing a student enrolled in an education program to perform a radiologic procedure without direct supervision; or

(32) knowingly concealing information relating to enforcement of the Act or this chapter.

(33) failing reasonably to protect the certificate from fraudulent or unlawful use.

(d) A person subject to disciplinary action under subsection (b)(6) of this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that the person is able to resume the practice of radiologic technology.

(e) An instructor engages in unprofessional conduct if the instructor violates any of the provisions of subsections (b) or (c) of this section or if the instructor:

(1) is an MRT or LMRT who fails to renew the certificate;

(2) is a practitioner who fails to renew his or her license or who has the license suspended, revoked, or otherwise restricted by the appropriate regulatory agency;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, religion, national origin, age, physical handicaps, sexual orientation, or economic status;

(4) abandons an approved course of study or a training program with currently enrolled students;

(5) knowingly provides false or misleading information on the application for instructor approval or on any student's application for certification; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, §85.203.

(f) An education program engages in unprofessional conduct if the program, including its employees or agents, violates any of the provisions of subsections (b) or (c) of this section or if the program:

(1) makes any misleading, deceptive, or false representations in connection with offering or obtaining approval of an education program;

(2) fails to follow appropriate safety standards or the TRCR in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, sexual orientation, age, physical handicaps, economic status, religion or national origin;

(4) aids or abets a person in violating the Act or rules adopted under the Act;

(5) abandons an approved education program with currently enrolled students; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, Section 85, Subchapter I.

(g) The department may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision.

(h) In determining the appropriate action to be imposed in each case, the department shall take into consideration the following factors:

(1) the severity of the offense;

(2) the danger to the public;

(3) the number of repetitions of offenses;

(4) the length of time since the date of the violation;

(5) the number and type of previous disciplinary cases filed against the person or program;

(6) the length of time the person has performed radiologic procedures;

(7) the length of time the instructor or education program has been approved;

(8) the actual damage, physical or otherwise, to the patient or student, if applicable;

(9) the deterrent effect of the penalty imposed;

(10) the effect of the penalty upon the livelihood of the person or program;

(11) any efforts for rehabilitation; and

(12) any other mitigating or aggravating circumstances.

(i) Formal hearing requirements:

(1) Notice requirements.

(A) Notice of the hearing shall be given according to the notice requirements of the Administrative Procedure Act (APA).

(B) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(C) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.

(2) Parties to the hearing.

(A) The parties to the hearing shall be the applicant or licensee and the complaints subcommittee or executive director, as appropriate.

(B) A party may appear personally or be represented by counsel or both.

(3) Prehearing conferences.

(A) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(i) the formulation and simplification of issues;

(ii) the necessity or desirability of amending the pleading;

(iii) the possibility of making admissions or stipulations;

(iv) the procedure at the hearing.

(v) specifying the number of witnesses;

(vi) the mutual exchange of prepared testimony and exhibits;

(vii) the designation of parties; and

(viii) other matters which may be expedite the hearing.

(B) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(C) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.

(4) Assessing the cost of a court reporter and the record of the hearing.

(A) In the event a court reporter is utilized in the making of the record of the proceedings, the department shall bear the cost of the per diem or other appearance fee for such reporter.

(B) The department may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The department may pay the cost of the transcript or assess the cost to one or more parties.

(C) In the event a final decision of the department is appealed to the district court wherein the department is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the department may be require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the department proceedings that is required to be transmitted to the reviewing court.

(5) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(6) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(7) Final orders or decisions.

(A) The final order or decision will be rendered by the department. The department is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(C) All final orders shall be signed by the commissioner; however, interim orders maybe issued by the Administrative Law Judge.

(D) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(8) Motion for rehearing. A motion for rehearing shall be governed by APA, §2001.146, Texas Government Code, and shall be addressed to the department and filed with the administrator.

(9) Appeals. All appeals from final department orders or decisions shall be governed by APA, Subchapter G, Texas Government Code and communications regarding any appeal shall be to the administrator.

(j) The following applies after disciplinary action has been taken.

(1) The department may not reinstate a certificate to a holder or cause a certificate to be issued to an applicant previously denied a certificate unless the department is satisfied that the holder or applicant has complied with requirements set by the department and is capable of engaging in the practice of radiologic technology. The person is responsible for securing and providing to the department such evidence, as may be required by the department. The administrator or the department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in this chapter; however, the department may not renew the certificate until the administrator or the department determines that the reasons for suspension have been removed and that the person is capable of engaging in the practice of radiologic technology.

(4) If the commissioner of health revokes or does not renew the certificate, the former certificate holder may reapply in order to obtain a new certificate by complying with the requirements and procedures at the time of reapplication. The department may not issue a new certificate until the administrator or the department determines that the reasons for revocation or nonrenewal have been removed and that the person is capable of engaging in the practice of radiologic technology. An investigation may be required.

(5) If the commissioner rescinds the approval of an instructor or program, the formerly approved instructor or program may reapply for approval by complying with the requirements and procedures at the time of reapplication. Approval will not be issued until the administrator or the department determines that the reasons for revocation have been removed. An investigation may be required.

(k) Pursuant to the Act, §601.351, the department is authorized to assess an administrative penalty against a person who violates the Act or this chapter.

§143.17. Mandatory Training Programs for Non-Certified Technicians.

(a) General. This section sets out the minimum standards for approval of mandatory training programs, as required by the Medical Radiologic Technologist Certification Act (Act), §2.05(f), which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Individuals who complete an approved training program may not use that training toward the educational requirements for a general or limited certificate as set out in §143.7 of this title (relating to Types of Certificates and Applicant Eligibility). Before a person performs a radiologic procedure, the person must complete all the hours in subsection (d)(1)(A)-(D) of this section, and at least one unit in subsection (d)(2)(A)-(G) of this section.

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an approved instructor. No credit will be given for training completed by self-directed study or correspondence.

(c) Instructor qualifications.

(1) An instructor(s) shall have education and not less than six months classroom or clinical experience teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists;

(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training; or

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas State Board of Chiropractic Examiners, Texas State Board of Medical Examiners, or Texas State Board of Podiatry Examiners, the Texas Health and Human Services Commission, the United States Department of Health and Human Services.

(2) An LMRT may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. An LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements. In order to successfully complete a program, each student must complete the following minimum training:

(1) prerequisites recommended for admission include high school graduation or general equivalency diploma; certified medical assistant; graduation from a medical assistant program; or six months full time patient care experience, otherwise determined by the practitioner.

(2) courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others-22 classroom hours;

(B) image production and evaluation-24 classroom hours; and

(C) radiographic equipment maintenance and operation-16 classroom hours which includes at least six hours of quality control, darkroom, processing, and Texas Control of Radiation Regulations; and

(3) one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) skull (five views: Caldwell, Townes, Waters, AP/PA, and lateral)-10 classroom hours;

(B) chest-eight classroom hours;

(C) spine-eight classroom hours;

(D) abdomen, not including any procedures utilizing contrast media- four classroom hours;

(E) upper extremities-14 classroom hours;

(F) lower extremities-14 classroom hours; and/or

(G) podiatric--five classroom hours.

(e) Application procedures for training programs. An application shall be submitted to the department at least 30 days prior to the starting date of the training program. Official application forms are available from the department and must be completed and signed by an approved instructor, who shall be designated as the training program director. The training program director shall be responsible for the curriculum, the instructors, and determining whether students have successfully completed the training program.

(1) Official application forms must be executed in the presence of a notary public and shall be accompanied by the application fee in accordance with §143.4 of this title. Photocopied signatures will not be accepted.

(2) Application forms and fees shall be mailed to the address indicated on the application materials. The department is not responsible for lost, misdirected, or undeliverable application forms. An application received without the application fee will be returned to the applicant.

(f) Application materials. The application shall include, at a minimum:

(1) the beginning date and the anticipated length of the training program;

(2) the number of programs which will be conducted concurrently and whether programs will be conducted consecutively;

(3) the number of students anticipated in each program;

(4) the daily hours of operation;

(5) the location, mailing address, phone and facsimile numbers of the program;

(6) the name of the training program director;

(7) a list of the names of the approved instructors and the topics each will teach, and a list of management and administrative personnel and any practitioners who will participate in conducting the program;

(8) clearly defined and written policies regarding the criteria for admission, discharge, readmission and completion of the program;

(9) evidence of a structured pre-planned learning experience with specific outcomes;

(10) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175. If approval has been granted by the Texas Higher Education Coordinating Board, a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section is not necessary; and

(11) specific written agreements to:

(A) provide the training as set out in subsection (d) of this section and provide not more than 75 students per instructor in the classroom;

(B) advise students that they are prohibited from performing radiologic procedures which have been identified as dangerous or hazardous in accordance with §143.16 of this title (relating to Dangerous or Hazardous Procedures) unless they become an LMRT, MRT or a practitioner;

(C) use written and oral examinations to periodically measure student progress;

(D) keep an accurate record of each student's attendance and participation in the program, accurate evaluation

instruments and grades for not less than five years. Such records shall be made available upon request by the department or any governmental agency having authority;

(E) issue to each student who successfully completes the program a certificate or written statement including the name of the student, name of the program, dates of attendance and the types of radiologic procedures covered in the program completed by the student;

(F) retain an accurate copy for not less than five years and submit an accurate copy of the document described in subparagraph (E) of this paragraph to the department within 30 days of the issuance of the document to the student; and

(G) permit site inspections by employees or representatives of the department to determine compliance with this section.

(g) Application approval.

(1) The administrator shall be responsible for reviewing all applications for training program approval. The administrator shall approve any application which is in compliance with this section. A letter of approval shall be issued for a period of one year.

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The training program director shall be notified in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(3) If approval is proposed to be denied, the training program director shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within ten days of the training program director's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(h) Application processing. The department shall use the same process as described in §143.6(e) of this title, except the time periods are as follows:

(1) letter of acceptance--30 days;

(2) letter of application deficiency--30 days;

(3) letter of approval--42 days; and

(4) letter of denial of approval--42 days.

(i) Renewal.

(1) The training program director shall be responsible for renewing the approval of the training program on or before the anniversary date of the initial application.

(2) The department shall send a renewal notice to the training program at least 60 days prior to the anniversary date. The department is not responsible for lost, misdirected, undeliverable or misplaced mail.

(3) The renewal is effective if the official renewal form and fee in accordance with §143.4 of this title are postmarked or delivered to the department on or before the anniversary date.

(4) Failure to submit the renewal form and renewal fee in accordance with §143.4 of this title by the deadline will result in the expiration of the training program's approval.

(5) A training program which does not renew the approval shall cease representing the program as an approved training program. The program director shall notify, or cause the notification of currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(6) The training program may reapply for approval and meet the then current requirements for approval under this section.

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

Filed with the Office of the Secretary of State on August 20, 2001.

TRD-200104887
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: September 9, 2001
Proposal publication date: March 9, 2001
For further information, please call: (512) 458-7236

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25 TAC §143.15

The repeal is adopted under the Medical Radiologic Technologist Certification Act, §601.052, Texas Occupations Code, which provides the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; and the Texas Health and Safety code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner for health.

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 August 20, 2001.

TRD-200104888
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: September 9, 2001
Proposal publication date: March 9, 2001
For further information, please call: (512) 458-7236

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CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER E. DOG AND CAT STERILIZATION

25 TAC §169.102

The Texas Department of Health (department) adopts new §169.102 concerning the establishment of guidelines for the distribution of money credited to the Animal Friendly account, without changes to the proposed text as published in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3911), and therefore the section will not be republished.

Specifically, the new section creates the Texas Department of Health Animal Friendly Grants and defines eligibility for grants; requirements for grants; procedures for grant announcements; procedures for grant applications; the review process; selection criteria; project approval; and continuation funding.

There were no comments received during the thirty day comment period on the proposal.

The new section is adopted under the Texas Health and Safety Code, Chapter 828, "Dog and Cat Sterilization," §828.014, which provides the Texas Board of Health (board) with the authority to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 August 20, 2001.

TRD-200104846
Susan Steeg
General Counsel
Texas Department of Health
Effective date: September 9, 2001
Proposal publication date: June 1, 2001
For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER F. VEHICLES

31 TAC §51.152

The Texas Parks and Wildlife Department adopts new §51.152, concerning Assignment and Use of Agency Vehicles, without changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3135).

The new section is necessary to comply with the provisions of Government Code, §2171.1045, which requires each state agency to adopt rules relating to the assignment and use of the agency's vehicles.

The new rule will function by requiring state vehicles not assigned to field personnel to be available to all headquarters personnel except in cases where the department's assignment of a vehicle to a particular individual has been documented as necessary.

The department received one comment opposed to adoption of the proposed rule. The commenter stated that subsection (b), which allows the department to assign a vehicle to an administrative or executive employee upon written finding that the assignment is critical to the needs and mission of the agency, is a loophole effectively negating subsection (a), which requires agency vehicles to be assigned to a motor pool available for any employee. The commenter also stated that the rule should define 'regular basis' to mean 'full time,' prohibit vehicle use during non-duty hours and weekends, eliminate government gasoline credit cards, and require all vehicles to be painted white with a green stripe and be marked. The department disagrees with the comment. The department responds that the exception in subsection (b) is consistent with the Fleet Vehicle Management Policy established by the General Services Commission. The department also responds that the term 'regular basis' is unnecessary, since the law requires the agency to make a finding that the assignment of a vehicle is critical to the agency's mission. The department further responds that state law and department policy concerning use of state vehicles and credit cards for private purposes is sufficient to address abuse, and that all department vehicles except certain executive and law enforcement vehicles are required to be marked. No changes were made as a result of the comments.

The rule is adopted under Government Code, §2171.1045, which requires the department to adopt rules relating to the assignment and use of the agency's vehicles.

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 August 13, 2001.

TRD-200104668
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: September 2, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 389-4775

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CHAPTER 53. FINANCE

SUBCHAPTER J. EXEMPTIONS FOR DISABLED VETERANS

31 TAC §53.190

The Texas Parks and Wildlife Department adopts new §53.190, concerning Exemptions from Stamp Fees, without change to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3136).

The new section is necessary to establish consistency in the department's treatment of disabled veterans, who are currently exempted by statute from the fees for hunting and fishing licenses.

The new rule will function by exempting disabled veterans from the fees for the following stamps: waterfowl, turkey, white-winged dove, archery, muzzleloader, saltwater fishing, and freshwater trout.

The department received one comment concerning adoption of the proposed rule. The commenter stated that all veterans should pay double the existing fees and be required to take a psychiatric examination. The department disagrees with the comment and responds that it does not possess the statutory authority to implement either recommendation. No changes were made as a result of the comment.

The rule is adopted under Parks and Wildlife Code, Chapter 43, which authorizes the commission to exempt persons from the stamp requirements of the chapter.

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

Filed with the Office of the Secretary of State on August 13, 2001.

TRD-200104667
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: September 2, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.6

The Comptroller of Public Accounts adopts an amendment to §1.6, concerning extensions of time, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4069).

The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §111.009 and §111.105.

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 August 15, 2001.

TRD-200104775
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.9

The Comptroller of Public Accounts adopts an amendment to §1.9, concerning position letters, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 9053).

The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopts under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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 August 15, 2001.

TRD-200104776
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.10

The Comptroller of Public Accounts adopts an amendment to §1.10, concerning acceptance or rejection of position letter; motion to dismiss petition or set for hearing, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4070).

The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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 August 15, 2001.

TRD-200104777
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.11

The Comptroller of Public Accounts adopts an amendment to §1.11, concerning modification of the position letter, without

changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4070).

The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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 August 15, 2001.

TRD-200104778
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.13

The Comptroller of Public Accounts adopts an amendment to §1.13, concerning initiation of an expedited hearing, with changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4071).

The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

The proposed version failed to insert the title "Administrative Hearings Section" in subsections (b)(3) and (f)(2), and those corrections are reflected in this version.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.13. Initiation of an Expedited Hearing.

(a) A taxpayer may request an expedited hearing at the time a petition for redetermination or written request for refund hearing is filed. An expedited hearing is one conducted under the accelerated pre-hearing and hearing timetable set forth in this section.

(b) To obtain an expedited hearing, a taxpayer must do the following at the time the petition for redetermination or written request for refund hearing is filed:

(1) request in writing the election of the expedited procedure and specify whether an oral hearing or a hearing on written submissions is preferred;

(2) pre-file its statement of grounds and all evidence (other than resale and exemption certificates) on which it intends to rely at the hearing, including summaries of testimony of witnesses expected to be called at an oral hearing. Contentions and evidence not pre-filed by the taxpayer shall be deemed inadmissible;

(3) agree to abbreviated discovery timetables in the event the Administrative Hearings Section should initiate discovery during the pre-hearing phase;

(4) request an extended oral hearing, if desired;

(5) agree to file resale and exemption certificates no later than the date of hearing or by the 60th day from the date of the hearing request, whichever occurs first, and to waive in writing the requirement of written notice and the 60-day period for the presentation of certificates as provided in Tax Code, §151.054(e); and

(6) waive in writing the issuance of a proposed decision.

(c) The general counsel or his designee shall, within ten days of his receipt of a request for an expedited hearing, make a determination as to whether the request qualifies for an expedited hearing. If it does not, the taxpayer will be so notified in writing, and advised that either with the filing of additional curative documentation the case can proceed on an expedited basis or that the case will be placed on the agency's regular hearings docket.

(d) For good cause shown, a request for an expedited hearing may be withdrawn; however, the waiver of the 60-day period pursuant to subsection (b)(5) of this section cannot be withdrawn. A taxpayer's request for continuance, or a request for an extended oral hearing filed after the initial request for an expedited hearing, shall not be granted unless there is a showing of good cause. Withdrawal of the request for an expedited hearing, or the granting of a motion for continuance or an extended oral hearing, shall cause the hearing to be set on the agency's regular hearings docket.

(e) The Administrative Hearings Section may petition the Administrative Law Judge for conversion from an expedited to a regular hearing for good cause shown, including, but not limited to, the need for additional policy consideration of issues raised, the need for extended discovery, for reasons of agency policy or court case hold, or for extended examination of records presented by the taxpayer. The Administrative Law Judge shall rule on such motion on the basis of written pleadings submitted by the parties.

(f) A compliant expedited hearing request shall be set and decided on the following timetable:

(1) within 20 days of receipt of the request by the general counsel or his designee an oral hearing or written submission closing date not to exceed 60 days from the date of receipt of the request shall be set by the Chief Administrative Law Judge;

(2) a date, not to exceed 50 days from the date of receipt of the request by the general counsel or his designee, shall be set as a deadline for the Administrative Hearings Section to file a written response to the taxpayer's statement of grounds and pre-filed evidence;

(3) a final decision shall be issued as follows:

(A) if no audit amendment is required in order to issue the final decision, within 45 days of the date of the oral hearing or the date the written submission record closes; or

(B) if an audit amendment is required in order to issue the final decision, within 75 days of the date of the oral hearing or the date the written submission record closes; and

(4) a motion for rehearing may be filed as provided in §1.29 of this title (relating to Motion for Rehearing).

(g) Hearings conducted pursuant to the expedited timetable established in this section shall not be subject to the provisions of §§1.9, 1.10, 1.11, 1.14, 1.15, 1.16, 1.20, and 1.27 of this title (relating to Rules of Practice and Procedure).

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 August 15, 2001.

TRD-200104774
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.14

The Comptroller of Public Accounts adopts an amendment to §1.14, concerning notice of setting, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4072).

The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.16

The Comptroller of Public Accounts adopts an amendment to §1.16, concerning response to the administrative hearings section, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4072).

The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.20

The Comptroller of Public Accounts adopts an amendment to §1.20, concerning continuances (postponement of hearings), without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4073).

The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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-200104781
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.33

The Comptroller of Public Accounts adopts an amendment to §1.33, concerning discovery, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4073).

The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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-200104782
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.39

The Comptroller of Public Accounts adopts an amendment to §1.39, concerning dismissal of case, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4074).

The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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 August 15, 2001.

TRD-200104783
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.40

The Comptroller of Public Accounts adopts an amendment to §1.40, concerning burden of proof, without changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4075).

The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

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 August 15, 2001.

TRD-200104784
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.42

The Comptroller of Public Accounts adopts an amendment to §1.42, concerning definitions, with changes to the proposed text as published in the June 8, 2001, issue of the *Texas Register* (26 TexReg 4075).

The rule is being amended to reflect current job titles and duties that are assigned to attorneys in the comptroller's Administrative Hearings Section, and to add a reference to the statutory provisions that authorize settlements of contested tax matters.

The proposed version failed to insert the title "Administrative Hearings Section" in paragraph (9), and that correction is reflected in this version.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.42. Definitions.

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

(1) Administrative law judge--An individual appointed by the comptroller to conduct hearings on matters within the comptroller's jurisdiction and to prepare proposed decisions to properly resolve such matters.

(2) Agency--The Office of the Comptroller of Public Accounts.

(3) Applicant--A party seeking a license or permit from the agency, or seeking an exemption.

(4) Authorized representative--An individual who represents a party in a contested case and may be any individual other than the party.

(5) Contested case or case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for redetermination or refund, as well as actions initiated by the agency to revoke or suspend permits or licenses administered by the agency on grounds other than failure to pay a final tax deficiency or failure to file a tax security. Contested cases are within the jurisdiction of the administrative law judges. Forfeitures of rights to do business, of certificates of authority, of articles of incorporation, penalties imposed under the Tax Code, §151.7031, the refusal or failure to settle under Tax Code, §111.101 or requests for or revocation of exemptions from taxation are not contested cases and are not within the jurisdiction of the administrative law judges.

(6) Determination--A written notice from the agency that a person is required to pay to the State of Texas a tax, fee, penalty, or interest.

(7) Assistant General Counsel--An attorney from the Administrative Hearings Section who is assigned to present the agency's position in a contested case.

(8) Licensing--The agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a permit.

(9) Party--Any person filing a petition or claim with the agency or asked by the agency to respond; the agency, acting through its Administrative Hearings Section; and any other person admitted as a party under §1.36 of this title (relating to Interested Parties).

(10) Permit--The whole or any part of a license, certificate, approval, registration, or similar form of permission, the issuance, renewal, amendment, suspension or revocation of which is within the jurisdiction of the agency.

(11) Permit holder--Includes a bonded agent, distributor, wholesaler, or retailer required to obtain a permit under the Tax Code, Chapters 154 or 155.

(12) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character. It may also include an estate, trust, receiver, assignee for benefit of creditors, trustee, trustee in bankruptcy, assignee, or any other group or combination acting as a unit.

(13) Petition--A request for official action by the agency regarding the rights, duties or privileges accorded to the person making the request under a statute administered or enforced by the agency. If the request is made orally, it must subsequently be reduced to writing.

(14) Petitioner, claimant, or taxpayer--Any person who files a petition seeking redetermination of a liability, a refund of monies paid, or determination of rights under any license or permit granted by the agency.

(15) Pleading--Any document filed by a party concerning the position or assertions in a contested case.

(16) Respondent or taxpayer--Any person to whom a notice of a show cause hearing for the suspension or revocation of a license has been issued.

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 August 15, 2001.

TRD-200104773
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 4, 2001
Proposal publication date: June 8, 2001
For further information, please call: (512) 463-4062

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) adopts an amendment to Subchapter A. General Provisions, §800.2. Definitions; the repeal of §§800.51, 800.52, 800.58, and 800.61 and new §§800.51, 800.52, 800.58, 800.61, 800.71-800.75 for Subchapter B, Allocations and Funding; and the repeal of Subchapter C. Reallocation of Funds, §§800.81 - 800.86. Section 800.2, §800.74 and §800.75 are adopted with changes to the proposed rules as published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4836). The remaining sections are adopted without changes and will not be republished.

The purposes of the changes are to reorganize the allocation and reallocation rules; to streamline the rules by removing the Funds Utilization and Service Level Report and Plan requirements; to focus on target expenditure levels, performance data relating to allocations and funds; and to set forth methods of examining expenditure levels and performance data as they relate to the provision of workforce services and training.

The Commission's intent in removing the Funds Utilization and Service Level Report and Plan is to respond to the needs and requests of local workforce development boards (Boards). The Commission strives for a method of ensuring that funds are fully utilized in the areas that are allocated those funds based on the federal formulas or as otherwise permitted by state law to be formula allocated using a need-based formula. The Funds Utilization and Service Level Report and Plan were initially developed to permit Boards to plan service delivery and related expenditures more carefully, yet provide a mechanism for the Commission to evaluate such performance, deobligate and quickly redistribute unexpended funds to areas of the state demonstrating the ability to provide services more efficiently and effectively, using funds in a timely manner. In implementing the Funds Utilization and Service Level Reports and Plans, it is apparent that the plans and reports created additional administrative burdens and hindered flexibility. The Commission intends to remove any reporting or planning requirements that are not necessary. The Commission also seeks to simplify processes, yet maintain a predictable schedule for the redistribution of allocated monies.

In §800.2, under the definition of child care, the reference to Welfare-to-Work formula grants was deleted because the Welfare-to-Work funds include some state General Revenue funds as well as formula grant funds. A change to the definition of WIA formula allocated funds or services and activities was made to delete the reference to services and activities and to emphasize WIA funding categories.

Section 800.58(f)(4) removes the requirement that Boards expend at least 4% of the Child Care and Development Funds for quality improvement activities, in order to give Boards more flexibility in determining the use of funds.

Section 800.61(c) changes the provisions relating to state general revenue funds for Welfare-to-Work to allow for more flexibility in the use of those funds. Section 800.61(e) is removed.

The rules numbers are consolidated into one subchapter for Allocation, Deobligation and Reallocation by renumbering §§800.81 - 800.86 as §§800.71-800.75.

In Section 800.81(b) the intent provision is moved to §800.51 to locate the provision so it is apparent that it applies to allocation, deobligation and reallocation.

Section 800.81 is renumbered as §800.71 and in subsection (b) the language is removed that excepts Welfare-to-Work and Workforce Investment Act (WIA) formula allocated funds, including Adult, Youth and Dislocated Worker funds, from the intent section; it also streamlines the reference to WIA throughout the applicable rules by referencing WIA Adult, Youth and Dislocated Workers as "WIA formula allocated funds."

In §800.81(c) and throughout the rest of §800.81, changes are made to shorten the references from WIA Adult, WIA Dislocated Worker and WIA Youth to "WIA formula allocated funds" and remove unnecessary provisions relating to (c) (2) exceptions to the scope of the rules.

Section 800.82 repeals the rule and merges the definitions of expenditures, monthly expenditure report, and obligation into §800.52 and deletes the remaining definitions of Funds Utilization and Service Level Plan, Program year, and service level report.

Section 800.83 is renumbered as §800.72 and the planning requirement related to the Funds Utilization and Service Level Reports is removed.

The provision regarding necessary revisions to the monthly expenditure report is eliminated throughout.

Section 800.84 is renumbered as §800.73 and a provision is added encouraging Boards to meet targeted expenditure levels to achieve appropriate levels of services. Subsection (b), the provision relating to carryover funds for Child Care, is eliminated and replaced with the provision that allows the Commission to consider obligated funds in reviewing the Boards' compliance with target expenditure levels as well as other factors necessary to evaluate performance of the Board.

Section 800.85 is renumbered as §800.74 and changes from required expenditure levels to target expenditure levels and allows the consideration of a Board's justification of current and projected service levels and related performance data in determining an amount of funding to deobligate. This section is also changed to clarify the procedure for requesting voluntary deobligation of funds and includes the notification of the designated chief elected officials in the local workforce development area.

Section 800.86 is renumbered as §800.75 and paragraph (b) (1) is changed from a requirement to utilize specific criteria to allow the Commission to consider factors including targeted expenditure levels.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

Background. The Commission is charged with ensuring accountability among Boards and subrecipients of the Agency. Boards are charged with the oversight and management of the services and activities of the One-Stop Service Delivery Network. Specifically, Board and Commission goals reflect WIA goals: streamlining services; empowering individuals; universal access; increased accountability; strong role for Boards and the private sector; and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government; local control; personal responsibility; and support for strong families.

Texas Government Code Chapter 2308, Texas Labor Code Title 4 and WIA have imposed on Boards a number of duties and responsibilities for the administration of Commission-funded activities, including maintaining adequate fiscal systems, complying with the uniform rules for administration of grants and agreements, meeting contract performance measures, and complying with all applicable state and federal statutes and regulations.

The rules emphasize the relationship between the Commission and Boards in assuring compliance with federal and state requirements through performance reviews, technical assistance, and contract oversight and monitoring.

The Commission received comments from the following local workforce development boards and one organization: The Coastal Bend Workforce Development Board, the North Central Workforce Development Board, the Southeast Texas Workforce Development Board, the Texoma Workforce Development Board, the West Central Workforce Development Board and the Center for Public Policy Priorities.

Comment: Regarding Section 800.2, one commenter stated a positive comment about the Food Stamp Employment & Training (E&T) program allocation coinciding with the fiscal year as with other programs, making it more uniform. Another commenter stated that changing the program year for Food Stamp E&T from September 1 - August 31 to October 1 - September 30, would require that Board programs will follow three non-aligned program years and that such a system would require an inordinate amount of time and duplicative efforts to develop partial-year budgets and contracts for program operators. The second commenter suggested that the Commission not change the Food Stamp E&T program year so that it will continue to align with the program years of the Child Care, Choices, and Welfare-to-Work programs. The second commenter further recommended that all programs follow a single program year, where allowed by law.

Response: The Commission recognizes that the establishment of policies that align workforce services across differing categorical populations and different program years plays an important part in the full integration of programs within the Texas Workforce Centers. The proposal to change the Food Stamp E&T program year to align with the federal fiscal year was an attempt to simplify the financial reporting requirements and ensure timely closeouts. However, with the expansion of these services into currently unserved counties and desire to align services more closely with

other workforce services, including Choices, the Commission agrees to change the rule to retain the current program year designation of September 1 through August 31.

Comment: Regarding §800.58(f)(1), one commenter stated that sufficient funds must be used for direct child care services to ensure Commission-approved child care targets are met. The commenter stated that the proposed rule indicates that the Board's primary responsibility in administering the Child Care program is to ensure that adequate quantities of children are placed in care and that quality initiatives are a secondary priority. While quality child care initiatives are provided through such vehicles as the TWC Train Our Teachers (TOT) program, the Board does not believe that such activities are adequate to address the needs for quality child care in its local workforce development area. The commenter said that local control of quality child care funds has allowed the Board to establish quality activities such as Child Development Associate training and providing technical assistance to child care providers adding that quality, affordable child care is essential to the success of workforce development programs and to the long-term economic health of the State, both now and in years to come. The commenter further stated the Board's commitment to developing local quality child care resources and urged TWC to continue in efforts to secure additional quality child care funding. Another commenter asked whether the performance targets for Boards would be raised if the Board expended less than 4% of the Child Care funds on quality activities. In other words, the commenter asked whether their Boards would be required to serve more children per day if the Board chose to spend less than 4% on quality activities.

Response: The Commission recognizes that child care represents an essential support service for low-income, working parents and has taken every opportunity to communicate that belief during the legislative process in order to provide child care services to low-income parents and to continue activities that promote quality care for children. In the General Appropriations Act, 77th Legislature, Regular Session, funding levels were set and the Commission and local workforce boards were instructed to ensure that direct child care services were provided to an average of 107,744 children whose families are transitioning from welfare to employment or working and determined to be at-risk. As a result, the Commission eliminated the previous requirement that Boards expend at least 4% of their total child care allocation on quality activities, allowing Boards to determine what amount is appropriate to expend on quality activities in the workforce area while continuing to meet the area's performance target. Boards may also choose to use the federal funds drawn down through local donations, transfers and certifications to support quality initiatives.

Comment: Two commenters supported the elimination of the Fund Utilization and Service Level Report and Plan requirements. Due to the on-going enhancement of state and local financial and programmatic reporting systems, this additional report added little value to performance management.

Response: The Commission appreciates the support and feedback from the Boards regarding enhancement of the state and local financial and reporting systems.

Comment: Regarding §800.73, one commenter recommended changing the expenditure requirements in (a) (1), (2) and (3) as follows: (1) expenditure level of 20% by the end of the 4th month; (2) expenditure level of 50% by end of 8th month; and (3) at least 90% for child care for all board areas, regardless of allocation size, 90% for Choices and 90% for WtW general revenue funds. The recommendation was based on the concern that as funds vary from one contract period to the next, it is highly desirable to ensure continuity of service if funding levels decrease. The ability to carry forward up to 10% of the prior year allocation would allow Board areas to be proactive in ensuring service, in the event of a funding decrease in the subsequent year.

Response: The Commission appreciates the Board's desire to reserve a cushion of funds for use in tight budget years. However, steps by Congress and the Legislature to evaluate the timely expenditure of funds and rescind or otherwise remove spending authority provides clear indication that states and local workforce boards must spend funds during the period for which the appropriation was made, and minimize amounts to be carried forward into future budget periods. Therefore, the Commission does not agree to change the expenditure amounts listed in the rule.

Comment: Regarding § 800.74(d), one commenter stated appreciation for the flexibility allowing for the voluntary deobligation of funds by a board. Another commenter recommended that because funds are allocated to a local workforce development area on behalf of its residents, the Commission should require that any request for voluntary deobligation of funds be in writing and include the signatures of both the board chair and the designated chief elected official for the area seeking deobligation. The Commenter stated that such oversight will ensure that the interests of local communities are taken into account in as full a manner as possible.

Response: The Commission understands the commenter's concern about the Board chairs and chief elected officials (CEOs) being involved in their local workforce board's decisions regarding the use of allocated funds. The Commission notes that state law establishes the duties of CEOs, and directs that they determine among themselves how local resources are to be allocated within the workforce area and how they are to be kept informed regarding workforce development activities. The Commission believes that mechanisms already exist to allow each area to include CEO approval of voluntary deobligations, if desired by the local community. However, the Commission believes access to such information is critical. As a result, the Commission will amend the rule to require that the Board chair sign any written request to the Commission for voluntary deobligation of funds from an area and that the Board chair notify the designated CEO of that area concurrently with the notification to the Commission.

Comment: Regarding §800.75(b)(1)(G), one commenter stated concern about the re-obligation of funds and not being available to an area if the board is under sanction. Some flexibility of these rules may allow an area to meet performance and come out from under sanctions. Regarding § 800.75(b)(2) and (3), one commenter recommended that item (1)(G) be included for these sections as well, which requires that a Board not be under sanction to receive reallocated funds.

Response: The Commission agrees that the Commission should consider other factors including sanctions to determine eligibility for reallocations and that the provisions in §800.75(b)(1) where applicable should relate to §800.75(b)(2) and (b)(3). For that reason the Commission agrees to clarify the language in (b)(2) and (b)(3) to reflect that the factors in (b)(1) also may be considered in evaluating reallocations.

Comment: One commenter recognized that the Commission is striving to ensure that workforce funds are fully utilized while holding true to Texas' vision for local control and efficient State

government, congratulated the Commission on this endeavor, and supported the effort to simplify these processes while maintaining a system for the timely redistribution of allocated funds.

Response: The Commission appreciates the continued relationship with the Local Workforce Development Boards and the feedback received from the Boards and the public regarding the proposed rules. After consideration of the comments, the Commission does see a need to change the rules as a result of the comments.

For information about the Commission please visit our web page at www.texasworkforce.org.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

The amendment is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendment affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.2. Definitions

The following words and terms, when used in this Part 20, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(2) Allocation--The amount approved by the Commission for expenditures during a specified period, according to specific state and federal requirements.

(3) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(4) Child Care--Child care services funded through the Agency, which may include services funded under the Child Care and Development Fund, Welfare-to-Work, WIA, and other funds available to the Agency or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(5) Choices--The employment and training activities created under §31.0126 of the Human Resources Code and funded under TANF (42 U.S.C.A. 601 et seq.) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment. Formerly known as Job Opportunities and Basic Skills Training (JOBS).

(6) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(7) Core Outcome Measures--Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC). The Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.

(8) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(9) Food Stamp Employment and Training (FSE&T) Activities--The activities authorized and engaged in as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.

(10) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.

(11) Performance Measure--An expected performance outcome or result.

(12) Performance Standard--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Measures.

(13) Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: September 1--August 31;

(B) Choices: September 1--August 31;

(C) Welfare-to-Work: September 1--August 31;

(D) Food Stamp Employment and Training: September 1--August 31; and

(E) WIA Adult, Dislocated Worker, and Youth: July 1--June 30.

(14) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 et seq.) and the Temporary Assistance for Needy Families statutes and regulations. (42 U.S.C.A. §601 et

seq., 45 C.F.R. Parts 260-265) Formerly named Aid to Families with Dependent Children (AFDC).

(15) TCWEC--Texas Council on Workforce and Economic Competitiveness appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TCWEC maintains the duties, responsibilities, powers and limitations as provided in Texas Government Code §§2308.101-2308.105.

(16) Texas Workforce Center Partner--an entity which carries out a workforce investment, educational or other human resources program or activity, and which participates in the operation of the One-Stop Service Delivery Network in a local workforce development area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

(17) WIA--Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 *et seq.* References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.

(18) WIA formula allocated funds--funds allocated by formula to local workforce development areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

(19) Local Workforce Development Area--Workforce development areas designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A. §§2831 and 2939). Also referred to as workforce 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.

Filed with the Office of the Secretary of State on August 14, 2001.

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John Moore
Assistant General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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SUBCHAPTER B. ALLOCATIONS AND FUNDING

40 TAC §§800.51, 800.52, 800.58, 800.61

The repeal is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

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

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40 TAC §§800.51, 800.52, 800.58, 800.61, 800.71 - 800.75

The new rules are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.74. Deobligation of Funds

(a) For deobligation of Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may, for the category of funding:

(1) deobligate all or part of the difference between a Board's actual expenditure level and the target expenditure level described in §800.73(a) and (b) of this subchapter, relating to Expenditure, Local Match and Obligation Levels, as applicable for each category of funding for that period; and

(2) consider a Board's justification of current and projected service levels and related performance data in determining to deobligate.

(b) For deobligation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required as described in §800.73(c) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels.

(c) For deobligation of WIA formula allocated funds for each separate category of funds related to WIA Adult, Dislocated Worker and Youth, the Commission shall deobligate funds from each of these categories of funding as follows:

(1) after the end of the twelfth month following the beginning of a program year, any unobligated funds which exceed 20% of the allocation for each category of WIA formula allocated funds for that program year, less any amount reserved up to 10% for costs of administration; and

(2) after the end of the 24th month following the beginning of a program year, any unexpended funds of the program year allocation for each category of WIA formula allocated funds.

(d) For voluntary deobligation, a Board may submit a written request that the Commission deobligate a portion of the workforce area's allocation for one or more categories of funding. The Board

chair must sign the written request and concurrently notify the designated chief elected official of the workforce area of the written request for the deobligation of funding.

§800.75. Reallocation of Funds

(a) Reallocation.

(1) For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may reallocate funds to an eligible workforce area based on the applicable allocation method set forth in this subchapter and may modify the amount to be reallocated by considering the following:

(A) the amount specified in the Board's written request for additional funds;

(B) the ability of the Board to expend funds to address the need for services in the workforce area;

(C) Board performance during the prior program year; and

(D) related factors as necessary to ensure that funds are fully utilized.

(2) For WIA formula fund allocations, the Commission shall reallocate funds as provided in WIA §§128 and 133.

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board securing local funds), Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may consider whether a Board:

(A) has met targeted expenditure levels as required by §800.73(a) and (b) of this subchapter, as applicable, for that period;

(B) has not expended more than 100% of the workforce area's allocation for the category of funding;

(C) has demonstrated that expenditures conform to cost category limits for funding;

(D) has demonstrated the need for and ability to use additional funds;

(E) is current on expenditure reporting;

(F) is current with all single audit requirements; and

(G) is not under sanction.

(2) For a workforce area to be eligible for a reallocation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may consider whether a Board has met the level for securing and completing local match requirements set out in §800.73(c) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) -(G).

(3) For a workforce area to be eligible for a reallocation of WIA formula allocated funds, the Commission may consider whether a Board has met the obligation or expenditure requirement for the applicable category of WIA formula allocated funds applicable to the program year. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) - (G).

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

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SUBCHAPTER C. REALLOCATION OF FUNDS

40 TAC §§800.81 - 800.86

The repeal is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

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

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CHAPTER 809. CHILD CARE AND DEVELOPMENT

The Texas Workforce Commission (Commission) adopts amendments to Subchapter A. General Provisions, §809.2; Subchapter B. General Management Requirements, §809.20 and §809.15; Subchapter G. Child Care for People Transitioning off Public Assistance, §809.103 and §809.105; and Subchapter K. Funds Management, §§809.221 and 809.225, relating to child care services with changes to the proposed text as published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4848). The Commission adopts amendments to Subchapter A. General Provisions, §809.1; the repeal of Subchapter A. General Provisions, §809.5; amendments to Subchapter B. General Management Requirements, §809.11 and §809.14; Subchapter C. Requirements to Provide Child Care, §§809.43, 809.46-809.48; Subchapter D. Self-Arranged Care, §809.61; Subchapter G. Child Care for People Transitioning off Public Assistance, §809.101, §809.102 and §809.104; the repeal of Subchapter I. Child Care Training Center Pilot Programs, §§809.171-809.174; and amendments to Subchapter K. Funds

Management, §809.231 and §809.233 without changes to the proposed text. These rules will not be republished.

The purposes of amending the rules are to offer clarification of priorities for service, adjust the parent's share of cost provision, incorporate the new Texas Rising Star provider identity for Designated Vendors, which includes higher reimbursement rates, and remove unnecessary provisions.

The rule amendments continue to require placing eligible Choices, Transitional or Texas Workforce Applicants' children into care. However, the rule amendments make clear that if necessary, due to the limitation of funds, a child's care may be discontinued to ensure that the statutory and regulatory priorities receive child care services. Therefore, a Board must ensure that policies are in place for discontinuing child care services for families that are other than Choices, Transitional, or Texas Workforce Applicants if funding is limited. The amendments ensure that funds are used for low-income families who are working or are in training or educational activities and who must receive child care services to assist them in becoming self-sufficient.

The exemption to the parent's share of cost provision relating to Temporary Assistance for Needy Families (TANF) is changed to an exemption for Choices participants. The purpose for the rule change is to provide for the exemption from paying a parent's share of cost for persons participating in the Choices services or activities who are working, in training or in an education activity. The intent of the rule change is to encourage parents to voluntarily participate in Choices if they are still receiving TANF, thus making them eligible for a broader range of services and further assisting them in becoming self-sufficient. TANF recipients who are not mandatory or voluntary participants in a Choices service or activity will be responsible for paying the parent's share of cost as determined by the Board.

The rule amendments also remove the parent's share of cost exemption for Supplemental Security Income (SSI) recipients to provide for the exemption from the parent's share of cost to apply only to Choices participants.

The rule amendments replace the Designated Vendor title with the new Texas Rising Star provider identity. This title has been established in coordination with local Boards and contractors and more accurately describes the higher quality of care that is found in these facilities. In addition, the rule amendments incorporate references to the statutory change resulting from House Bill 3333, 76th Legislature, Regular Session (1999), which put into place a minimum five percent increase in the reimbursement rate for Designated Vendor (Texas Rising Star) providers as long as the rate does not exceed the published rate and incorporated a provision that each Board shall establish graduated reimbursement rates for child care based on the Texas Workforce Commission's Designated Vendor program. Specifically, the bill required that the reimbursement rate for Designated Vendors must be at least five percent greater than the maximum rate established for nondesignated vendors for the same category of care and that the Designated Vendor rate differential shall be funded with the federal Child Care and Development Funds (CCDF) dedicated to quality improvement activities.

The rule amendments remove certain portions of the rules that are obsolete or have expired, such as the child care training center pilot programs.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

In §809.1, subsection (b), the word "or" replaces the word "and". Also, in section (b), the phrase "continues to" is deleted, and the word "administer" is changed to plural form.

In §809.2, paragraphs (1) and (2), the definitions regarding the Board and Child Care are redefined which are consistent with §800.2. Changes have been made to paragraph (2) clarification purposes regarding the role of the Commission.

Section 809.5. Child Care State Advisory Committee is repealed in its entirety.

In §809.14, paragraph (3) of subsection (a), the phrase "Designed Vendor standards of" is replaced by the phrase "Texas Rising Star criteria as established by." In addition, the phrase "(formerly known as the Designated Vendor criteria)" is appended to the end of subsection (b). In subsection (d), the phrase "Designated Vendor" is replaced by the phrase "Texas Rising Star Provider."

In §809.15, subsection (b), the phrase "Designated Vendor criteria" is replaced by the phrase "Texas Rising Star Provider criteria." In addition, the phrase "(formerly known as the Designated Vendor criteria)" is appended to the end of subsection (b). In subsection (d), the phrase "Designated Vendor" is replaced by the phrase "Texas Rising Star Provider."

In §809.20, subsection (f), changes have been made for clarification purposes.

In §809.46, subparagraph (B) of paragraph (2) of subsection (a), the sentence was removed, and the subsequent subsections were renamed appropriately.

In §809.61, a new subsection (c) was inserted between subsection (b) and subsection (c). All subsections following the new subsection (c) were renamed appropriately.

In §809.103, subsection (c), the phrase "one year" was replaced by the phrase "12 months or until the family reaches the Board's income limit for eligibility, whichever occurs first. Subject to the availability of funds and the continuing employment of the parent(s), children who are otherwise eligible for at-risk child care and whose time limit for Applicant child care has expired, may be continued in care subject to the Board's policies for at-risk child care. At-risk care includes eligibility under any provision contained in Subchapter H of this title relating to Children of Parents At-Risk of Becoming Dependent on Public Assistance."

In §809.105, changes were made to clarify TDPRS Child Care.

Subchapter I. Child Care Training Center Pilot Programs is repealed in its entirety.

§809.221 was reworded entirely for clarification purposes.

In §809.225, subsection (c), the phrase "if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services (TDPRS) or its case worker indicates that the child is in need of protective services." was replaced by the phrase "if the children are otherwise eligible under the Board's child care policies and meet the minimum requirements for eligibility set forth in the federal regulations, and if it does not result in removing another child from care. Children Needing to Receive Child Protective Services (CPS) referred by a TDPRS CPS worker that are no longer funded through TDPRS

shall remain in care for the period of time determined appropriate by TDPRS. The provision of care shall not exceed six months and shall not result in another child being removed from care. In addition, the entire subsection (d) was deleted. Changes were made to these subsections to clarify TDPRS Child Care.

In §809.231, a new subsection (b) was added, subsequent subsections were renamed appropriately, and a new subsection (e) was added.

In§809.233, paragraph (1), each phrase stating "parent fees" was replaced by the phrase "parent's share of costs."

The Commission received comments on the rules from five commenters, which included:

the Alamo Workforce Development Board,

the Coastal Bend Workforce Development Board,

the North Central Workforce Development Board,

the Southeast Workforce Development Board, and

the West Central Workforce Development Board.

The commenters expressed support for the rules and one commenter asked questions related to the rules. The comment summaries and the responses are as follows:

Comment: Regarding §809.46, Assessing and Collecting Parent's Share of Cost, one commenter stated appreciation for the flexibility to review and assess families for the parent's share of cost. The commenter also stated that the proposed rule will provide the Board with the latitude of evaluating and determining any policy changes of assessing parent's share of cost to others if the financial circumstances require such action and that the parent's share of cost is one tool to assist the families in assuming the parental responsibilities that are a part of self-sufficiency.

The Commission agrees with the commenter's statements and appreciates the feedback on the proposed changes to the rules.

Comment: Regarding §809.105, one commenter recommended that if continued coordination with TDPRS is required, Boards should be able to count these children in the Board's performance measures.

Response: The Commission agrees that any child care services for former TDPRS children paid for out of the Commission's child care allocation to the local workforce development areas should be counted in the Board's performance measures. However, the performance targets stipulated by the Legislature for the Commission and Boards currently are based on the child care funds allocated by the Commission, which reflects the average number of children in care and excludes children receiving child care services funded by TDPRS.

Comment: Regarding §809.225, one commenter questioned why the TDPRS children should be given priority over other children in care, especially in the light of the demands for funds resulting from the expected increase in the number of Choices clients needing child care. The commenter explained that if the TDPRS refers a child to an open slot and fills that slot and then the following week a Choices eligible child needs care, there are no more available slots because the TDPRS child is filling that slot. Regarding §809.225(c), another commenter stated that it was not clear whether former TDPRS children will need to meet income guidelines as a requirement for receiving care.

Response: The Commission acknowledges that there are concerns regarding which children receive priority care. However, the Commission intends that, consistent with the Federal CCDF regulations at 45 CFR 98.44, children with special needs are given priority for care. Specifically, children needing protective services are included in the definition of "children with special needs" as reflected in the State's CCDF Plan. As §809.221 stipulates, TDPRS children that were formerly funded by TDPRS, who have been determined on a case-by-case basis by TDPRS to need protective services related child care (former TDPRS children needing protective services related child care) are in the second tier of priority and do not take precedence over children eligible for Choices and Transitional child care. TDPRS children that were formerly funded by TDPRS which have not been determined by TDPRS to need protective services related child care (former TDPRS funded children not needing protective services related child care) are not included in this priority; however, such children may be eligible for care as at-risk care. Sections 809.221 and 809.225 both indicate that continuing former TDPRS children determined to need protective services related child care after the children are no longer eligible for TDPRS funding is contingent on not requiring that another child be removed from care. Beyond those provisions, the Board is able to set further priorities related to former TDPRS children not determined to need protective services related child care.

Comment: Regarding §809.221(a)(2), one commenter recommended that in order to enhance the funds allocation flexibility to the Boards, it would be more feasible to allow Boards to set up priority groups to address local needs and the commenter agreed that Choices Child Care be listed as 1, Transitional Child Care listed as 2, Workforce Orientation for Applicants listed as 3 along with at risk, teen parents and children with disabilities. Regarding §809.103 and §809.221, another commenter stated that clarification is appreciated on the listing of priorities as well as the addition of TDPRS children in the second priority.

Response: The State and federal welfare reform work requirements demand that priority for child care services be given to parents participating in Choices activities. A reference to the Choices Child Care in state law may be found at Texas Human Resources Code Section 31.012(e) and is included in Child Care rules at Section 809.102. State law further establishes Transitional Child Care as a priority pursuant to Human Resources Code Section 31.0035(e). This priority is specified in the Child Care rules at 40 TAC §809.101. The Commission's own rules established Workforce Orientation Applicant (WOA) Child Care as a priority in order to provide assistance to parents to enable them to support themselves and their children. Child Care services may help parents continue working or attending school or training; thus saving time-limited benefits for the future. The Commission rule at 40 TAC §809.103 sets forth the provisions relating to Texas Workforce Applicant Child Care.

The priority for TDPRS children is a requirement as referenced in the Federal CCDF regulation at 45 CFR §98.44, which requires that children with special needs be given priority for care. "Children with Special Needs" as defined in the State's CCDF Plan, includes children needing protective services that were formerly funded by TDPRS and which TDPRS has on a case-by-case basis determined that the child needs protective services related Child Care.

Because of the statutory and policy rationale for the particular priorities as set forth in this response, the Commission does not see a need to move the priority for Texas Workforce Applicants to a lower priority. Once the referenced priorities are served, the Commission intends that Boards may exercise local flexibility

to establish other priority groups for child care services such as priorities for children in at-risk families, teen parents, and children with disabilities.

Comment: Regarding §809.231(b), one commenter stated that the Texas Rising Star providers have expressed concern about not being able to receive higher payments as a result of providing higher quality care because their published rate is under the Board's maximum rate. Private pay families force the provider's published rate to stay lower. The commenter suggested that the Commission might allow the payment of 5 percent over the published rate but not to exceed the Board's maximum rates, affecting more providers operating at lower rates.

Response: House Bill 3333, 76th Legislature, Regular Session (1999), which put into place a minimum five percent increase in the reimbursement rate for Texas Rising Star providers as long as the rate does not exceed the published rate and incorporated a provision that each Board shall establish a graduated reimbursement rate for child care based on the Texas Workforce Commission's Designated Vendor (Texas Rising Star) program. Specifically, the bill required that the reimbursement rate for Designated Vendors (Texas Rising Star Providers) must be at least five percent greater than the maximum rate established for nondesignated vendors for the same category of care and that the designated vendor rate differential shall be funded with the federal CCDF dedicated to quality improvement activities. The Boards have the flexibility to set maximum rates consistent with the Commission's rule at §809.231 regarding Provider Reimbursement Rates. The financial management reporting requirements dictate that the State may not pay more than the published or market rate for a service.

Comment: One commenter expressed appreciation for the changes to the rule that provide exemption for Choices participants rather than TANF recipients from the co-payment process because the commenter believes that this change will encourage individuals to voluntarily participate in the Choices program. The commenter also stated that the Commission has done well in eliminating unnecessary parts of the rule and adding local flexibility when possible.

Response: The Commission appreciates the support of and input from the Boards in commenting on the rules and providing valuable feedback to assist the Commission in setting policies designed to help working parents obtain and retain a job.

After consideration of the comments received and for the reasons stated, the Commission agrees to make some changes to the proposed language at this time.

For information about the Commission please visit our web page at www.texasworkforce.org.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.1, §809.2

The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.2. Definitions.

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

(1) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(2) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, Welfare-to-Work, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(3) Commission--The Texas Workforce Commission.

(4) Grant Recipient--The entity approved by the Commission under Texas Government Code §2308.263.

(5) Local workforce development area--The designated geographic area for which a Board provides services funded through the Commission, pursuant to Texas Government Code §2308.252.

(6) Parent--An individual responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, stepparent, or legal guardian.

(7) Provider--A person or entity that meets the minimum qualifications as set forth in this chapter for providing child care funded through the Commission. Unless specifically stated otherwise, the term "provider" does not refer to a self-arranged provider.

(8) Self-arranged provider--A person or entity that meets the minimum qualifications for providing self-arranged child care as set forth in this chapter.

(9) TANF--Temporary Assistance for Needy Families provided for under the federal Personal Responsibility and Work Opportunity Reconciliation Act and the Temporary Assistance for Needy Families block grant statutes and regulations, as amended.

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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John Moore
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40 TAC §809.5

The rule is repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44. Subchapter A. General Provisions

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

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SUBCHAPTER B. GENERAL MANAGEMENT REQUIREMENTS

40 TAC §§809.11, 809.14, 809.15, 809.20

The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.15. Quality Improvement Activities.

(a) A Board shall ensure that providers receive orientation, technical assistance, and ongoing training to improve the quality of child care.

(b) A Board shall ensure that the quality of child care is improved by recognizing providers who voluntarily exceed the minimum regulatory standards set by the Texas Department of Protective and Regulatory Services by using the Texas Rising Star Provider criteria (formerly known as the Designated Vendor criteria) as established by the Commission.

(c) A Board shall ensure that the quality of child care is improved by using quality improvement activities including, but not limited to, the activities described in 45 Code of Federal Regulations §98.51, except the Boards may not provide loans.

(d) In addition to the Texas Rising Star Provider criteria, a Board may establish other voluntary criteria for improving quality and recognize providers that meet or exceed the voluntary standards for quality.

(1) The quality improvement criteria may include, but are not limited to one or more of the following activities:

(A) reducing group sizes;

(B) improving health and safety conditions;

(C) improving linkage to parents and community services; or

(D) improving teacher training.

(2) Boards may also choose to recognize professional accreditation as a means to improve quality.

§809.20. Leveraging Local Resources.

(a) Leveraging Local Funds. The Commission encourages Boards to secure local public and private funds for match to the extent possible to leverage all available resources for child care needs in the community.

(1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:

(A) donations of funds from a private entity;

(B) transfers of funds from a public entity; or

(C) certifications of expenditures by a public entity that represent expenditures eligible for federal match.

(2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) Securing Local Funds to Access Federal Matching Funds from the Commission.

(1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.

(2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.

(c) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:

(1) the signature of the representative of the Board;

(2) the signature of the potential contributor;

(3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;

(4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and

(5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.

(d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.

(e) Completing Donations, Transfers and Certifications.

(1) A Board shall ensure that donations of cash and transfers of funds are paid to the Agency and that certifications are also submitted to the Agency.

(2) Donations and transfers are considered complete to the extent that the funds have been paid to the Agency.

(3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Agency that reflects that the public entity has expended a specific amount of funds on eligible child care services.

(f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in subsections (d) and (e) of this section and §800.72. Reporting Requirements.

(g) Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of unmatched federal funds available through the Commission do not exceed an amount that corresponds to the donations, transfers, and certifications that are completed by the end of the program year.

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

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SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.43, 809.46 - 809.48

The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

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

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SUBCHAPTER D. SELF-ARRANGED CARE

40 TAC §809.61

The rule amendment is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

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SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

40 TAC §§809.101 - 809.105

The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.103. Workforce Orientation Applicant Child Care.

(a) Children are eligible for Applicant Child Care if their parents meet the criteria for eligibility of children living at low incomes, as detailed in §809.121 of this chapter, (relating to Children Living At Low Incomes), and meet all of the following criteria:

(1) need child care to accept employment;

(2) receive a referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants; and

(3) locate employment prior to TANF certification.

(b) To receive Applicant Child Care, parents shall not have voluntarily terminated paid employment of at least 30 hours a week within 30 days prior to receiving the referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants, unless the voluntary termination was for good cause connected with the parent's work.

(c) Subject to the availability of funds and the continued employment of the parent(s), Applicant Child Care shall be provided for up to 12 months or until the family reaches the Board's income limit for eligibility, whichever occurs first. Subject to the availability of funds, children who are otherwise eligible for at-risk child care and whose time limit for Applicant child care has expired, may be continued in care subject to the Board's policies for at-risk child care. At-risk care includes eligibility under any provision contained in Subchapter H. of this title relating to Children of Parents at Risk of Becoming Dependent on Public Assistance.

§809.105. Children Receiving or Needing Protective Services.

(a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by the Texas Department of Protective and Regulatory Services (TDPRS). Child care continues as long as authorized and funded by the TDPRS.

(b) In closed TDPRS Child Protective Services cases (TDPRS cases) where child care is no longer funded by the TDPRS, the following shall apply:

(1) Former TDPRS Children Needing Protective Services Related Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working, or in an education or training activity, if the TDPRS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for the child care slot for up to six months after the TDPRS case is closed; and

(2) Former TDPRS Children Not Needing Protective Services Related Child Care. If the family meets income eligibility requirements of the Board and if the TDPRS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph (2) of this subsection, the parent must be working, or in a training or education activity.

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

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SUBCHAPTER I. CHILD CARE TRAINING CENTER PILOT PROGRAMS

40 TAC §§809.171 - 809.174

The rules are repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

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

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SUBCHAPTER K. FUNDS MANAGEMENT

40 TAC §§809.221, 809.225, 809.231, 809.233

The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.221. General Funds Management.

Boards shall ensure that resources are proportionately allocated among the following priority groups so that child care services are assured for the first priority group, and then subject to the availability of funds, the remaining priorities in descending order are served.

(1) The first priority group includes children of parents eligible for the following:

(A) Choices Child Care as referenced in 809.102; and

(B) Transitional Child Care as referenced in 809.101.

(2) The second priority group includes:

(A) children of parents eligible for Workforce Orientation Applicant Child Care; and

(B) children who need to receive protective services related child care as referenced in §809.105(b)(1) of this Chapter.

(3) The third priority group includes any other priority adopted by the Board, which may include but is not limited to:

(A) teen parents;

(B) children with disabilities; or

(C) other persons at risk of becoming dependent on public assistance that meet the income eligibility level as determined by the Board.

§809.225. Continuity of Care.

(a) General Principle. Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.

(b) Exceptions. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for one or more of the following types of priority child care:

(1) Choices Child Care under §809.102 of this Chapter,

(2) Transitional Child Care under §809.101 of this Chapter, or

(3) Workforce Orientation Applicant Child Care under §809.103 of this Chapter.

(c) Former Texas Department of Protective and Regulatory Services (TDPRS) children as referenced in §809.105(b)(1) of this Chapter shall also continue receiving child care funded through the Commission for the period chosen by TDPRS, which shall not exceed six months, so long as it does not result in another child being removed from care.

(d) Former TDPRS children as referenced in §809.105(b)(2) of this Chapter may continue receiving child care funded through the Commission if it does not result in removing another child from care.

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

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CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 813, Subchapter A. General Provisions, §813.1 and §813.2; Subchapter B. Expenditure of Funds, §§813.11-813.14; Subchapter C. Allowable Activities for Participants, §§813.21-813.23; Subchapter D. Support Services for Participants, §§813.31-813.33; Subchapter E. Complaints and Appeals, §§813.41-813.43; and new Chapter 813, Subchapter A. General Provisions, §§813.1-813.3; Subchapter B. Access to Employment and Training Activities and Support Services, §813.11 and §813.12; Subchapter C. Expenditure of Funds, §813.22; Subchapter D. Allowable Activities, §813.31 and §813.32; Subchapter E. Support Services for Participants, §813.41; and Subchapter F. Complaints and Appeals, §§813.51-813.53, without changes as published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4856). The rules will not be republished.

The purposes of the repeal and new rules are to support the expansion of Food Stamp Employment and Training (E&T) activities and support services statewide by aligning Food Stamp E&T, Choices, work search and complementary requirements associated with Unemployment Insurance, and other work-related services through the Texas Workforce Network, and to provide more flexibility to assist Boards in the integration of Food Stamp E&T activities and support services into the Texas Workforce Centers as set forth in 40 TAC Chapter 801 Subchapter B relating to the Texas Workforce Center Network. The purpose of the new rules is also to more clearly state the role of the Boards in the oversight and management of the delivery of Food Stamp E&T activities and support services.

Subchapter A sets out the General Provisions. Section 813.1 states the purpose, §813.2 sets out the definitions and terms used in this chapter, and §813.3 sets out the general Board responsibilities.

Subchapter B sets out the provisions for access to employment and training activities and support services. Section 813.11 sets out board responsibilities regarding access to Food Stamp E&T Activities and Support Services, and §813.12 sets out participant responsibilities.

Subchapter C sets out Expenditure of Funds. Section 813.21 states who is to be served, §813.22 states what funds are designated for able-bodied adults without dependents (ABAWDs).

Subchapter D sets out the Allowable Activities. Section 813.31 sets out the allowable activities for ABAWDs, and §813.32 sets out the activities for all Food Stamp E&T mandatory work registrants.

Subchapter E sets out the Support Services for Participants. Section 813.41 is the general provision on support services, §813.42 discusses Child Care services, and §813.43 discusses the transportation assistance.

Subchapter F sets out Complaints and Appeals. Section 813.51 addresses appeals of decisions made on food stamp applications and benefits, §813.52 addresses appeals of Food Stamp E&T activities and services decisions, and §813.53 addresses discrimination complaints.

Statutory Background: The Food Stamp Act of 1977 requires non-exempt adults at least 16 years of age but less than 60 years of age, referred to the Texas Workforce Commission by the Texas Department of Human Services, to register for work and take part in Food Stamp E&T activities and support services. Failure to comply with these requirements may result in disqualification from the receipt of Food Stamp benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires able-bodied food stamp recipients at least 18 years of age but less than 50 years of age with no dependent children (ABAWDs) to work or participate in specific activities in order to receive Food Stamp benefits. Failure of ABAWDs to comply with these federal requirements will limit their assistance to three out of thirty-six (36) months.

Food Stamp E&T activities and support services are funded with 100% federal grant funds (100% funds) as well as 50% federal and 50% state funds (50/50 funds). Regarding the 100% funds, the Balanced Budget Act of 1997 authorized additional funds for ABAWDs and mandated that states utilize at least eighty percent (80%) of the 100% funds for qualifying work activities for ABAWDs. The remaining twenty percent (20%) of the 100% funds may be used to provide work activities specified in the Texas Food Stamp E&T State Plan, approved by the U.S. Department of Agriculture, for all mandatory work registrants. The remaining twenty percent (20%) of funds are not subject to the restrictions placed upon the eighty percent (80%) of the federal funds. The 50/50 funds may be used for Food Stamp E&T activities in addition to support services such as Child Care, transportation, and other expenses to assist participants in Food Stamp E&T activities with becoming self sufficient.

Purpose: The purpose of the rule changes related to Food Stamp E&T activities and support services is to facilitate the maintenance and continuous improvement of the One-Stop Service Delivery Network as established in Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302. The rules provide the Boards with flexibility to more fully integrate Food Stamp E&T into the One-Stop Service Delivery Network. As part of the network, the goals of Food Stamp E&T activities and support services are consistent with and reflective of the Workforce Investment Act (WIA) one-stop principles and the principles of Texas' vision. The WIA principles are: streamlining services, empowering individuals, universal access, increased accountability, a strong role for Boards and the private sector, and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government, local control, personal responsibility, and support for strong families.

The oversight and management by Boards of the delivery of Food Stamp E&T activities and support services outlined in the rules are intended to emphasize the role of the Boards in providing a seamless network of information and services that is

responsive to the individual needs of customers, including persons engaged in the Food Stamp E&T activities and support services. The Commission intends that the Food Stamp E&T activities and support services be fully integrated through the available one-stop centers with the added flexibility identified in the rules.

The Commission received two comments on the rules. The commenters expressed support and agreement with the new rules. The two commenters included the Coastal Bend Workforce Development Board and the West Central Workforce Development Board. Comment summaries and responses are as follows.

One commenter expressed general support for all of the rules and expressed appreciation for the inclusion of additional activities in the rules that allow local areas to provide services in an integrated approach by allowing provision of activities similar to other workforce funding streams. Regarding §813.31 and §813.32, another commenter expressed support for the improvement the new rules provide over the current system. The commenter stated that the new rules allow Boards to better integrate Food Stamp services into Workforce activities, and offer a more positive approach to assisting Food Stamp clients, via the provisions to more basic skills, GED, and vocational training as well as a range of supportive services.

Response: The Commission appreciates the Boards' support of the new Food Stamp E&T Rules. The Commission agrees that the inclusion of additional activities will enhance integration by allowing the provision of services similar to other workforce funding streams. The Commission also agrees that this may help with the recruitment and enrollment of Food Stamp work registrants and increase their ability to secure employment and promote long-term self-sufficiency.

Comment: Regarding § 813.41(c)(1), one commenter indicated that the listing of Child Care as an allowable support service for Food Stamp clients was included in the rule and that currently the Board's Food Stamp E&T Child Care allocation was only sufficient to provide full time care for a few children. The commenter stated that the new rules should allow services to many more non-ABAWDs with children, and thus greatly increase the need for Child Care funding. The commenter also indicated that once the Food Stamp E&T Child Care allocation is exhausted, the only other source of funding would be Child Care allocation for Income Eligible children, which will be limited in FY2002 due to the increase in anticipated Choices clients and their need for Child Care. The commenter further suggested that the rules should allow Boards to reassign the Food Stamp E&T allocation as needed for Child Care.

Response: The Commission appreciates the concerns regarding the availability of Child Care funds for Food Stamp E&T participants. Regarding the ability to reassign a portion of the Food Stamp E&T allocation to the Food Stamp E&T Child Care allocation, the General Appropriations Act set the amount of child care funds for Food Stamp E&T participants at $200,000 for the state. The Commission recognizes that expansion of these services statewide could also produce growth in the need for child care services among the general Food Stamp population that has work requirements, and would accept requests from the Boards to increase the Food Stamp E&T Child Care allocation as funds are needed . Such a request might be fulfilled through the deobligation and reallocation process, before consideration is given to a transfer of additional funds into the Food Stamp E&T Child Care strategy. The Commission would also note that the work requirement only applies to Food Stamp recipients with children age 6 or older. Boards may be able to minimize the need for child care in this group by offering Food Stamp E&T component activities during school hours. The Commission will continue to analyze the Boards' expenditure patterns for Food Stamp E&T Child Care funds as the expansion to statewide coverage of the E&T program transpires.

After considering the comments and responses, the Commission does not see a need for the changes to the rules as proposed.

For information about the Commission please visit our web page at www.texasworkforce.org.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §813.1, §813.2

The rules are repealed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

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 August 14, 2001.

TRD-200104693
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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40 TAC §§813.1 - 813.3

The new rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the new rules.

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 August 14, 2001.

TRD-200104695
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER B. EXPENDITURE OF FUNDS

40 TAC §§813.11 - 813.14

The rules are repealed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

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 August 14, 2001.

TRD-200104694
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

40 TAC §813.11, §813.12

The new rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the new rules.

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 August 14, 2001.

TRD-200104696
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER C. ALLOWABLE ACTIVITIES FOR PARTICIPANTS

40 TAC §§813.21 - 813.23

The rules are repealed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

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 August 14, 2001.

TRD-200104698
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER C. EXPENDITURE OF FUNDS

40 TAC §813.22

The new rule is adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the new rule.

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 August 14, 2001.

TRD-200104697
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER D. SUPPORT SERVICES FOR PARTICIPANTS

40 TAC §§813.31 - 813.33

The rules are repealed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

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 August 14, 2001.

TRD-200104702

John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §813.31, §813.32

The new rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the new rules.

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 August 14, 2001.

TRD-200104701
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER E. COMPLAINTS AND APPEALS

40 TAC §§813.41 - 813.43

The rules are repealed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

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 August 14, 2001.

TRD-200104699
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

40 TAC §813.41

The new rule is adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the new rule.

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 August 14, 2001.

TRD-200104700
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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SUBCHAPTER F. COMPLAINTS AND APPEALS

40 TAC §§813.51 - 813.53

The new rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the new rules.

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 August 14, 2001.

TRD-200104703
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: September 3, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 463-2573

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Agency Rule Review Plan (Revised)

Texas Department of Criminal Justice

Title 37, Part 6

Filed: August 15, 2001

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Proposed Rule Reviews

Texas Department on Aging

Title 40, Part 9

In accordance with Texas Government Code Annotated §2001. 039, Review of Existing Agency Rules, the Texas Department on Aging will review and consider for re-adoption, repeal or amendment Chapter 253, concerning State Aging Plan. The rules to be reviewed are located in Title 40, Part 9, Chapter 253 of the Texas Administrative Code and contain the following sections:

253.3

The rules are being reviewed to determine whether the reasons for which they initially were adopted continue to exist. Changes to the rules that may be proposed by the Texas Board on Aging will appear in the "Rules Proposed" 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.

Comments on the proposed rule review can be submitted to: Gary Jessee, Aging Network Policy Coordinator, Texas Department on Aging, P. O. Box 12786, Austin, Texas 78711. All comments must be received within 30 calendar days following the date of publication of the proposed new rules in the *Texas Register*.

TRD-200104787
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: August 16, 2001

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In accordance with Texas Government Code Annotated §2001. 039, Review of Existing Agency Rules, the Texas Department on Aging will review and consider for re-adoption, repeal or amendment Chapter 254, concerning Operation of the Texas Department on Aging. The rules to be reviewed are located in Title 40, Part 9, Chapter 254 of the Texas Administrative Code and contain the following sections:

254.1, 254.3, 254.5, 254.7, 254.9, 254.11, 254.13, 254.15, 254.17, 254.19, 254.21-254.24, 254.35

The rules are being reviewed to determine whether the reasons for which they initially were adopted continue to exist. Changes to the rules that may be proposed by the Texas Board on Aging will appear in the "Rules Proposed" 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.

Comments on the proposed rule review can be submitted to: Gary Jessee, Aging Network Policy Coordinator, Texas Department on Aging, P. O. Box 12786, Austin, Texas 78711. All comments must be received within 30 calendar days following the date of publication of the proposed new rules in the *Texas Register*.

TRD-200104788
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: August 16, 2001

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In accordance with Texas Government Code Annotated §2001. 039, Review of Existing Agency Rules, the Texas Department on Aging will review and consider for re-adoption, repeal or amendment Chapter 255, concerning State Delivery Systems. The rules to be reviewed are located in Title 40, Part 9, Chapter 255 of the Texas Administrative Code and contain the following sections:

255.39

The rules are being reviewed to determine whether the reasons for which they initially were adopted continue to exist. Changes to the rules that may be proposed by the Texas Board on Aging will appear in the "Rules Proposed" 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.

Comments on the proposed rule review can be submitted to: Gary Jessee, Aging Network Policy Coordinator, Texas Department on Aging, P. O. Box 12786, Austin, Texas 78711. All comments must be received within 30 calendar days following the date of publication of the proposed new rules in the *Texas Register*.

TRD-200104789
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: August 16, 2001

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In accordance with Texas Government Code Annotated §2001. 039, Review of Existing Agency Rules, the Texas Department on Aging will review and consider for re-adoption, repeal or amendment Chapter 260, concerning Area Agency on Aging Administrative Requirements. The rules to be reviewed are located in Title 40, Part 9, Chapter 260 of the Texas Administrative Code and contain the following sections:

260.1-260.3, 260.11, 260.14, 260.15, 260.17, 260.19, 260.21

The rules are being reviewed to determine whether the reasons for which they initially were adopted continue to exist. Changes to the rules that may be proposed by the Texas Board on Aging will appear in the "Rules Proposed" 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.

Comments on the proposed rule review can be submitted to: Gary Jessee, Aging Network Policy Coordinator, Texas Department on Aging, P. O. Box 12786, Austin, Texas 78711. All comments must be received within 30 calendar days following the date of publication of the proposed new rules in the *Texas Register*.

TRD-200104790
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: August 16, 2001

♦ ♦ ♦

In accordance with Texas Government Code Annotated §2001. 039, Review of Existing Agency Rules, the Texas Department on Aging will review and consider for re-adoption, repeal or amendment Chapter 270, concerning General Service Requirements. The rules to be reviewed are located in Title 40, Part 9, Chapter 270 of the Texas Administrative Code and contain the following sections:

270.1-270.3, 270.5-270.9, 270.11, 270.13, 270.15, 270.17, 270.19, 270.21

The rules are being reviewed to determine whether the reasons for which they initially were adopted continue to exist. Changes to the rules that may be proposed by the Texas Board on Aging will appear in the "Rules Proposed" 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.

Comments on the proposed rule review can be submitted to: Gary Jessee, Aging Network Policy Coordinator, Texas Department on Aging, P. O. Box 12786, Austin, Texas 78711. All comments must be received within 30 calendar days following the date of publication of the proposed new rules in the *Texas Register*.

TRD-200104832
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: August 17, 2001

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Texas Certified Self-Insurer Guaranty Association

Title 28, Part 3

Texas Certified Self-Insurer Guaranty Association Title 28 The Texas Certified Self-Insurer Guaranty Association files this notice of intention to review the rule contained in Chapter 181 concerning By-Laws of the Texas Certified Self-Insurer Guaranty Association. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB 178, 76th Legislature.

The agency's reason for adopting the rule contained in this chapter continues to exist and it proposes to readopt Chapter 181.

Comments regarding whether the reason for adopting this rule continues to exist must be received by 5:00 p.m. on September 30, 2001 and submitted to Judy Roach, Executive Director, Texas Certified Self-Insurer Guaranty Association, 98 San Jacinto Boulevard, 1600 San Jacinto Center, Austin, TX 78701.

Chapter 181. By-Laws of the Texas Certified Self-Insurer Guaranty Association.

TRD-200104925
Judy Roach
Executive Director
Texas Certified Self-Insurer Guaranty Association
Filed: August 21, 2001

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Office of the Governor

Title 1, Part 1

The Office of the Governor files this notice of intent to review Texas Administrative Code, Title 1, Part 1, Chapters 3 (Criminal Justice Division) and 5 (Budget and Planning Office).

The review is in accordance with the requirements of the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years. The review shall assess whether the reasons for the rules continue to exist.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Heather Morgan, Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711; or via fascimille at (512) 475-2042.

TRD-200104801
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 16, 2001

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Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code,

Part 1, Chapter 37. Maternal and Infant Health Services, Subchapter K. Epilepsy Program, §§37.211 - 37.224.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, 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 these 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, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200104945
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 21, 2001

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 289. Radiation Control, Subchapter F. License Regulations, §289.254, and Subchapter G. Registration Regulations, §289.301.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, 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 these 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, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200104943
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 21, 2001

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Texas Savings and Loan Department

Title 7, Part 4

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 65, relating to loans and investments of savings and loan associations, pursuant to §2001.039, Government Code. The Commission will accept comments for 20 days following publication of this notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of this chapter is scheduled for the Commission's meeting on October 19, 2001.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. 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 20 day public comment period prior to final adoption or repeal by the Commission.

TRD-200104927
Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
Filed: August 21, 2001

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The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 67, relating to savings and deposit accounts of savings and loan associations, pursuant to §2001.039, Government Code. The Commission will accept comments for 20 days following publication of this notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of this chapter is scheduled for the Commission's meeting on October 19, 2001.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. 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 20 day public comment period prior to final adoption or repeal by the Commission.

TRD-200104928
Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
Filed: August 21, 2001

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The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 69, relating to reorganization, merger, consolidation, acquisition, and conversion of savings and loan associations, pursuant to §Government Code. The Commission will accept comments for 20 days following publication of this notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of this chapter is scheduled for the Commission's meeting on October 19, 2001.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this

chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. 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 20 day public comment period prior to final adoption or repeal by the Commission.

TRD-200104929
Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
Filed: August 21, 2001

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The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Chapter 73, relating to subsidiary corporations of savings and loan associations, pursuant to §2001.039, Government Code. The Commission will accept comments for 20 days following publication of this notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of this chapter is scheduled for the Commission's meeting on October 19, 2001.

The Texas Savings and Loan Department, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by e-mail to pledger@TSLD.state.tx.us. 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 20 day public comment period prior to final adoption or repeal by the Commission.

TRD-200104930
Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
Filed: August 21, 2001

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Adopted Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 82 (§§82.1-82.2), relating to Custody of Criminal History Record Information; Open Records Requests; and Charges pertaining to Administration, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

Notice of the review was published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 5075). No written comments were received with respect to these rules. The Office of Consumer Credit Commissioner which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist.

The commission readopts these sections, pursuant to the requirements of Government Code, §2001.039, and finds that the reason for adopting these rules continues to exists.

TRD-200104815
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 17, 2001

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Texas Department of Criminal Justice

Title 37, Part 6

The Texas Department of Criminal Justice (department) has reviewed Chapter 160, concerning Receipt and Disbursement of Work Program Residents' Earned Funds and amendments have been made to all existing sections. Chapter 153, concerning Internal Inquiries has been reviewed and the agency's reason for adopting continues to exist. Chapter 192, concerning Parole Board and Parole Division Administrative Matters, containing only one section, has been repealed. Chapter 195, concerning Parole, has been reviewed and §§195.72 - 195.75 have been readopted. The remaining sections contained amendments and the repeal of §195.61. Chapter 197, concerning Mandatory Supervision, contained only one section, which has been repealed. Any changes to the rules as a result of this adopted review have been published in the *Texas Register*.

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.

TRD-200104771
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 15, 2001

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State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Title 22, Part 7

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) has completed and adopts the rules review of Title 22, Examining Boards, Part 7, State Committee of Examiners in the Fitting and Dispensing of hearing Instruments, Chapter 141, Fitting and Dispensing of Hearing Instruments. Notice of the proposed rules review was published in the September 17, 1999, issue of the Texas Register (24 TexReg 7773).

As a result of the rules review, the committee adopted the repeal of §141.18, amendments to §§141.1 - 141.8, 141.11, and 141.13 - 141.17, and 141.19 - 141.22, and new §141.18 The committee also adopts §§141.9 - 141.10, and 141.12 that were proposed for readoption without changes because no needed revisions were identified during the review and no comments were received and was published in the proposed preamble in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1955).

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The department has determined that reasons for readopting the sections continue to exist. The adopted preamble and rules are being published in this same issue under the Adopted Rules Section.

TRD-200104946

Michael Shobe

Chairman

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Filed: August 21, 2001

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Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Sections 9-10, 76th Legislature, and Texas Government Code §2001.039, as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the June 15, 2001 issue of the *Texas Register*, (26 TexReg 4517) the Texas Workers' Compensation Commission (the commission) has reviewed and considered for readoption the following sections in Title 28, Part II of the Texas Administrative Code

CHAPTER 148. HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS §148.1. Scope and Applicability §148.2. Definitions §148.3. Requesting a Hearing §148.4. Notice of Hearing §148.5. Statement of Matters Asserted §148.6. Venue §148.7. Appearance and Representation §148.8. Withdrawal of Hearing Request §148.9. Informal Disposition §148.10. Filing Instruments; Furnishing Copies §148.11. APA Prehearing Conference §148.12. Request for Alternative Dispute Resolution §148.13. Discovery and Production of Documents and Tangible Things for Inspection, Copying or Photographing §148.14. Subpoenas; Depositions §148.15. Ex Parte Communications §148.16. Conduct and Decorum §148.17. Hearing Officer's Authority §148.18. Parties' Rights in Hearings §148.19. Failure to Appear §148.20. Recording the Hearing §148.21. Evidence §148.22. Decision of the Hearing Officer §148.23. Proposal For Decision by the Hearing Officer §148.24. Special Provisions for Administrative Penalties §148.25. Record of the Hearing §148.26. Transcript or Duplicate of the Hearing Audiotape §148.27 Reimbursement, Travel Expenses, and Fees for Witnesses and Deponents §148.28. Expenses to be Paid by Party Seeking Judicial Review CHAPTER 149. MEMORANDUM OF UNDERSTANDING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS §149.1 General Statement §149.2 Definitions §149.3 Referral of Contested Case to SOAH §149.4 Notice of Hearing §149.5 Filing Requirements §149.6 Hearings §149.7 Final Orders in Accordance with the Act §411.049, §413.031 and §415.034 §149.8 Proposals for Decision in Accordance with the Act, §402.072, §407.046, and §408.023 §149.9 Custody of the Hearing Record §149.10 Transition of Hearings from the Commission to SOAH

The commission has assessed whether the reason for adopting or readopting these rules continues to exist. The commission received one comment that addressed several rules in Chapter 148 and Chapter 149.

CHAPTER 148

COMMENT:

The Commenter specifically objected to the re-adoption of §§148.1-148.5, §§148.7-148.10, §§148.12-148.14, §§148.17-148.19, §148.21, and §148.25. These objections were based on a variety of issues ranging from constitutional issues to conflicts with SOAH rules and processes. RESPONSE: The commission disagrees that the need for the 17 mentioned rules no longer exists and that the rules should not be re-adopted. However, the commission does agree that the rules in Chapter 148 warrant re-visiting. By law, the commission's procedural rules govern procedural matters if SOAH has adopted the commission's procedural rules. The existing memorandum of understanding (MOU) between SOAH and the commission was adopted through the rulemaking process in 1995 and includes procedural matters. SOAH is currently in the active process of amending their procedural rules, and the commission continues to monitor the progress of that rulemaking effort. The commission plans to revisit the MOU and the rules in both Chapter 148 and 149 as soon as the new SOAH rules are adopted and become available. The commission believes that it is important to maintain our current procedural rules in place until such time as we have the opportunity to review the new SOAH rules that may re-define these areas. The commission does not believe that it would be the most responsible use of agency time and resources to make changes to commission rules based on current SOAH rules that are known to be in the process of revision. The commenter asked several questions and made several suggestions for amendments to the rules. While these comments are beyond the scope of this review, they are noted by the commission and will be made available to the team that reevaluates the rules from Chapters 148 and 149 after the new SOAH rules become available.

CHAPTER 149

COMMENT:

The commenter's main objections were to the re-adoption of 17 rules in Chapter 148. After commenting on the Chapter 148 rules the Commenter stated that the foregoing comments apply equally to the proposed rules in Chapter 149.

RESPONSE:

The commission disagrees. As previously stated in the response to the public comment received for the sections in Chapter 148, the Commission plans to re-visit not only the rules in Chapter 148 but also the rules in Chapter 149 once the new SOAH procedural rules have been adopted. Again, the commission does not believe it would be the most responsible use of agency time and resources to make changes to commission rules based on current SOAH rules that are known to be in the process of revision.

As a result of the review, the commission has determined that the reason for adoption of these rules continues to exist. Therefore, the commission readopts these rules If the commission determines that any of these rules should be revised, the revision will be accomplished in accordance with the Administrative Procedure Act.

TRD-200104910

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: August 20, 2001

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Texas Youth Commission

Title 37, Part 3

In accordance with the General Appropriation Act, Article IX, Section 167, 75th Legislature, the Texas Youth Commission is adopting the review of Title 37, Part 3, Chapters 111, 117, 119, and 125 concerning Contracting for Services Other Than Youth Services, Interstate Compact On Juveniles, and Agreements With Other Agency. The proposed rule review was published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4747).

The Commission has determined that the reason for adopting these rules continues to exist.

The Commission proposes no amendments, repeals, or withdraws to the chapter's 111, 117, 119, and 125.

Comments or questions pertaining to this notice should be directed to Sherma Cragg, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765 or e-mail sherma.cragg@tyc.state.tx.us.

TRD-200104831

Steve Robinson
Executive Director
Texas Youth Commission
Filed: August 17, 2001

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §5.1(c)(1)

IMPORTANT NOTICE TO HOME LOAN BORROWERS

READ THIS NOTICE TO GIVE YOU IMPORTANT INFORMATION THAT CAN HELP YOU, PROTECT YOU, AND MAYBE SAVE YOU MONEY.

◆WHY AM I RECEIVING THIS NOTICE?

Texas law requires your lender to give you this Notice when you apply for a home loan with an interest rate of 12% or greater.

◆CAN HOUSING COUNSELING REALLY HELP ME?

Yes. Contacting a housing counselor before closing might save you hundreds or thousands of dollars. Borrowing money with your home as collateral is a complicated process. Housing counselors understand this process and the documents used. Do not sign any documents until you have read and understand them. You are entitled to have your own attorney review any documents before closing the loan.

◆ARE THERE HOUSING COUNSELING AGENCIES NEAR ME?

Yes. To find a housing counseling agency near you, look at the list of HUD-approved housing counseling agencies your lender gave you. For additional copies call HUD: 888-466-3487 or www.hud.gov, or the Texas Finance Commission: 866-303-4636 or www.fc.state.tx.us.

◆ARE ALL HOME LOANS AND LENDERS THE SAME?

No. It is important to shop around. Be sure to obtain all cost information. Compare these costs to other lenders' costs. A nearby housing counseling agency can help you.

◆WHERE CAN I GET MORE INFORMATION OR FILE A COMPLAINT?

If you have questions or complaints, call or email the Texas Finance Commission Home Loan Hotline: 866-303-4636 or homeloaninfo@fc.state.tx.us. Other resources include:

Texas Department of Banking: www.banking.state.tx.us
Texas Office of Consumer Credit Commissioner: www.occc.state.tx.us
Texas Savings & Loan Department: www.tsld.state.tx.us
U.S. Consumer Gateway: www.consumer.gov
HUD: www.hud.gov
Fannie Mae: www.homepath.com
Federal Reserve: www.federalreserve.gov/consumers.htm

OFFICIAL STATE OF TEXAS NOTICE REGARDING HIGH COST HOME LOANS

The loan you have applied for may be a "high-cost home loan" as defined by state and federal law. Look at everything you earn and everything you owe and then ask yourself if you can afford to make the payments when due.

If you can't afford this loan, you may lose your home.

Figure: 7 TAC §80.22(a)

Form A

Conditional Qualification Letter

Date:

Prospective Applicant:

Mortgage Broker:

License Number _____

Address _____

Phone # _____

Loan (describe as follows):

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage Broker	has	has not	received a signed application for the Loan from the Prospective Applicant
Mortgage Broker	has	has not	reviewed the Prospective Applicant's credit report
Mortgage Broker	has	has not	reviewed the Prospective Applicant's credit score

Mortgage Broker has reviewed the following additional items (list):

The Prospective Applicant has provided the Mortgage Broker verbally in writing with information about the Prospective Applicant's income, available cash for a down payment and payment of closing costs, debts, and other assets.

Based on the information that the Prospective Applicant has provided to the Mortgage Broker, as described above, the Mortgage Broker has determined that the Prospective Applicant is eligible and qualified to meet the financial requirements of the Loan.

This is not an approval for the Loan. Approval of the Loan requires: (1) the Mortgage Broker to verify the information that the Prospective Applicant has provided; (2) the Prospective Applicant's financial status and credit report to remain substantially the same until the Loan closes; (3) the collateral for the Loan (the subj ect property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the Loan, as described, to remain available in the market; (5) the Prospective Applicant to execute loan documents the lender requires, and (6) the following additional items (list):

_____

Mortgage Broker

Figure: 7 TAC §80.22(b)

Form B

Conditional Approval Letter

Date:

Applicant:

Mortgage Broker:

License No.:_____

Address:_____

Phone: _____

Loan (describe as follows):

Loan Amount:

Interest Rate:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Points:

Origination: _____

Discount: _____

Commitment: _____

Other (describe): _____

Loan Type and Program:

Secondary financing terms (if applicable):

Subject Property:

Mortgage Broker has received a signed application from the Applicant.

Mortgage Broker has reviewed Applicant's credit report and credit score and has verified Applicant's income, available cash for a down payment and closing costs, debts, and other assets.

Applicant is approved for the Loan provided that the Applicant's creditworthiness and financial position do not materially change prior to closing and provided that:

(1) The Subject Property is appraised for an amount not less than $_____ .
(2) The Lender does not object to encumbrances to title shown in the title commitment or survey;
(3) The Subject Property's condition meets Lender's requirements
(4) The Subject Property is insured in accordance with Lender's requirements;
(5) The Applicant executes the loan documents Lender requires; and
(6) The following additional conditions are complied with (list):

This Conditional Approval expires on _____.

_____
Mortgage Broker

Figure: 25 TAC §143.9(d)(2)

TYPE OF LIMITED CERTIFICATE	CLINICAL INSTRUCTION (# OF CLOCK HOURS)	CLINICAL EXPERIENCE (# OF CLOCK HOURS)
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
Chiropractic	60	100
Podiatric	4	50

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 State Affordable Housing Corporation

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on September 7, 2001 at 12:00 Noon, at the Dallas Public Library, Polk-Wisdom Branch, 7151 Library Lane, Dallas, Texas, 75232, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $81,000,000, the proceeds of which will be loaned to HIC Arborstone Baybrook, L.L.C., an Internal Revenue Code §501(c)(3) corporation, to finance the acquisition and rehabilitation of three separate multifamily housing properties (collectively, the "Properties") located in the cities of Dallas and Houston, Texas. The public hearing, which is the subject of this notice, will concern the Arborstone Apartments containing 536 units, located at 6940 South Cockrell Hill Road, Dallas, Texas. The Properties will be owned by HIC Arborstone Baybrook, L.L.C.

All interested parties are invited to attend such public hearing to express their views with respect to the Properties and the issuance of the Bonds. Questions or requests for additional information may be directed 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 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 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.org.

TRD-200104960

Daniel C. Owen
Vice President
Texas State Affordable Housing Corporation
Filed: August 22, 2001

♦ ♦ ♦

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on September 10, 2001 at 5:00 p.m., at the Harris County Public Library, Freeman Branch, 16602 Diana Lane, Houston, Texas 77062, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $81,000,000, the proceeds of which will be loaned to HIC Arborstone Baybrook, L.L.C., an Internal Revenue Code §501(c)(3) corporation, to finance the acquisition and rehabilitation of three separate multifamily housing properties (collectively, the "Properties") located in the cities of Dallas and Houston, Texas. The public hearing, which is the subject of this notice, will concern the Baybrook Village Apartments containing 776 units, located at 2702 West Bay Area Boulevard, Houston, Texas and Crescent Oaks Apartments containing 429 units, located at 6718 DeMoss, Houston, Texas. The Properties will be owned by HIC Arborstone Baybrook, L.L.C.

All interested parties are invited to attend such public hearing to express their views with respect to the Properties and the issuance of the Bonds. Questions or requests for additional information may be directed 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 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 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.org.

TRD-200104961
Daniel C. Owen
Vice President
Texas State Affordable Housing Corporation
Filed: August 22, 2001

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Texas Department on Aging

Service Providers for Area Agencies on Aging

The Texas Department on Aging oversees the delivery of services for the elderly of Texas through contracts with Area Agencies on Aging located throughout the state. These 28 Area Agencies on Aging are currently seeking qualified entities to contract with to provide services which may include, but are not limited to: Congregate Meals, Home Delivered Meals, Transportation Services, Personal Assistance, Homemaker as well as other related services.

Parties interested in providing services to the elderly must contact the Area Agency on Aging operating within their service area to obtain information relating to vendor open enrollment, requests for proposals (RFP), the contracting process, the types of services being considered and the actual funding available.

Identified below is a comprehensive list of all Area Agencies on Aging, contact information, addresses, telephone numbers and service areas:

ALAMO AAA

Ms. Maggie Schreier, Director

8700 Tesoro, Suite 700

San Antonio, Texas 78212

Ph: 210-362-5200

1-800-960-5201

Fax: 210-225-5937

E-mail: garriaga@aacog.com

Counties Served: Atascosa, Bandera, Comal, Frio, Gillespie, Guadalupe, Karnes, Kendall, Kerr, Medina and Wilson

ARK-TEX AAA

Ms. Maratha Smith, Manager

122 Plaza West 75501

P.O. Box 5307

Texarkana, Texas 75505-5307

Ph: 903-832-8636

1-800-372-4464

Fax: 903-832-3441

E-mail: Aaa@atcog.org

Counties Served: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River and Titus

BEXAR COUNTY AAA

Mr. Robert L. Zepeda, Director

8700 Tesoro, Suite 700

San Antonio, Texas 78212

Ph: 210-362-5207

1-800-960-5201

Fax: 210-225-5937

E-mail: rzepeda@aacog.dst.tx.us

Counties Served: Bexar

BRAZOS VALLEY AAA

Mr. Ronnie Gipson, Director

1706 E. 29th (77802)

P.O. Drawer 4128

Bryan, Texas 77805-4128

Ph: 979-775-4244

1-800-994-4000

Fax: 979-775-3466

E-mail: rgipson@bvcog.org

Counties Served: Brazos, Burleson, Grimes, Leon, Madison, Robertson and Washington

CAPITAL AAA

Ms. Glenda Rogers, Director

2512 South IH 35, Suite 340

Austin, Texas 78704-5798

Ph: 512-916-6062

1-888-622-9111

Fax: 512-916-6042

E-mail: grodgers@capco.state.tx.us

Counties Served: Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis and Williamson

CENTRAL TEXAS AAA

Mr. H. Richard McGhee, Director

302 East Central Avenue

P.O. Box 729

Belton, Texas 76513

Ph: 254-939-1886

1-800-447-7169

Fax: 254-933-7521

E-mail: dir14@vvm.com

Counties Served: Bell, Coryell, Hamilton, Lampasas, Milam, Mills and San Saba

COASTAL BEND AAA

Ms. Betty Lamb, Director

2910 Leopard

P.O. Box 9909

Corpus Christi, Texas 78469

Ph: 361-883-5743

1-800-817-5743

Fax: 361-883-5749

E-mail: betty@cbcog98.org

Counties Served: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio and San Patricio

CONCHO VALLEY AAA

Ms. Betty Ford, Director

4850 Knickerbocker Road (76904)

P.O. Box 60050

San Angelo, Texas 76906

Ph: 915-944-9666

1-800-728-2592

Fax: 915-944-9925

E-mail: betty@cvcog.org

Counties Served: Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Schleicher, Sterling, Sutton and Tom Green

DALLAS COUNTY AAA

Mr. Norman Moorehead, Director

400 N. St. Paul, Suite 200

Dallas, Texas 75201-6804

Ph: 214-871-5065

1-800-548-1873

Fax: 214-871-7442

E-mail: daaa@onramp.net

Counties Served: Dallas

DEEP EAST TEXAS AAA

Ms. Holly Anderson, Director

274 East Lamar

Jasper, Texas 75951

Ph: 409-384-5704 or 409-384-5704

Fax: 409-384-9092

1- 800-435-3377

E-mail: handerson@detcog.org

Counties Served: Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity and Tyler

EAST TEXAS AAA

Mr. Claude I. Andrews, Director

3800 Stone Road

Kilgore, Texas 75662

Ph: 903-984-8641

1-800-442-8845

Fax: 903-983-1440

E-mail: Claude.Andrews@twc.state.tx.us

Counties Served: Anderson, Camp, Cherokee, Gregg, Harrision, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, VanZandt and Wood

GOLDEN CRESCENT AAA

Ms. Cindy Cornish, Director

568 Big Bend Drive

P.O. Box 2028

Victoria, Texas 77902

Ph: 361-578-1587

1-800-574-9745

Fax: 361-578-8865

E-mail: cindyco@gcrpc.org

Counties Served: Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca and Victoria

HARRIS COUNTY AAA

Ms. Charlene Hunter-James, Director

8000 North Stadium Drive, 3rd Floor

Houston, Texas 77054

Ph: 713-794-9001

1-800-213-8471

Fax: 713-794-9238

E-mail: CJAMES@HLT.CI.HOUSTON.TX.US

Counties Served: Harris

HEART OF TEXAS AAA

Mr. Donald R. Smith, Director

300 Franklin Avenue

Waco, Texas 76701

Ph: 254-756-7822

1-800-460-2121

Fax: 254-756-0102

E-mail: don@hot.cog.tx.us

Counties Served: Bosque, Falls, Freestone, Hill, Limestone and McLennan

HOUSTON-GALVESTON AAA

Mr. Curtis Cooper, Manager

3555 Timmons Lane, Ste 500 (77027)

P.O. Box 22777

Houston, Texas 77227

Ph: 713-627-3200

1-800-437-7396

Fax: 713-993-4578

E-mail: ccooper@hgac.cog.tx.us

Counties Served: Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Walker, Waller and Wharton

LOWER RIO GRANDE VALLEY AAA

Mr. Jose L. Gonzalez, Director

311 N. 15th Street

McAllen, Texas 78501-4705

Ph: 956-682-3481

1-800-365-6131

Fax: 956-682-8852

E-mail: kjones@lrgvdc1.vt.com

Counties Served: Cameron, Hidalgo and Willacy

MIDDLE RIO GRANDE VALLEY AAA

Ms. Gloria Perez, Director

307 W. Nopal Street

P.O. Box 1199

Carrizo Springs, Texas 78834

Ph: 830-876-3533

1-800-224-4262

Fax: 830-876-9415

E-mail: Gloria.perez@twc.state.tx.us

Counties Served: Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde, Val Verde and Zavala

NORTH CENTRAL TEXAS AAA

Ms. Doni Van Ryswyk, Manager

616 Six Flags Drive, Suite 200 (76011)

P.O. Box 5888

Arlington, Texas 76005-5888

Ph: 817-695-9194

1-800-272-3921

Fax: 817-695-9274

E-mail: doni@dfwinfo.com

Counties Served: Collin, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell and Wise

NORTH TEXAS AAA

Ms. Rhonda K. Pogue, Director

4309 Jacksboro Hwy., Ste 200 (76302-2745)

P.O. Box 5144

Wichita Falls, Texas 76307-5144

Ph: 940-322-5281

1-800-460-2226

Fax: 940-322-6743

E-mail: rpogue@texasconnection.org

Counties Served: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger and Young

PANHANDLE AAA

Ms. Jamie Goldston, Director

415 West 8th 79101

P.O. Box 9257

Amarillo, Texas 79105-9257

Ph: 806-372-3381

1-800-642-6008

Fax: 806-373-3268

E-mail: jgoldston@prpc.cog.tx.us

Counties Served: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher and Wheeler

PERMIAN BASIN AAA

Ms. Sue Fielder, Director

2910 Laforce Blvd.

P.O. Box 60660

Midland, Texas 79711

Ph: 915-563-1061

1-800-491-4636

Fax: 915-563-1728

E-mail: sfielder@pbaging.intanets.com

Counties Served: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward and Winkler

RIO GRANDE AAA

Mr. Adan Dominguez, Director

1100 North Stanton, Suite 610

El Paso, Texas 79902

Ph: 915-533-0998

1-800-333-7082

Fax: 915-544-5402

E-mail: a.dominguez@riocog.com

Counties Served: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis and Presidio

SOUTH EAST TEXAS AAA

Ms. Roxanne Smith Parks, Director

3501 Turtle Creek Drive #108

Port Arthur, Tx. 77642

P.O. Drawer 1387

Nederland, Texas 77627

Ph: 409-721-5465

1-800-395-5465

Fax: 409-724-1863 or 409-727-4078

E-mail: aaasetx.director@readynet.net

Counties Served: Hardin, Jefferson and Orange

SOUTH PLAINS AAA

Mr. Pete Lara, Director

1323 58th Street (79412)

P.O. Box 3730 / Freedom Station

Lubbock, Texas 79452

Ph: 806-762-8721

1-800-858-1809

Fax: 806-765-9544

E-mail: spagage@hub.ofthe.net

Counties Served: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry and Yoakum

SOUTH TEXAS AAA

Mr. Albert Rivera Jr., Aging Services Director

1718 E. Calton Road

P.O. Box 2187

Laredo, Texas 78044-2187

Ph: 956-722-3995

1-800-292-5426

Fax: 956-722-2670

E-mail: stdc@border.net

Counties Served: Jim Hogg, Starr, Webb and Zapata

TARRANT COUNTY AAA

Ms. Janet Pacatte, Director

210 East Ninth Street

Fort Worth, Texas 76102

Ph: 817-258-8081

1-877-886-4833

Fax: 817-258-8092

E-mail: jpacatte@onramp.net

Counties Served: Tarrant

TEXOMA AAA

Ms. Janis Thompson, Director

3201 Texoma Parkway, Suite 220

Sherman, Texas 75090

Ph: 903-813-3580

Fax: 903-813-3515

1-800-677-8264

E-mail: jthompson@texoma.cog.tx.us

Counties Served: Cooke, Fannin and Grayson

WEST CENTRAL TEXAS AAA

Ms. Gail Kaiser, Director

1025 East North 10th Street

P.O. Box 3195

Abilene, Texas 79604

Ph: 915-672-8544

1-800-928-2262

Fax: 915-675-5214

E-mail: aaa@abilene.com

Counties Served: Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Kent, Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephens, Stonewall, Taylor and Throckmorton

TRD-200104958
Gary Jessee
Aging Network Policy Coordinator
Texas Department of Aging
Filed: August 22, 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 August 10, 2001, through August 16, 2001. The public comment period for these projects will close at 5:00 p.m. on September 21, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: Halls Petroleum, Inc.; Location: The project is located off State Highway 562, northeast of Smith Point, near Lake Surprise, in the South Mayes Gas Field, in Chambers County, Texas. The site can be located on the U.S.G.S. Lake Stephenson quadrangle map. Approximate UTM Coordinates: Zone 15; Easting: 334400; Northing: 3270300. CCC Project No.: 01-0298-F1; Description of Proposed Action: The applicant proposes to construct a 300- by 300-foot drill pad for oil and gas exploration and production. In the event that the well is productive, the well pad will be reduced to a minimum production area, approximately 100 feet by 100 feet. The remainder of the drill site will be restored to pre-project contours and revegetated. The applicant is now offering mitigation to compensate for impacts to 2.1 acres of wetlands. The applicant has coordinated with the Texas Parks and Wildlife Department to drill a water well and install associated piping on a Wildlife Management Area (WMA) located adjacent to Highway 562. The well would maintain appropriate water levels in 3 existing freshwater ponds within the WMA's boundaries. Upon completion of the installation of the well and piping, the maintenance of the ponds will be delegated to TPWD. Type of Application: U.S.A.C.E. permit application #22273 (Revised) is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Tejas South Pipeline Partnership; Location: The project is located at Mitchell Point and runs through Mitchell Bay through

the San Jacinto River to Alexander Island in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled La Porte, Texas. Approximate UTM Coordinates: Zone 15; Easting: 303601; Northing: 3290214. CCC Project No.: 01-0299-F1; Description of Proposed Action: The applicant proposes to abandon in place portions of two 30-inch pipelines and one 10-inch pipeline. The pipeline abandonment will be within approximately 150 feet from the shorelines. The abandoned lines will be filled with a slurry grout. At 150 feet from the Alexander Island shoreline, the pipelines are located 13 feet below the mud line and approximately 30 feet below mean low tide. At this location, the cut point is approximately 18 feet below mean low tide. The abandoned pipelines will be 920 feet from the expanded ship channel. The pipeline must be removed to accommodate the widening and deepening of the Houston Ship Channel. The purpose of the abandonment along the shorelines is to maintain stability of the shorelines of Alexander Island and Mitchell Point and to protect a solid waste management site. The shoreline of Alexander Island is currently a small, unprotected, vegetated bluff that appears to be eroding. The shoreline will be stabilized with riprap this summer by the Corps of Engineers. The removal of the pipelines along this shoreline would require excavation of a large area which would degrade the integrity of the shoreline stabilization project and would impact the levees of the dredged material placement area. Type of Application: U.S.A.C.E. permit application #4044(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Western Towing Company; Location: The project is located at the north bulkhead line of the Tule Lake Channel west of the Bulk Terminal Dock Number 2 near Torch Petroleum in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Corpus Christi, Texas. Approximate UTM Coordinates: Zone 14; Easting: 650900; Northing: 3077830. CCC Project No.: 01-0300-F1; Description of Proposed Action: The applicant proposes to conduct hydraulic dredging and install fifteen, 3-pipe pile breasting dolphins to provide fleeting access to accommodate barges. Approximately 97,000 cubic yards of material will be excavated and placed in the South Shore Dredge Material Placement Area (Cell C), owned by the Port of Corpus Christi and located immediately north of the project site. Type of Application: U.S.A.C.E. permit application #22421 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Ridgewood Baptist Church; Location: The project site is located at 6920 Memorial Boulevard in Port Arthur, Jefferson County, Texas. CCC Project No.: 01-0302-F1; Description of Proposed Action: The applicant requests authorization to retain fill placed into 0.95 acres of jurisdictional wetlands without a Department of Army permit. Approximately 1,500 cubic yards of fill material was used to fill the wetland area. The purpose of the fill was to construct a church, school, daycare, senior adult complex, and associated parking areas. Some of these structures have already been completed. In addition, the applicant proposes to fill the remaining 0.2 acres of wetlands located on their property. A playground will be constructed in this area. Type of Application: U.S.A.C.E. permit application #22434 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review of this project may be conducted by the Texas Natural Resource Conservation Commission, as part of its certification under Section 401 of the Clean Water Act.

Applicant: EEX Operating LP; Location: The project is located in State Tracts 52, 69, and 72 in Trinity Bay, offshore Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 321000; Northing: 328000. CCC Project No.: 01-0303-F1; Project Description: The applicant requests an Oil Field Development Permit to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include the placement of drilling vessels on location to drill and produce wells and to subsequently install wellhead protection structures and associated production flowlines upon successful completion of the wells. Eight temporary, 3-pile clusters will be installed to moor the equipment barges and will be removed upon completion of the drilling operations. Shell pads, measuring approximately 250 feet by 100 feet and 3-feet thick may be installed in the area around the well locations. Type of Application: U.S.A.C.E. permit application #22440 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Nester Flores; Location: The project site is located on the San Bernard River at 6326 County Road 659, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Cedar Lane NE, Texas. Approximate UTM Coordinates: Zone 15; Easting: 242946; Northing: 3199409. CCC Project No.: 01-0304-F1; Project Description: The applicant proposes to reclaim a 235-square-foot-area of land in order to construct a bulkhead. The proposed reclamation would require approximately 133 cubic yards of fill material. The bulkhead would allow the applicant to extend his property line from the existing bulkhead to be equal with that of the adjacent property owner located to the northwest of the project site. The water depth at the proposed bulkhead is 1-foot mean low tide. Additionally, the applicant proposed to replace a 47-foot by 4-foot existing pier with an L-head pier. The pier will extend 47 feet from the proposed bulkhead and have a width of 6 feet. A 10-foot by 10-foot section will be added to the northwest side of the pier to create the L-head. The total area of the pier will be 382 square feet. Type of Application: U.S.A.C.E. permit application #22420 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Gulf Road Development, Inc.; Location: The project site is located at 7600 Gulf Road, in Hitchcock, Galveston County, Texas. The project site can be located on U.S.G.S. quadrangle: Hitchcock, Texas. The UTM coordinates are: Zone: 15; Easting: 305532; Northing: 3244657. CCC Project No.: 01-0307-F1; Project Description: The applicant proposes to develop a Type I Municipal Solid Waste Disposal Facility for the proper disposal and daily cover of non-hazardous municipal and industrial solid waste for the greater Galveston County area to insure an uninterrupted resource. The creation of the proposed facility will involve excavation; construction of a hurricane protection levee, drainage channels, and detention/sedimentation basin; construction of underdrain and leachate collection systems; construction of an impervious liner; disposal and daily cover of non-hazardous municipal waste, and placement of a final earthern cap in accordance with Texas Natural Resource Conservation Commission rules and regulations. Approximately 164,800 cubic yards of fill material will be placed within 86.7 acres of jurisdictional waters of the United States, including 0.21 acres of tidally-influenced waters, 38.43 acres of non-tidal waters, and 48.06 acres of adjacent wetlands. To compensate for the wetland impacts, the applicant proposes to take the following actions: 1) restore and enhance five areas of prairie wetlands, totaling 29.06 acres, that drain into Basford Bayou; 2) create approximately 44.49 acres of prairie wetlands; 3) create 38.5 acres of semi-permanently inundated areas within the proposed detention ponds and enhance 0.73 acres of ponded areas to accommodate migratory waterfowl as mitigation for the 38.37 acres of open water areas within and near the main sand mining area; and 4) create approximately 0.91 acres of new tidally-influenced channels as outfall for the project and to connect the existing seismic ponds into Basford Bayou. In addition, a total of 33.05 acres of upland prairie buffers will be restored in and around all of the mitigation sites. All exotic species will be removed, and the area will be

managed through annual mowings and herbicide applications, as necessary. Cattle grazing will be terminated for the entire mitigation area. The entire 146.7 acres of the mitigation area, including buffers, will be deed-restricted as a "Wetlands Mitigation Preserve" and the restrictions filed of record in the Galveston County Deed Records. Type of Application: U.S.A.C.E. permit application #22388 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review of this project may be conducted by the Texas Natural Resource Conservation Commission, as part of its certification under Section 401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information 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-200104966
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 22, 2001

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 08/27/01 - 09/02/01 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 08/27/01 - 09/02/01 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/01 - 09/30/01 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/01 - 09/30/01 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200104920
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 21, 2001

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Credit Union Department

Application for Foreign Credit Union to Operate a Branch Office

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Lennox Employees Credit Union, Marshalltown, Iowa to operate a Foreign (out-of-state) Branch Office at 1209 S. Haltom Road, Fort Worth, Texas.

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-200104955
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2001

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Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was filed by OmniAmerican Credit Union, Fort Worth, Texas, to amend its Articles of Incorporation to add a new section, Section 10, relating to indemnification of directors and officers who act in good faith, while serving in their official capacity, from personal liability.

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-200104954
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2001

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Applications 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 OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Las Colinas Medical Center who work in or are paid from Irving, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of ConAgra Grocery Products who work in or are paid from Fort Worth, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would

permit employees of The Nordam Group Texas who work in or are paid from Fort Worth, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Dallas-Fort Worth Auto Auction who work in or are paid from Fort Worth, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Charlie's Chicken who work in or are paid from Fort Worth, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Perfect Choice Limousine Service who work in or are paid from Fort Worth, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Reliance Aeroproducts International, Inc. who work in or are paid from Mansfield, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Broder, Pineider & Ford, LLP who work in or are paid from Southlake, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Woodard's Janitorial Services who work in or are paid from Irving, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Minyard Pharmacy 5003 who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Fraser Mining & Industrial Supply who work in or are paid from Mansfield, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of STL Logistics who work in or are paid from Grapevine, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of B.TRADE.COM who work in or are paid from Irving, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Internal, Sports & Occupational Medicine, who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Steve Perkins, M.D., P.A. who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Mohammad Khalid, M.D., who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Metroplex Auto Body who work in or are paid from Euless, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Myron H. Watkins, M.D., P.A. who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of American Industrial Tire who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Texas Oncology, P.A. who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Dallas Obstetric & Gynecologic Association who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Drain DR who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Dallas Neuropsychiatry Associates, P.A. who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of PR Services, LC who work in or are paid from Euless, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Edgewater Group, LC who work in or are paid from Euless, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of EB Services, LC who work in or are paid from Euless, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of BR Services Group, LC who work in or are paid from Euless, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Petro Services, LC who work in or are paid from Euless, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would

permit employees of Kohl's Department Stores, Inc. who work in or are paid from Cedar Hill, Texas, Keller, Texas and Southlake, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200104953
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2001

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Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Kegans State Jail Visitation Awning, Requisition Number: 696-SJ-1-B039.

The Contract was awarded to Luebe-Jones dba Air Vent Remodeling and Design Center, as a full award for a dollar amount of $30,172.

TRD-200104947
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 22, 2001

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Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the TYC McLennan County Phase II Expansion - Mart, Texas, Requisition Number: 696-TY-1-B011.

The Contract was awarded to Sedalco, Inc., 2554 East Long Avenue, Ft. Worth, Texas 76137-4801,as a full award for a dollar amount of $23,306,000. Part of the award went to HUB vendor: Millennium Mechanical Systems, Inc., 17250 Dallas Parkway #270, Dallas, Texas 75248.

TRD-200104948
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 22, 2001

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Notice to Bidders

The Texas Youth Commission invites bids for the Construction and Renovation of the Brownwood State School at Brownwood, Texas. The project consists of removal of 24,533 square feet. existing roofs at the Administration and Education buildings at the Sanctions Unit to include installation of a new built-up roof system. Construction of a pedestrian Security Vestibule at the Sanctions Unit will include a metal detector, interlocking door system and camera surveillance. Also, replacement of a Sanitary Sewer System. Work includes (ex. civil, architectural, mechanical, electrical, plumbing, security electronics, structural, concrete and steel), as further shown in the Contract Documents prepared by : Aguirre & Associates, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner.

Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

Contractor must be bondable and insurable at the levels required.

All Bids must be accompanied by a Bid Guarantee in the amount of 5.0% of greatest amount bid. Bid Guarantee may be in the form of a Bid Bond or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $50 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Aguirre & Corporation, 12700 Park Central Drive, Floor 15, Dallas, Texas 75251, ATTN: Rob Lanter; Phone: (972) 788-1508; FAX: (972) 788-1583.

A Pre-Bid conference will be held at 9AM on 06 September 2001, at the Brownwood State School Unit, Brownwood, Texas, followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2PM on 27 September, 2001, in the Contracts & Procurements Conference Room at the Texas Department of Criminal Justice located in the West Hill Mall, Two Financial Plaza , Suite 525, Huntsville, Texas.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200104963
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 22, 2001

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Monthly PAC Report due December 5, 2000

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

David P. Lancaster, Texas Architects Committee, 816 Congress #970, Austin, Texas 78701

Don L. King, Sensitive Care PAC, 500 N. Akard Street #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly PAC Report due November 6, 2000

David P. Lancaster, Texas Architects Committee, 816 Congress #970, Austin, Texas 78701

Don L. King, Sensitive Care PAC, 500 N. Akard Street #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly PAC Report due October 5, 2000

Don L. King, Sensitive Care PAC, 500 N. Akard Street #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly PAC Report due September 5, 2000

Raymond R. Hernandez, International Longshoremen's Assoc. Local #24, 7811 Harrisburg, Houston, Texas 77012

Don L. King, Sensitive Care PAC, 500 N. Akard Street #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly PAC Report due August 7, 2000

Don L. King, Sensitive Care PAC, 500 N. Akard Street #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly PAC Report due July 5, 2000

Don L. King, Sensitive Care PAC, 500 N. Akard Street #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Semiannual PAC Campaign Finance Report due July 17, 2000

Sheila A. Holbrook-White, Texas Citizen Action PAC, P.O. Box 10231, Austin, Texas 78756

W. Howell Branum, PSI PAC, 510 E. 22nd Street, Lombard, IL 60148

Angie S. Perez, Ysleta Educators PAC, 10110 Montwood #D, El Paso, Texas 79925

Josephine Z. Chavez, Texas Political & Legislative Committee, USA District #12 PAC Fund, 12821 Industrial Road, Houston, Texas 77015

Joe P. Barnett, Citizens For Honesty in Taxation, P.O. Box 13162, Arlington, Texas 76094

G. Daniel Mena, Unity 94 El Paso County, 3233 N. Piedras, El Paso, Texas 79930-3703

Jorge B. Haynes, International Bank of Commerce Comm. for Improvement & Betterment of the Country, P.O. Box 1359, Laredo, Texas 78044

Vicki L. Hoover, Rockwall County Democratic Party PAC, 6209 Scenic Drive, Rowlett, Texas 75088

Emil Pena, Hispanic PAC, 1111 Caroline #2507, Houston, Texas 77010

Steven A. Bennett, Friends of Sandy Kress, John Sharp, Paul Hobby, David Cain & Royce West, 1700 Pacific Avenue #4100, Dallas, Texas 75201

William M. Eastland, Texans for Freedom, P.O. Box 13162, Arlington, Texas 76094-0162

Alfred Adask, Equity Under All Law, 9494 Forest Lane #159, Dallas, Texas 75243

Ted Lewis, Denton County Democratic Party, P.O. Box 297, Denton, Texas 76202

Fred Lehmann, Grayson County Democratic Party PAC, 100 N Travis Street #206, Sherman, Texas 75090-0014

Vidal G. DeLeon, McLennan County Mexican Americans for Better Government PAC, 1619 Baylor Avenue, Waco, Texas 76706

Pat Stevens, South Denton County PAC, 2025 Aspen Drive, Highland Village, Texas 75067

William M. Eastland, Texans for Freedom in Education, P.O. Box 13162, Arlington, Texas 76094-0162

William M. Eastland, Free Republican Caucus, P.O. Box 13162, Arlington, Texas 76094-0162

Ronald L. Robertson, Port Arthur Police Association PAC, 4001 Memorial Blvd. #133, Port Arthur, Texas 77642

Johnny Atkinson, Committee for Better Education, HC 1 Box 624A, Goodrich, Texas 77335-9704

J. R. Tyson, DOG PAC, P.O. Box 1326, Alvin, Texas 77512

H. J. Johnson, Pleasant Wood Pleasant Grove PAC, P.O. Box 150408, Dallas, Texas 75305-0408

William E. Muirhead, Muirhead Election Committee, 158 Countrywood Est., Cleveland, Texas 77327

Winston Holt, Jr., Gray County Republican Party Executive Committee (CEC), 2301 Christine, Pampa, Texas 79065

Joe P. Barnett, Independent Committee Supporting John B. Hawley for Supreme Court, Pl. 1, P.O. Box 13162, Arlington, Texas 76094

Daniel L. Easterly, Fund to Take Back Texas Prisons, 1500 S. Dairy Ashford #115, Houston, Texas 77077

Carole L. Smith, Private Providers Assn. of Texas PAC, 8711 Burnet Road #E53, Austin, Texas 78757

Fred Lehmann, Texoma PAC, 100 N Travis Street, #206, Sherman, Texas 75090-0014

Caryl Bunton, ASSIST PAC, P.O. Box 55763, Houston, Texas 77255

Charles B. Wilkison, Brothers United for Building a Better America, Texas, 400 W. 14th Street #200, Austin, Texas 78701

Michael H. Jones, Voices of the Elephant, 5744 Danciger Drive, Fort Worth, Texas 76112-3951

Clarence B. Bagby, Houston Historic Preservation PAC, 2003 Kane Street, Houston, Texas 77007-7612

David Jackson, Republican Communications Network PAC, P.O. Box 703936, Dallas, Texas 75370-3936

Fernando Contreras, Jr., Southside Democrats, P.O. Box 37278, San Antonio, Texas 78237-0278

Nancy Hrobar, Van Zandt County Assn. of Taxpayers, 14232 FM 773, Ben Wheeler, Texas 75754

Daniel K. Cook, Green Party of Dallas/Fort Worth, P.O. Box 2501, Arlington, Texas 76004

Frank Fuentes, Hispanic Contractors Assn. De Tejas, Inc. PAC, 4100 Ed Bluestein #201, Austin, Texas 78721

Raul E. Ruiz, Stonewall Democrats - Houston, 3730 Kirby Drive #418, Houston, Texas 77098

Floyd E. Hodges, Jr., Texans for Good Government, 280 W Renner Road #2611, Richardson, Texas 75081

Karen K. Tarry, Doctors for Better Government, 5615 Morningside Drive #402, Houston, Texas 77005

Melanie A. Curtsinger, Tarrance for Texas Senate, 716 Hogan Drive, Conroe, Texas 77302

Patricia L. Wagner, AFGE 1920 PAC, P.O. Box 841, Killeen, Texas 76540-0841

Lance R. West, Lead America Political Action Committee, 2001 Brady Avenue #6, Brownwood, Texas 76801

Bill Burdock, Eagle Mountain Political Fund, 714 South Saginaw, Saginaw, Texas 76179

David T. LaPlante, San Antonio Coalition of Politically Active Christians, P.O. Box 460834, San Antonio, Texas 78246

Deadline: Semiannual C/OH Campaign Finance Report due July 17, 2000

Lynda Akin, 5868 Westheimer Road #302, Houston, Texas 77057-5641

Daniel L. Alford IV, P.O. Box 275, Caldwell, Texas 77836

David Arevalo, 627 Delaware, San Antonio, Texas 78210

Kathleen Ballanfant, 5160 Spruce, Bellaire, Texas 77401

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104

Burgess Beall, 111 Evergreen Circle, Georgetown, Texas 76626-4805

Stephen P. Birch, 4911 Haverwood Lane #2924, Dallas, Texas 75287-4440

Howard Bridges Jr., 434 W. Kiest Blvd. #100, Dallas, Texas 75224

Maria D. Burbridge, 7202 Smokey Hill Road, Austin, Texas 78736

Mary D. Guevara Capello, P.O. Box 6031, Laredo, Texas 78042-6031

Shene Casey, 256 CR 3101, Greenville, Texas 75402

Anna L. Cavazos Ramirez, 1820 Houston #B, Laredo, Texas 78040

Chloe N. Daniel, P.O. Box 810570, Dallas, Texas 75381-0570

Jeanne M. Doogs, 300 Trinidad Court, Fort Worth, Texas 76126

Richard N. Draheim, Jr., 339 Henry M. Chandler's Dr., Rockwall, Texas 75032-2439

Russell L. Duerstine II, 3202 Sunset Drive, San Angelo, Texas 76904

Deborah Dunsinger, 450 El Dorado #1303, Webster, Texas 77598

Philip L. Durgin, 2511 Shiloh Drive, Austin, Texas 78745-6936

William M. Eastland, P.O. Box 13162, Austin, Texas 76094-0162

Dan Engel, 2608 Greenwood, Arlington, Texas 76013

Jack D. Ewing, 2938 Meadowbrook Drive, League City, Texas 77573

Gerald P. Flanagan II, P.O. Box 123, Argyle, Texas 76226

Baltazar Garcia, 712 McDaniel, Houston, Texas 77022

Edward T. Garcia, P.O. Box 3202, Freeport, Texas 77541

Juan A. Garcia, 1101 S. Cameron, Alice, Texas 78332

Mario Garcia, 735 West 10th, Mercedes, Texas 78570

Joseph E. Gardner Jr., P.O. Box 6637, Corpus Christi, Texas 78466-6637

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Thomas L. Gatton, 2320 Southwest Freeway #C, Houston, Texas 77098

Samuel Gonzalez, 15721 Maiden Lane, Houston, Texas 77053

Arthur Granado, P.O. Box 638, Corpus Christi, Texas 78403

Grant U. Hardeway Sr., 28 Thornhill Oaks Court, Houston, Texas 77015

David M. Hart, P.O. Box 79034, Saginaw, Texas 76179

Robert Ashton Herrera, P.O. Box 37177, San Antonio, Texas 78237-0177

Samuel W. Hudson III, P.O. Box 150972, Dallas, Texas 75315-0972

James D. Jepson, 208 S. Pecos Street, Fort Stockton, Texas 79735

Dennis Jones, P.O. Box 1027, Lufkin, Texas 75902

S. Christopher LaRue, 10878 Westheimer Road #373, Houston, Texas 77042-3202

Raymundo Mancera, 2319 Tremont Avenue, El Paso, Texas 79930-1113

Alberto T. Martinez, P.O. Box 549, San Diego, Texas 78384

Michael E. McLelland, 918 Antelope, Corpus Christi, Texas 78401

Robert H. Mendoza, P.O. Box 5566, Brownsville, Texas 78523-5566

Steve Mendoza, P.O. Box 291216, San Antonio, Texas 78229-1216

Norbon E. Mitchell, 1709 Martel, Fort Worth, Texas 76103

Nancy J. Moffat, P.O. Box 92656, Southlake, Texas 76092

William E. Muirhead, 158 Countrywood Est., Cleveland, Texas 77327

Pat Mullen, P.O. Box 160910, Austin, Texas 78716-0910

Lloyd W. Oliver, P.O. Box 271503, Houston, Texas 77277

Alice Oliver-Parrott, 480 Thunder Canyon Road, Canyon Lake, Texas 78133-5459

Morris L. Overstreet, P.O. Box 12817, Austin, Texas 78711

James Partsch-Galvan, 1611 Holman, Houston, Texas 77004

Robert L. Penrice, 2000 Professional Building, Loop 197, Texas City, Texas 77590

Fernando R. Ramirez, 2735 Lakeshore Drive, Port Arthur, Texas 77640

Christina M. Ryan, 27129 Paula Lane, Conroe, Texas 77385

Roger Q. Settler, 6263 McNeil Drive Apt. 1731, Austin, Texas 78729-7590

Victor Smith, 1423 W. Red Bird Lane, Dallas, Texas 75232

Juan F. Solis III, 907 W. Kirk, San Antonio, Texas 78226

Aubrey R. Thoede, 1408 South Eldridge Parkway, PMB 138, Houston, Texas 77077-1699

Mark T. Villasana, 4131 Beaver Brook Lane, Dallas, Texas 75229

Melva Washington-Becnel, 2403 Arbor, Houston, Texas 77004

Larry M. Wessels, P.O. Box 340, LaGrange, Texas 78945

Brian Winn, 2507 47th Street, Lubbock, Texas 79413

Michael Yarbrough, 1314 Texas Avenue #515, Houston, Texas 77002

TRD-200104853
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: August 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	Amend -ment #	Date of Action
Ennis	PRHC Ennis LP	L05427	Ennis	00	07/30/01
Houston	Baylor College of Medicine	L05436	Houston	00	08/09/01
Houston	Richmond Imaging Affiliates LTD	L05455	Houston	00	07/31/01
Throughout Tx	Engineering Consulting Services LTD	L05451	San Antonio	00	0731/01
Webster	Bharat Patel MD PA	L05444	Webster	00	08/08/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	Abilene Cardiology Consultants PA	L04315	Abilene	24	08/13/01
Arlington	Columbia Medical Ctr of Arlington Subsidiary LP	L02228	Arlington	52	08/07/01
Arlington	Radiology Associates of Tarrant County PA	L05109	Arlington	13	08/10/01
Austin	Austin Radiological Association	L00545	Austin	95	08/09/01
Austin	Heart Hospital IV LP	L05215	Austin	06	08/07/01
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	86	08/09/01
Bryan	St Joseph Regional Health Center	L00573	Bryan	56	08/09/01
Cleburne	Walls Regional Hospital	L02039	Cleburne	16	08/02/01
Cleburne	Walls Regional Hospital	L02039	Cleburne	17	08/07/01
Columbus	Columbus Community Hospital	L03508	Columbus	09	08/06/01
Conroe	Drilling Specialties Company	L04825	Conroe	06	08/06/01
Corpus Christi	Associates in Heart Disease	L05023	Corpus Christi	06	08/06/01
Corpus Christi	Radiology & Imaging of South Texas LLP	L05182	Corpus Christi	05	08/10/01
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	65	08/10/01
Dallas	Baylor University Medical Center	L01290	Dallas	54	08/14/01
Dallas	Cardiovascular Consultants LLP	L04627	Dallas	06	08/13/01
Dallas	Doctors Hospital	L01366	Dallas	40	08/09/01
Dallas	Mallinckrodt Inc	L03580	Dallas	41	08/02/01
Dallas	Saint Paul Medical Center	L01065	Dallas	56	08/06/01
Denton	Network Cancer Care of Denton	L05348	Denton	06	08/10/01
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	12	08/01/01
Georgetown	Georgetown Healthcare System	L03152	Georgetown	25	07/31/01
Glen Rose	Somervell County Health Care Authority	L03225	Glen Rose	15	08/02/01
Houston	Cardiovascular Ventures of West Houston Inc	L04882	Houston	12	08/01/01
Houston	Interventional Cardiology Associates	L05294	Houston	02	08/14/01
Houston	Lyondell Citgo Refining LP	L00187	Houston	51	08/16/01
Houston	Memorial Hermann Hospital System	L00439	Houston	74	08/02/01
Houston	Parkway Hospital Inc	L01964	Houston	40	08/03/01
Houston	Rice University	L01772	Houston	17	08/10/01
Houston	Syncor International Corporation	L01911	Houston	109	08/14/01
Houston	University Of Texas MD Anderson Cancer Center	L00466	Houston	76	07/31/01

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Kingsville	Christus Spohn Health System	L02917	Kingsville	25	07/31/01
Laredo	Laredo Regional Medical Center	L02192	Laredo	20	08/08/01
Lubbock	Covenant Medical Center	L00483	Lubbock	114	08/09/01
Lubbock	Texas Tech University	L01536	Lubbock	68	08/08/01
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	66	08/03/01
Lubbock	University Medical Center	L04719	Lubbock	43	08/07/01
Mexia	Parkview Regional Hospital Nuclear Medicine Dpt	L05144	Mexia	14	08/03/01
Mexia	Parkview Regional Hospital Nuclear Medicine Dpt	L05144	Mexia	15	08/10/01
Midlothian	TXI Operations LP	L01421	Midlothian	36	08/13/01
North Richland Hills	COR Specialty Associates of North Texas PA	L05399	North Richland Hills	02	08/09/01
Plano	Columbia Medical Center	L02032	Plano	51	08/09/01
Round Rock	Columbia / ST Davids Healthcare System LP	L03469	Round Rock	29	07/31/01
San Antonio	Baptist Health System	L00455	San Antonio	103	08/13/01
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	158	08/01/01
Sherman	Wilson N Jones Memorial Hospital Inc	L02372	Sherman	23	08/13/01
Temple	Kings Daughters Hospital	L00666	Temple	40	08/06/01
The Woodlands	Enchira Biotechnology Corporation	L04773	The Woodlands	08	08/16/01
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	68	08/16/01
Throughout Tx	Century Inspection Inc	L00062	Dallas	94	08/16/01
Throughout Tx	Ground Technology Inc	L05125	Houston	04	08/16/01
Throughout Tx	HTS Inc Consultants	L02757	Houston	12	08/16/01
Throughout Tx	Industrial Fabricators Inc	L04935	Texas City	14	08/09/01
Throughout Tx	Longview Inspection Inc	L01774	Houston	167	07/31/01
Throughout Tx	Longview Inspection Inc	L01774	Houston	168	08/16/01
Throughout Tx	Metco	L03018	Houston	114	08/16/01
Throughout Tx	Midwest Inspection Services	L03120	Perryton	61	08/16/01
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	93	08/09/01
Throughout Tx	XCEL Energy Southwestern Public Service	L05238	Amarillo	03	08/16/01
Tyler	East Texas Medical Center	L00977	Tyler	85	08/01/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Borger	Hutchinson County	L04369	Borger	07	08/08/01
Crockett	East Texas Medical Center Crockett	L01411	Crockett	21	08/14/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	Rice University	L03050	Houston	10	08/10/01
Mt Vernon	East Texas Medical Center Mt Vernon	L03013	Mt Vernon	12	08/14/01
Throughout Tx	Heard & Katz Engineering Services	L05049	Houston	06	07/31/01

LICENSE EXEMPTIONS ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Sugar Land	Stillmeadow Inc	L04497	Sugar Land		07/31/01
Sugar Land	Stillmeadow Inc	L04497	Sugar Land		08/14/01

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

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-200104847
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 20, 2001

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Notice of Request for Proposals for Prevention Services for Human Immunodeficiency Virus-Infected Persons

INTRODUCTION

The Texas Department of Health (department) is requesting proposals to provide prevention services to Human Immunodeficiency Virus (HIV)-infected persons. Projects will start March 1, 2002.

PURPOSE

The project will have two purposes:

(1) to provide services to assure that effective and appropriate prevention services are available to HIV- infected, high-need clients who may already be in a community care system, or who are newly diagnosed. These may be people who have multiple and complex needs which interfere with their ability to adopt and sustain behaviors with reduced risk for disease transmission. Young men who have sex with other men (especially men of color), intravenous drug users, and others with complex prevention needs, will be a high priority for receiving these services; and

(2) to provide services to assure that HIV-infected incarcerated persons are successfully linked to appropriate HIV prevention and related services upon release. When released from prisons and jails, HIV-infected persons need to be referred to ongoing prevention services.

ELIGIBLE APPLICANTS

Eligible applicants are public or private nonprofit organizations within the state of Texas. Applicants must be current providers of HIV prevention, health and/or social services. Agencies that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply.

AVAILABLE FUNDS

The department has identified $690,934 in HIV prevention funds to provide the above programs. The department plans to select approximately five agencies to provide these services and linkages through a competitive Request for Proposals (RFP). The review and award criteria will be included in the RFP.

DEADLINE

The RFP will be available September 14, 2001. Proposals will be due by 5:00 p.m. Central Daylight Saving Time, November 14, 2001, and may be submitted to Laura Ramos, HIV/STD Health Resources Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone (512) 490-2525.

FOR INFORMATION

Interested parties may obtain a copy of the RFP at the website: http://www.tdh.state.tx.us/hivstd/grants/default.htm; or, contact Laura Ramos at 512/490-2525, or by e-mail at laura.ramos@tdh.state.tx.us. No copies of the RFP will be released prior to September 14, 2001. Request Document Number 0026.

TRD-200104965
Susan Steeg
General Counsel
Texas Department of Health
Filed: August 22, 2001

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates

Proposal. As single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts new per diem payment rates for state owned veterans nursing facilities. The adopted rates for state veterans nursing facilities for state fiscal year 2002 are as follows: Big Spring, $113.00; Bonham, $113.00; Floresville, $113.00; and Temple, $105.78. Payment rates are adopted to be effective September 1, 2001, pending adoption of the proposed rate setting methodology described below.

Methodology and justification. The adopted payment rates were determined in accordance with the proposed rate setting methodology for veterans nursing facilities to be codified at 1 Texas Administrative Code (TAC) Chapter 355, Subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.309, which will be published in the August 31, 2001, issue of the *Texas Register*. This reimbursement methodology is proposed pursuant to House Bill Number 1, 77th Legislature, Article II, §56, which instructs HHSC to establish Medicaid reimbursement rates for Medicaid-eligible veterans who reside in state veterans nursing facilities.

TRD-200104950
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 22, 2001

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Notice of Proposed Medicaid Provider Payment Rates

Proposal. As single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) proposes new per diem payment rates for the nursing facilities program operated by the Texas Department of Human Services (DHS). These payments are proposed pursuant to House Bill (HB) Number 1, 77th Legislature, Article II §44, which states that $20 million in general revenue for each year of the biennium may "only be expended to improve the quality of care in nursing homes"; and Senate Bill 1839, 77th Legislature, which directs HHSC to ensure that rate determination rules "improve the quality of care" by "providing incentives for increased direct care staff and direct care wages and benefits" and through other means to the extent funding allows. These payments are also proposed pursuant to HB 154, 77th Legislature, which directs HHSC to ensure that the "rates paid for nursing home services provide for the rate component derived from reported liability insurance costs to be paid only to those homes that purchase liability insurance acceptable to the commission". To comply with HB 154, the portion of the general and administrative rate component derived from reported liability insurance costs has been excluded from the rates in the chart below. The liability insurance rate component is $1.17 per diem. The funds from the liability insurance rate component excluded from these rates will be distributed to facilities that verify liability insurance coverage acceptable to HHSC.

Payment rates are proposed to be effective September 1, 2001, for the state fiscal years 2002 and 2003, as follows:

Table 1:

Rates by TILE (Texas Index for Level of Effort) class:

TILE	Facilities Participating in the Enhanced Direct Care Staff Rate	Facilities not Participating in the Enhanced Direct Care Staff Rate
201	$148.64	$145.00
202	$132.71	$129.59
203	$125.62	$122.72
204	$105.17	$102.94
205	$97.74	$95.74
206	$98.83	$96.79
207	$89.85	$88.11
208	$86.83	$85.19
209	$81.06	$79.61
210	$70.74	$69.62
211	$68.22	$67.18
212 (default)	$68.22	$67.18
Supplemental Payments:		
Ventilator--Continuous	$79.98	$77.40
Ventilator--Less than Continuous	$31.99	$30.96
Pediatric Tracheostomy	$47.99	$46.44

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, Subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 and (relating to Enhanced Direct Care Staff Rate), §355.308, and in accordance with proposed revisions to be codified in these sections.

Participating facilities requesting to staff above the minimum staffing requirements included in the rates in the above chart may receive one of the following payment rates per day in addition to the above payment rates (within available funds):

Table 2:

Minutes Associated with Proposed Rate	Proposed Rate Per Diem
1 LVN Minute = 1.88 Aide Minutes = 0.68 RN Minutes	$0.30
2 LVN Minutes = 3.75 Aide Minutes = 1.36 RN Minutes	$0.60
3 LVN Minutes = 5.63 Aide Minutes = 2.05 RN Minutes	$0.90
4 LVN Minutes = 7.50 Aide Minutes = 2.73 RN Minutes	$1.20
5 LVN Minutes = 9.38 Aide Minutes = 3.41 RN Minutes	$1.50
6 LVN Minutes = 11.25 Aide Minutes = 4.09 RN Minutes	$1.80
7 LVN Minutes = 13.13 Aide Minutes = 4.77 RN Minutes	$2.10
8 LVN Minutes = 15.00 Aide Minutes = 5.45 RN Minutes	$2.40
9 LVN Minutes = 16.88 Aide Minutes = 6.14 RN Minutes	$2.70
10 LVN Minutes = 18.75 Aide Minutes = 6.82 RN Minutes	$3.00
11 LVN Minutes = 20.63 Aide Minutes = 7.50 RN Minutes	$3.30
12 LVN Minutes = 22.50 Aide Minutes = 8.18 RN Minutes	$3.60
13 LVN Minutes = 24.38 Aide Minutes = 8.86 RN Minutes	$3.90
14 LVN Minutes = 26.25 Aide Minutes = 9.55 RN Minutes	$4.20
15 LVN Minutes = 28.13 Aide Minutes = 10.23 RN Minutes	$4.50

Additional levels will be made available on an as needed basis within appropriated funds.

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, Subchapter C (relating to Enhanced Direct Care Staff Rate), §355.308, and in accordance with proposed revisions to be codified in this section.

These proposed rates replace the proposed rates which appeared in the August 3, 2001, issue of the *Texas Register*(26 TexReg 5855).

TRD-200104944
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 21, 2001

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Notice of Proposed Medicaid Provider Payment Rates, HCS, HCS-O and MRLA

Proposal.

As single state agency for the state Medicaid program the Health and Human Services Commission proposes new rates for Home and Community-Based Services (HCS) effective September 1, 2001, through August 31, 2002, Home and Community-Based Services-OBRA effective September 1, 2001, through August 31, 2002, and Mental Retardation Local Authority (MRLA) effective September 1, 2001, through August 31, 2002.

Methodology and justification.

The proposed rates were determined in compliance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter F, §§355.723, 355.733 and 355.775.

Public Hearing.

A public hearing will be held in compliance with 1 TAC Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Monday, September 10, 2001 at 10:00 AM in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by 12:00 noon on September 10, 2001. Interested parties may obtain a copy of the reimbursement-briefing package by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring ADA accommodation should contact Tom Wooldridge by calling (512) 206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Wooldridge through the Texas Relay operator by calling 1-800-735-2988.

TRD-200104968
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 22, 2001

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Notice of Proposed Medicaid Provider Payment Rates, State-Operated Facilities

Proposal.

As single state agency for the state Medicaid program, the Health and Human Services Commission proposes new rates for the State Operated Intermediate Care Facilities for the Mentally Retarded (ICF/MR) program operated by the Texas Department of Mental Health and Mental Retardation. The proposed rates will be in effect from September 1, 2001 through August 31, 2002. Payment rates for state-operated facilities are proposed as follows:

Large Facility: $244.10

Small Facility: $182.05

Methodology and justification.

The proposed rates were determined in compliance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter D, §355.456.

Public Hearing.

A public hearing will be held on Monday, September 10, 2001 at 9:00 AM in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by 12:00 noon on September 10, 2001. Interested parties may obtain a copy of the reimbursement briefing package by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring ADA accommodation should contact Tom Wooldridge by calling (512) 206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Wooldridge through the Texas Relay operator by calling 1-800-735-2988.

TRD-200104967
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 22, 2001

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting a Medicaid state plan amendment to propose revisions to the reimbursement methodology for nursing facilities. House Bill 154 of the 77th Legislature directed HHSC to ensure that the "rates paid for nursing home services provide for the rate component derived from reported liability insurance costs to be paid only to those homes that purchase liability insurance acceptable to the commission". Therefore, this proposal creates separate payment rates for nursing facilities such that facilities with acceptable liability insurance will receive higher payment rates that include a separate payment rate component for professional liability insurance and a separate payment rate component for general liability insurance paid to the provider as appropriate.

Senate Bill (SB) 1, Article II, Texas Department of Human Services (DHS) rider 44 states that $20 million in general revenue for each year of the biennium "may only be expended to improve the quality of care in nursing homes". SB 1839 directs HHSC to ensure that rate determination rules "improve the quality of care" by "providing incentives

for increased direct care staff and direct care wages and benefits" and through other means to the extent that funding allows. To comply with Rider 44 and SB 1839, HHSC proposes to reconfigure the enhanced direct care staff rate system by basing participant rates for direct care staff on inflated statewide average compensation costs. The former practice of marking up this cost figure by seven percent to account for statewide cost variation will be replaced by marking up this cost figure by three percent and expanding the selection of enhancement levels. For those participants located in relatively high-wage areas who are at a disadvantage in meeting staffing requirements, a further proposal will mitigate staffing recoupments to the extent that enhancements are expended on direct nursing staff compensation. As a result of these proposed changes, participation in the enhancement program should become viable for a greater number of facilities and the accountability standards should be more equitable in light of differentials in wages and staff availability across the state.

To further expand the accountability of spending on direct care staff, the spending requirement effective September 1, 2002, will be increased from 85% to 90%. Facilities who fail to meet the spending requirement are subject to recoupment of unexpended funds below 90% of the direct care staff compensation rate component revenues. In recognition of nursing facilities that deliver good care, some of the spending recoupment of facilities that fail to meet their spending requirement will be mitigated for facilities that achieve a high quality index score. The higher the quality index score of the facility, the less recoupment the facility will be required to repay.

For facilities that staff above their required staffing levels, the proposal provides for the distribution of funds that were collected as recoupments. The distribution would be made to nursing facilities that requested higher enhanced staffing levels than were granted, and achieved the higher levels of staffing.

The calculation of the staffing requirement for private pay residents is being modified to use the facility's average case mix or Texas Index for Level of Effort (TILE) level 207, whichever is lower. Currently the facility's average case mix for Medicaid recipients is used in the calculation of the staffing requirement for private pay residents, because TILE levels are not determined for private pay residents. This modification recognizes that in some cases facilities may have a high average case mix for their Medicaid recipients and a lower average case mix for their private pay residents. The proposal will also allow respiratory therapists to be included as direct care staff for the determination of staffing requirements when the facility is receiving the supplemental payment for serving ventilator dependent recipients.

The proposal eliminates the Six-month Staffing and Compensation Report in an effort to reduce paperwork for the provider and the state, and to allow the full year for providers to meet their staffing requirements. In addition, providers may elect to combine their Annual Staffing and Compensation Report and their cost report by using the rate year as the reporting period. Beginning with the rate year September 1, 2001, to August 31, 2002, the annual staffing and compensation report must be completed by an individual that has attended the nursing facility cost report training. This is intended to improve the quality of the staffing and compensation reports submitted by providers.

The proposal clarifies how the days of service and revenue for Medicaid managed care recipients in nursing facilities are used in the calculation of required spending levels. In addition, it clarifies that swing beds in rural hospitals will be paid the minimum participant rate, but are not subject to staffing and spending requirements.

In addition, the proposal allows HHSC to delay or cancel the annual enhancement enrollment in July if HHSC determines it to be warranted; eliminates references to the implementation period which ended on August 31, 2000; and changes the references from DHS to references for HHSC as the responsible entity for nursing facility payment rates.

If the proposed methodology and rates are approved, it is estimated that there will be no increase in the aggregate annual expenditure for state fiscal year 2002 and 2003 resulting from these revisions, because the revisions provide for the redistribution of funds within the nursing facility program. For example, the funds that are reduced by the proposal that changes the percentage of the markup over costs is redistributed into increased levels of enhanced rates. Also, funds that are recouped because of the proposed change in the spending requirement may be reinvested into additional levels of rate enhancements. In addition, the mitigation or reduction of recoupments for failure to meet staffing requirements if facilities spent the enhanced funds that they received and/or based on their quality index score, would reduce the funds that could be redistributed into increased levels of enhanced rates.

To obtain copies of the draft reimbursement methodology, interested parties may contact Pam McDonald, Rate Analysis Department, Texas Department of Human Services, Mail Code W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4086.

The draft reimbursement methodology is available for public review at local offices of the Texas Department of Human Services. For further information, contact Pam McDonald at (512) 438-4086.

TRD-200104951
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 22, 2001

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State Plan Notice for Distinct Pediatric Units of Nursing Facilities

The Texas Health and Human Services Commission (HHSC) is planning to submit a Medicaid state plan amendment to create a nursing facility pediatric care facility special rate class. This amendment will describe the reimbursement methodology for determining a facility specific payment rate for children's facilities and distinct pediatric units qualifying for this special rate class. HHSC is establishing this special rate class to recognize the cost differences that exist in a nursing facility or distinct unit of a nursing facility that specializes in caring for children. The increase in annual aggregate expenditures for state fiscal year 2002 is estimated to be $504,926. Local Texas Department of Human Services Field Offices may be contacted to obtain copies of the draft reimbursement methodology available for public review, or contact Carolyn Pratt, Texas Department of Human Services, Mail Code W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4057. Written comments can also be submitted to this address.

TRD-200104957
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 22, 2001

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Texas Department of Human Services

Request for Proposal for Community Awareness and Relocation Services

The Texas Department of Human Services (DHS) announces a request for proposal (RFP) for the delivery of Community Awareness and Relocation Services to help transition 100 Medicaid eligible children and adults from institutional living arrangements to integrated community settings at selected sites. The contractor will identify the appropriate areas (3 sites) for relocation and community awareness services. The sites should include an urban area, a rural area and a mixed urban-rural area.

Description of Services: The contractor will provide community awareness and relocation services. The contractor will develop community awareness material to inform the targeted population of long-term care options and how to access services/resources to transition into the community. The contractor will conduct community outreach activities, develop assessment tools and processes to identify and assess Medicaid eligible nursing facility residents who choose to transition into the community and provide intense relocation services. The contractor will maintain follow-up contacts with persons relocated from nursing facilities. The contractor will administer the transition grants. Transition grants will cover some of the costs related to establishing residence in the community for eligible individuals relocated from nursing facilities.

Terms and/or Amount: This contract is for 12 months. The contract may be subject to an extension of up to three years. The contract for the approved proposal will be a cost reimbursement contract.

Selection and Evaluation: To complete the evaluation, DHS may enter into negotiations with one or more of the offerors. Additionally, DHS has the right to reject all offers submitted in response to the solicitation; DHS may, at its option, award one or more contracts; and DHS may cancel the solicitation at any time.

Evaluation criteria are established to assess which offer, if any, represents the best purchase (considering price, quantity, and quality). The factors considered in making the selection and their relative weights in the evaluation are:

1. Technical proposal (45 points) - The potential contractor has provided a clear proposal that addresses the requirements of the RFP. The methodology described by the potential contractor to accomplish the requirements of this project demonstrate the potential to achieve the maximum rate of successful transitions. The potential contractor has described the availability of resources for timely implementation and has presented implementation plans that identify timelines for the community awareness and relocation activities to be accomplished in this project.

2. Qualifications, knowledge and experience of contractor (30 points) - The potential contractor has described the qualifications, experience and knowledge of its staff related to community awareness and relocation services for adults and children with disabilities residing in institutional settings. Information specific to interactions with families of disabled individuals and community-based services should also be addressed.

3. Proposed budget (25 points) - The potential contractor has proposed a cost reimbursement budget. The potential contractor included separate budgets for the services and products described in this RFP for a 12-month period. The budget must be based upon costs that are reasonable, necessary, properly allocated, and allowable.

The source of information for these evaluation criteria is the proposal submitted. The original proposal should be complete, concise, consistent, and correct. All information conveyed in the proposal is subject to validation.

To ensure the integrity of this process, proposals from committee members participating in the review of this RFP and organizations with which review members are directly or indirectly associated will not be accepted. A prospective bidder anticipating a problem or conflict that may cause disqualification from participating may contact Lily Vela at (512) 438-2489.

Offerors' Conference: A teleconference will be held from 9:00 a.m. to 11:30 a.m., Central Daylight Time, on September 20, 2001, for potential offerors to receive a briefing from DHS on this RFP and to ask questions. To participate in the teleconference, the potential offerors must submit a notification of intent to participate (including potential offeror's name, phone number, fax number, address, and contact person) to the DHS contact person by no later than September 18, 2001. Notification of teleconference date, time, and access details will be communicated to interested parties who respond timely to the notification of intent to participate.

DHS will respond in writing to all questions and comments. Answers are not binding until released in writing. All offerors of record and potential offerors who participated in the teleconference will receive the written responses to all questions and comments.

Closing Date: Proposals must be **postmarked by no later than November 29, 2001**. The original proposal and 4 copies must be mailed to: Lily Vela, Promoting Independence Initiative, DHS, 701 W. 51st Street, Mail Code W-511, Austin, TX 78751, or P.O. Box 149030, Mail Code W-511, Austin, TX 78714-9030.

Contact Person: To obtain a request for proposal packet, please write to Lily Vela, Promoting Independence Initiative, DHS, 701 W. 51st Street, Mail Code W-511, Austin, TX 78751, or P.O. Box 149030, Mail Code W-511, Austin, TX 78714-9030, or fax: 512-438-5504.

Charitable Communities or religious organizations, as well as Historically Underutilized Businesses, are encouraged to submit proposals.

TRD-200104949
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: August 22, 2001

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance published a Notice in the August 10, 2001, issue of the *Texas Register* (26 TexReg 6050) TRD-200104412.

In the first paragraph, the reference to "Article 21.49 §8(e)(3)" is incorrect. The reference should read "Article 21.49 §8(h)(3)".

TRD-200104792

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Insurer Services

Application for admission to the State of Texas by GUIDEONE CASUALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in West Des Moines, IA.

Application to change the name of BANKERS AND FARMERS LIFE INSURANCE COMPANY to FIRST COMMAND LIFE INSURANCE COMPANY, a domestic life insurance company. The home office is in Fort Worth, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200104962
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 22, 2001

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Advance PCS Health, L.P., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200104926
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 21, 2001

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Texas Lottery Commission

Instant Game No. 206 "$50's Fever"

1.0 Name and Style of Game.

A. The name of Instant Game No. 206 is "$50S FEVER". The play style is a "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 206 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 206.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $5.00, $10.00, $20.00, $30.00, $50.00, $100, $500, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, and SODA.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

Figure 1 : GAME NO. 206 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SEV
08	EGT
09	NIN
10	TEN
11	ELVN
12	TWLV
13	THRTN
14	FRTN
15	FIFTN
SODA SYMBOL	SODA

Table 2 of this section.

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 206 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100, or $500.

I. High-Tier Prize - No high-tier prizes in this game.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (206), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 206-0000001-000.

L. Pack - A pack of "$50S FEVER" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page. Tickets 005-009 will be on the next page and so forth and ticket 245-249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50S FEVER" Instant Game No. 206 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50S FEVER" Instant Game is determined once the latex on the ticket is scratched off to expose 13 (thirteen) play symbols. If any of the player's YOUR NUMBERS match the WINNING NUMBER, the player will win the prize shown. If the player gets a soda symbol, the player will win that prize automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 13 (thirteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 13 (thirteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 13 (thirteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 13 (thirteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will have duplicate non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. The auto win symbol will never appear more than once on a ticket.

E. The auto win symbol will only appear on winning tickets.

F. The auto win symbol will never appear as the WINNING NUMBER.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50S FEVER" Instant Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $30.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "$50S FEVER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50S FEVER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,497,500 tickets in the Instant Game No. 206. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3 : GAME NO. 206 - 4 .0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$ 1 .00	2,4 5 9 ,6 3 2	8.3 3
$ 2.00	1 ,1 4 7,89 4	1 7.86
$ 5 .00	4 9 2,1 6 2	4 1 .6 5
$ 1 0.00	81 ,75 5	25 0.72
$ 20.00	4 1 ,05 7	4 9 9 .24
$ 3 0.00	25 ,6 1 4	800.25
$ 5 0.00	4 3 ,6 22	4 6 9 .89
$ 1 00	3 ,4 1 6	6 ,000.4 4
$ 5 00	278	73 ,73 2.01

* The number of actual winners may vary based on sales, distribution, and number of priz es claimed.

* * The overall odds of winning a priz e are 1 in 4 .77. The individual odds of winning for a particular priz e level may vary based on sales, distribution, and number of priz ed claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 206 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 206, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200104917
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 20, 2001

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Instant Game No. 243 "Money in the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 243 is "MONEY IN THE BANK". The play style is a "match three (3) of six (6) with a tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 243 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 243.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $5.00, $10.00, $25.00, $100, $1,000, $3,000, and TRIPLE

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

Figure 1 : GAME NO. 243 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$25.00	TWY FIV
$100	ONE HUND
$1,000	ONE THOU
$3,000	THR THOU
PIGGY BANK SYMBOL	TRIPLE

Table 2 of this section.

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 243 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
FTN	$15.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $10.00, or $15.00.

H. Mid-Tier Prize - A prize of $25.00, $30.00, $75.00, $100, or $300.

I. High-Tier Prize - A prize of $1,000 or $3,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (243), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 243-0000001-000.

L. Pack - A pack of "MONEY IN THE BANK" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page. Tickets 005-009 will be on the next page and so forth and ticket 245-249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY IN THE BANK" Instant Game No. 243 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONEY IN THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose six (6) play symbols. If the player finds three (3) like amounts, the player will win that amount. If the player finds two (2) like amounts and a piggybank symbol, the player triples that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly six (6) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the six (6) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will have four (4) or more like play symbols on a ticket.

C. The tripler symbol will never appear on a ticket which contains three (3) like play symbols.

D. There will be no more than one (1) tripler symbol on a ticket .

E. No more than one (1) pair of like play symbols will appear on a ticket containing a tripler symbol.

F. No more than two (2) pairs of like play symbols will appear on a ticket which does not contain a tripler symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY IN THE BANK" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $15.00, $25.00, $30.00, $75.00, $100, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $30.00, $75.00, $100, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim

is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MONEY IN THE BANK" Instant Game prize of $1,000 or $3,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY IN THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MONEY IN THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MONEY IN THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,491,000 tickets in the Instant Game No. 243. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3:16 TAC GAME NO. 243 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1885198	10.87
$2.00	1065197	19.24
$3.00	983786	20.83
$5.00	164053	124.90
$10.00	82085	249.63
$15.00	81841	250.38
$25.00	21313	961.43
$30.00	8539	2,399.70
$75.00	6430	3,186.78
$100	4283	4,784.26
$300	2051	9,990.74
$1,000	20	1,024,550.00
$3,000	34	640,343.75

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 243 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 243, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200104916
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 20, 2001

♦ ♦ ♦

Instant Game No. 248 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 248 is "WEEKLY GRAND". This ticket contains three (3) games, indicated as "Game 1"; "Game 2"; and "Game 3", or "Quick $20". The play style of "Game 1" is a "Your Number Beats Their Number" play style. The play style of "Game 2" is a "Match 3 Like Prize Amounts" play style. The play style of "Game 3", or "Quick $20", is a "Match 2 Like Symbols" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 248 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 248.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols for" Game 1" are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $300, and GRAND. The possible Play Symbols for "Game 2" are:, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, and GRAND. The possible game symbols for "Game 3" are: MONEY BAG symbol, GOLD BAR symbol, POT OF GOLD symbol, TOP HAT symbol, CLOVER symbol, and DIAMOND symbol.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

Figure 1 : GAME NO. 248 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
GRAND	WEEK
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
[CLOVER]	CLVR
[DIAMOND]	DIAMD
[GOLD BAR]	GOLD
[POT OF GOLD]	POTGLD
[MONEY BAG]	MBAG
[TOP HAT]	TPHAT

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section.

Figure 2: GAME NO. 248 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, or $300.

I. High-Tier Prize - A prize of $1,000 or GRAND.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (248), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 248-0000001-000.

L. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the first page; tickets 002 and 003 will be on the next page and so forth with tickets 248-249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY GRAND" Instant Game No. 248 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in "Game 1" of the "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose the "Your Number", "Their Number", and "Prize" Play Symbols on the front of the ticket. The player wins "Prize" amount if a Play Symbol shown under "YOUR NUMBER" is greater than the Play Symbol appearing under "THEIR NUMBER" in each of the two (2) rows. The player wins $1,000 per week for 20 (twenty) years if a Play Symbol shown under "YOUR NUMBER" is greater than the Play Symbol appearing under "THEIR NUMBER" in either row and the Play Symbol "GRAND" appears in the "Prize" spot for that row. In "Game 2", the player wins the prize amount that appears three (3) times on the play area. If the Play Symbol "GRAND" appears three times on the play area of "Game 2", the player wins $1,000 per week for 20 years. In "Game 3", the player wins $20 instantly if there are two (2) out of three (3) matching Play Symbols under "QUICK $20". No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six (6) Play Symbols must appear under the latex overprint on "Game 1", exactly six (6) Play Symbols must appear under the latex overprint on "Game 2", and exactly three (3) Play Symbols must appear under "Game 3".

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly six (6) Play Symbols and exactly six Play Symbol Captions under "Game 1", exactly six (6) Play Symbols and exactly six (6) Play Symbol Captions under "Game 2", and exactly three (3) Play Symbols and exactly three (3) Play Symbol Captions under "Game 3" on the front of the ticket under the latex overprint on the front portion of the ticket, exactly one (1) Serial Number, exactly one (1) Retailer Validation Code, and exactly one (1) Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the six (6) Play Symbols appearing under "Game 1", each of the six Play Symbols appearing under "Game 2", and each of the three (3) Play Symbols appearing under "Game 3" must be exactly one of those described in Section 1.2.C of these Game Procedures, and each of the Play Symbol Captions to those Play Symbols must be exactly one of these described in Section 1.2.D of these Game Procedures;

17. Each of the six (6) Play appearing under "Game 1", each of the six (6) Play Symbols appearing under "Game 2", and each of the three (3) Play Symbols appearing under "Game 3" on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Validation Numbers must be printed in the Validation font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no three (3) or more like non-winning prize symbols on a ticket.

C. Non-winning PRIZE SYMBOLS will not match a winning prize symbol on a ticket.

D. The GRAND symbol may only be used in "Game 1" and "Game 2".

E. In "Game 1", there will be no ties between YOURS and THIERS in a row.

F. There will be no duplicate games on a ticket in "Game 1".

G. No duplicate non-winning prize symbols in "Game 1".

H. In "Game 2", no more than four (4) or more of a kind will appear.

I. In "Game 3", all symbols will be used an approximately even number of times on winning and non-winning tickets.

J. There will never be three (3) like symbols in "Game 3"

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY GRAND" Instant Game prize of GRAND, the claimant must choose one of four (4) payment options for receiving their prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 173) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by

the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $1,000 per week for 20 years from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 25,699,750 tickets in the Instant Game No. 248. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 248 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	2,672,947	9.61
$4.00	2,107,293	12.20
$5.00	102,799	250.00
$10.00	359,696	71.45
$20.00	231,348	111.09
$40.00	154,287	166.57
$300	9,318	2758.08
$1,000/WK	3	8566583.33

* The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

** The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 248 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 248, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant tot he State Lottery Act and reference in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200104915
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 20, 2001

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Instant Game No. 260 "Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 260 is "JUMBO BUCKS". The play style is a "match key number with 5 time win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 260 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 260.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $2.00, $3.00, $5.00, $10.00, $20.00, $25.00, $100, $500, $25,000, and JUMBO.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

Figure 1 : GAME NO. 260 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
$1.00	ONE
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$100	ONE HUND
$500	FIV HUND
$25,000	25 THOU
JUMBO SYMBOL	WINX5

Table 2 of this section.

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 260 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
SVN	$7.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $7.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $30.00, $50.00, $75.00, $100, or $500.

I. High-Tier Prize - A prize of $25,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (260), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 260-0000001-000.

L. Pack - A pack of "JUMBO BUCKS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000-001 will be on the top page. Tickets 002-003 will be on the next page and so forth and ticket 248-249 will be on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUMBO BUCKS" Instant Game No. 260 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) play symbols. If the player matches any of YOUR NUMBERS to either of the two SERIAL NUMBERS, the player will win the prize shown for that number. If the player gets a JUMBO symbol, the player will win five (5) times that prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning tickets will be greater than 10 (ten).

C. There will be no more than one (1) pair of duplicate non-winning prize symbols on a ticket.

D. There will be no duplicate Serial Numbers on a ticket.

E. The JUMBO symbol will never appear more than once on a ticket.

F. The JUMBO symbol will appear only on intended winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUMBO BUCKS" Instant Game prize of $2.00, $3.00, $5.00, $7.00, $10.00, $15.00, $20.00, $25.00, $30.00, $50.00, $75.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $30.00, $50.00, $75.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "JUMBO BUCKS" Instant Game prize of $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,197,000 tickets in the Instant Game No. 260. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3:16 TAC GAME NO. 260 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	2,908,366	6.94
$3.00	525,006	38.47
$5.00	444,290	45.46
$7.00	80,754	250.11
$10.00	121,262	166.68
$15.00	80,850	249.81
$20.00	161,576	125.00
$25.00	42,111	479.61
$30.00	33,622	600.71
$50.00	20,391	990.49
$75.00	12,616	1,600.90
$100	16,016	1,261.05
$500	7,546	2,676.52
$25,000	40	504,925.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 260 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 260, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200104914
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 20, 2001

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding Steves & Sons, Incorporated, Docket No. 1999-0699- AIR-E on August 10, 2001 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joshua Olszewski, Staff attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elhamad Enterprises, Inc. dba J.R.'s Mini Mart, Docket No. 1999-1236-PST-E on August 10, 2001 assessing $19,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff attorney at (713)422-8914, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding William Ince dba Ince Trash Service, Docket No. 2000- 0101-MSW-E on August 10, 2001 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Scott McDonald, Staff attorney at (817)588-5888, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP Marketing Company, Inc., Docket No. 2001-0193- AIR-E on August 10, 2001 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Precinct No. 1 - Main Camp, Docket No. 2001-0030-PWS-E on August 10, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512)239-5025, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Knightco Oil Company dba Superior Lubricants, Docket No. 2001-0182-PST-E on August 10, 2001 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817)588-5886, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Structural Metals, Inc., Docket No. 2000-1048-AIR-E on August 10, 2001 assessing $15,000 in administrative penalties with $3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Malcolm Ferris, Enforcement Coordinator at (210)403-4061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Javier Tapia dba J. T. Dairy, Docket No. 2001-0328- AGR-E on August 10, 2001 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915)655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Strasburger Enterprises, Inc., Docket No. 2001-0127- IWD-E on August 10, 2001 assessing $2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903)535-5145, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Curb Cut, Incorporated, Docket No. 2001-0107- EAQ-E on August 10, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2000- 1304-MLM-E on August 10, 2001 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512)239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Paradise Point, Inc., Docket No. 2000-1059- MWD-E on August 10, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks and Wildlife Department Inks Lake State Park, Docket No. 2001-0052-MWD-E on August 10, 2001 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at (512)239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Venus, Docket No. 2001-0016-PWS-E on August 10, 2001 assessing $740 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817)588-5825, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Transportation, Inc., Docket No. 2001-0162- PST-E on August 10, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817)588-5825, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Xklen Corporation, Docket No. 2000-1306-MLM-E on August 10, 2001 assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512)239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ticona Polymers, Incorporated, Docket No. 2001-0087- AIR-E on August 10, 2001 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding WeeBe Industries, Inc., Docket No. 2000-0776-AIR-E on August 10, 2001 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff attorney at (512)239-2029, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mark Locke dba Champion Water Services dba Dayton Oaks Estates Public Water Supply, Docket No. 2000-0655-PWS-E on August 10, 2001 assessing $1,938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Biggins, Staff attorney at (210)403-4017, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Able Lopez, Jr. dba Savey 1, Docket No. 1999-0279-PST- E on August 10, 2001 assessing $10,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elisa Roberts, Staff attorney at (817)588-5877, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An amended agreed order was entered regarding City of Little Elm, Docket No. 2000-0023- MWD-E on August 10, 2001 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff attorney at (512)239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blue Dolphin Energy Company, Docket No. 2001-0017- AIR-E on August 10, 2001 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Kevin Keyser, Enforcement Coordinator at (713)422-8938, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thousand Trails, Inc., Docket No. 2000-1185-MWD-E on August 10, 2001 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915)655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tuong H. Nguyen dba Express Way Food Store, Docket No. 2001-0028-PST-E on August 10, 2001 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra P.E., Enforcement Coordinator at (817)588-5890, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bobby Lee dba Environmental Box Cleaning & Storage Services, Docket No. 2000-1275-IHW-E on August 10, 2001 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Faye Liu, Enforcement Coordinator at (713)767-3726, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel Sertuche dba Sertuche & Son Plumbing, Docket No. 2000-1453-OSI-E on August 10, 2001 assessing $1,750 in administrative penalties with $350 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at (512)239-0739, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Racetrac Petroleum, Inc., Docket No. 2000-1240-PST-E on August 10, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra P.E., Enforcement Coordinator at (817)469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patterson Petroleum LP, LLLP, Docket No. 2001-0244- AIR-E on August 10, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713)767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas A & M University, Docket No. 2000-1394-MWD- E on August 10, 2001 assessing $1,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512)239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wayne Downing dba Talent plus, Docket No. 2000- 1398-PWS-E on August 10, 2001 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael Barton dba Cotton Valley RV, Docket No. 2001-0194-AIR-E on August 10, 2001 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akzo Nobel Chemicals, Inc., Docket No. 2001-0037- AIR-E on August 10, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512)239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Continental Cabinets Manufacturing, Inc., Docket No. 2000-1117-AIR-E on August 10, 2001 assessing $15,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2000-1267-AIR-E on August 10, 2001 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Faye Liu, Enforcement Coordinator at (713)767-3726, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oasis Car Wash, Inc. dba Oasis Car Wash, Docket No. 2000-1029-PST-E on August 10, 2001 assessing $2,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Enforcement Coordinator at (817)588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NCI Building Systems LP, Docket No. 2001-0012- MWD-E on August 10, 2001 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713)767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Menasha Corporation, Docket No. 2000-1284-AIR-E on August 10, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Johnson, Enforcement Coordinator at (512)239-2555, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Entergy Gulf States, Inc., Docket No. 2001-0025-AIR-E on August 10, 2001 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)899-8760, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Goodyear Tire and Rubber Company, Docket No. 2001- 0172-AIR-E on August 10, 2001 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)899-8760, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marathon Ashland Petroleum LLC, Docket No. 2000- 0780-AIR-E on August 10, 2001 assessing $22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Heartland Rig International, Inc., Docket No. 2000-1389- IHW-E on August 10, 2001 assessing $31,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915)655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Logo Materials, Inc., Docket No. 2000-1027-MSW-E on August 10, 2001 assessing $2,200 in administrative penalties with $440 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary McDonald, Enforcement Coordinator at (361)825-3122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yec Sin Lee, Docket No. 2000-1381-PWS-E on August 10, 2001 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly McGuire, Enforcement Coordinator at (512)239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laguna Madre Water District, Docket No. 2001-0200- MWD-E on August 10, 2001 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512)239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding High Plains Children's Home and Family Services, Docket No. 2001-0075-PWS-E on August 10, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512)239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Garland, Docket No. 2000-1486-MSW-E on August 10, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200104934
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 21, 2001

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Extension of Comment Period

In the August 24, 2001 issue of the *Texas Register*, the Texas Natural Resource Conservation Commission (commission) published proposed

amendments to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicle.. The preamble to the proposal stated that the commission must receive all written comments by 5:00 p.m., September 14, 2001. The commission has extended the deadline for receipt of written comments to 5:00 p.m., September 17, 2001 for this proposal.

Written comments should be mailed to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. For further information on the proposed revisions, please contact Jill Burditt at (512) 239-0560. Copies of the proposed amendments can be obtained from the commission's web site at *www.tnrcc.state.tx.us/oprd/rules/propadop.html*.

TRD-200104854
Ramon Dasch
Acting Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 20, 2001

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Notice of Costs to Administer the Voluntary Cleanup Program

In accordance with Solid Waste Disposal Act, §361.613, Subchapter S, the executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) shall calculate and publish annually the commission's costs to administer the Voluntary Cleanup Program. The Innocent Landowner Program, based on authority from Solid Waste Disposal Act, §361.752(b) shall also calculate and publish annually a rate established for the purposes of identifying the costs recoverable by the commission. The TNRCC is publishing the hourly billing rate of $104 for both the Voluntary Cleanup Program and the Innocent Landowner Program for Fiscal Year 2002.

The Voluntary Cleanup Law was effective September 1, 1995, and as such, this will be the seventh year of operation for the program. The commission is able to use data from the previous six years to calculate the rate for Fiscal Year 2002. The Innocent Landowner Program Law was effective September 1, 1997. As such, this will be the fifth year of operation for the program. Therefore, the commission will be able to use data from the previous four years to calculate the rate for Fiscal Year 2002. A single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding divided by the estimated billable salary hours. The hourly rate for the two programs was calculated, and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 40.8% to account for non-site specific hours. The release time includes sick leave, jury duty, holidays, etc., and is set at 16.21% (actual rate for Fiscal Year 2000). The current fringe benefit rate is 20.75%. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a rate that applies to the agency as a whole. The current indirect cost rate is 34.22%. Indirect costs include allowable overhead expenses and are also calculated at a rate that applies to the whole agency. The billings processed for Fiscal Year 2002 will use the hourly billing rate of $104 for both the Voluntary Cleanup Program and the Innocent Landowner Program and will not be adjusted. All travel related expenses will be billed as a separate expense. After an applicant's initial $1,000 application fee has been expended by the Innocent Landowner Program or the Voluntary Cleanup Program in-site review and oversight, invoices will be sent to the applicant on a quarterly basis for payment of additional program expenses.

The commission anticipates receiving federal funding during Fiscal Year 2002 for the development and implementation of the Innocent Landowner Program and for the continued development and enhancement of the Voluntary Cleanup Program. These federal funds are instrumental in the commission having some of the lowest rates of any state Voluntary Cleanup Program. If the federal funding anticipated for Fiscal Year 2002 does not become available, the commission may publish a new rate. Federal funding of the Voluntary Cleanup Program and the Innocent Landowner Program should occur prior to October 1, 2001.

For more information, please contact Mr. Charles Epperson, Voluntary Cleanup Section, Remediation Division, Texas Natural Resource Conservation Commission, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-5891.

TRD-200104952
Ramon Dasch
Acting Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 22, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 1, 2001**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 1, 2001**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Angel Brothers Enterprises, Ltd. dba Angel's Gas & Grocery #11; DOCKET NUMBER: 2001-0227-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Station Identification Number 0068267; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(B) and the Code, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Faye Liu, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Baxter Oil Service, Inc. dba Jones Oil Service; DOCKET NUMBER: 2001- 0460-MSW-E; IDENTIFIER: Used Oil Registration Number A85204; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: transfer, treatment, and storage of used oil and used oil filters; RULE VIOLATED: 30 TAC §37.2011 and §324.22, by failing to provide an original financial assurance mechanism; PENALTY: $200; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(3) COMPANY: Boling Municipal Water District; DOCKET NUMBER: 2000-1422-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10843-001; LOCATION: Boling, Wharton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10843-001, and the Code, §26.121, by failing to meet biochemical oxygen demand (BOD) effluent limitations; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Chem-Pruf Door Co., Ltd.; DOCKET NUMBER: 2001-0507-AIR-E; IDENTIFIER: Air Account Number CD-0215-T; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: fiberglass door manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.0518(a) and §382.085(b), by failing to obtain a permit prior to increasing the acetone usage; PENALTY: $2,160; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: City of De Leon; DOCKET NUMBER: 2000-0687-MWD-E; IDENTIFIER: TPDES Permit Number 10078-001; LOCATION: De Leon, Comanche County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10078-001, and the Code, §26.121, by failing to meet permitted limits for five-day carbonaecous BOD and ammonia-nitrogen, and failing to report effluent violations which deviate from the permitted effluent limitation by more than 40%; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: Diamond Shamrock Refining and Marketing; DOCKET NUMBER: 2001-0274- PST-E; IDENTIFIER: PST Station Identification Number 0005481; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and (J), and the Code, §382.085(b), by failing to maintain all components of the Stage II VRS in proper operating condition and to an approved condition; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of El Paso; DOCKET NUMBER: 2001-0099-AIR-E; IDENTIFIER: Air Account Number EE-1924-A; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: municipal automotive repair shop; RULE VIOLATED: 30 TAC §114.100(a) and the Code, §382.085(b), by allegedly having supplied and/or dispensed gasoline for the use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $720; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Fine Meadow Farm, Incorporated; DOCKET NUMBER: 2000-1298-MWD-E; IDENTIFIER: Enforcement Identification Number 9512; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.33(e), by failing to construct facilities to contain all contaminated runoff; and 30 TAC §321.39(f)(12) and (24)(B), by failing to install permanent markers to show the storage capacity and contain manure stockpiles to prevent contaminated runoff; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(9) COMPANY: Mr. Alvin Kidd dba Greenwood Terrace Mobile Home Subdivision; DOCKET NUMBER: 2001-0190-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1650048; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.101 and the Code, §13.242, by failing to obtain a certificate of convenience and necessity (CCN); and 30 TAC §291.21 and the Code, §13.190, by failing to obtain an approved tariff; PENALTY: $360; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(10) COMPANY: Houston Marine Services, Inc.; DOCKET NUMBER: 2001-0466-MSW-E; IDENTIFIER: Used Oil Registration Number A85458; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: used oil handling; RULE VIOLATED: 30 TAC §37.2011 and §324.22, by failing to submit an original financial assurance mechanism; PENALTY: $200; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Mr. Richard Keenan dba K & B Waterworks; DOCKET NUMBER: 2001- 0597-PWS-E; IDENTIFIER: PWS Number 0840187 and CCN Number 12084; LOCATION: Santa Fe, Galveston County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that its tariff includes an approved drought contingency plan; and 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make its drought contingency plan available for inspection; PENALTY: $125; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Koch Midstream Services Company, LLC; DOCKET NUMBER: 2001-0456- AIR-E; IDENTIFIER: Air Account Number FI-0008-M; LOCATION: Teague, Freestone County, Texas; TYPE OF FACILITY: natural gas treating and sulfur recovery; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 5269A, and the Code, §382.085(b), by failing to operate the plant in compliance with the sulfur dioxide emission limit; PENALTY: $2,500; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Louisiana Pacific Corporation; DOCKET NUMBER: 2001-0320-PWS-E; IDENTIFIER: PWS Number 1760021; LOCATION: Bon Weir, Newton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.103(5) and §290.106(a), (b)(1) and (5), (e)(2) [now 30 TAC §290.109(c)(2)(F) and (3), (g), and §290.122(c)], and the Code, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis, collect and submit repeat samples for bacteriological analysis, collect and submit the required number of additional routine samples for bacteriological analysis, and provide public notice related to its failure to collect and submit samples for bacteriological analysis; 30 TAC §290.119(a)(1), by failing to utilize a laboratory approved by the Texas Department of Health for the analysis of water samples;

and 30 TAC §290.51(a)(3) and the Code, §341.041, by failing to pay public health service fees; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892 (409) 898-3838.

(14) COMPANY: City of Malone; DOCKET NUMBER: 2000-1324-MWD-E; IDENTIFIER: TPDES Permit Number 10514-001; LOCATION: Malone, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10514- 001, and the Code, §26.121, by failing to meet the permitted limits; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Minsa Corporation; DOCKET NUMBER: 2001-0386-IWD-E; IDENTIFIER: Water Quality Permit Number 03032-000; LOCATION: Muleshoe, Bailey County, Texas; TYPE OF FACILITY: masa (corn) flour manufacturing; RULE VIOLATED: 30 TAC §305.125(1) and (5), Water Quality Permit Number 03032-000, and the Code, §26.121, by failing to maintain effluent pH range between six and nine standard units, limit the average daily volume of wastewater used for irrigation to 80,000 gallons per day, maintain hydraulic loading on irrigated land at or below 4.2 acre feet/acre/year, maintain the organic loading rate below 85 pounds/acre/day, and maintain a perennial crop of alfalfa or a similar vegetation cover; PENALTY: $11,375; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(16) COMPANY: Mitchell Gas Service L.P.; DOCKET NUMBER: 2001-0365-AIR-E; IDENTIFIER: Air Account Number CO-0034-B; LOCATION: Talpa, Coleman County, Texas; TYPE OF FACILITY: natural gas transmission station; RULE VIOLATED: 30 TAC § 101.10 and the Code, §382.085(b), by failing to submit the emission inventory questionnaire; PENALTY: $800; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: New Braunfels Utilities; DOCKET NUMBER: 2001-0468-MWD-E; IDENTIFIER: TPDES Permit Number 10232-002; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10232-002, and the Code, §26.121, by failing to comply with the permit limits for ammonia-nitrogen daily average and daily maximum; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Panaco, Inc.; DOCKET NUMBER: 2001-0413-AIR-E; IDENTIFIER: Air Account Number CI-0179-M; LOCATION: Trinity Bay, Chambers County, Texas; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §111.111(a)(4)(A)(ii) and the Code, §382.085(b), by failing to make notations in a daily flare log to indicate whether or not the flare was smoking; 30 TAC §117.209(c) and the Code, §382.085(b), by failing to submit an initial control plan; and 30 TAC §122.130(a)(1)(B)(i), §122.121, and the Code, §382.054, by failing to operate with a federal operating permit; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Petroleum Wholesale, Inc.; DOCKET NUMBER: 2001-0251-MLM-E; IDENTIFIER: PST Facility Identification Number 00929; LOCATION: Seguin, Guadalupe County, Texas; TYPE OF FACILITY: truck stop with retail fuel sales; RULE VIOLATED: the Code, §26.121, by allowing the discharge of petroleum substances; the Code, §26.266(a), by failing to address the contamination of the stock pond; and 30 TAC §327.3(b) and §334.75(a), by failing to provide notification of the discharge; PENALTY: $28,800; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Hollis Rogers dba Rough Canyon Marina; DOCKET NUMBER: 2001-0567- PWS-E; IDENTIFIER: PWS Number 2330020 and CCN Number 12804; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that its tariff includes an approved drought contingency plan; and 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make its adopted drought contingency plan available for inspection; PENALTY: $125; ENFORCEMENT COORDINATOR: Tim Haase, (512) 239-6007; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(21) COMPANY: S.I. Enterprises, LLC; DOCKET NUMBER: 2000-1354-MWD-E; IDENTIFIER: TPDES Permit Number 13316-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: warehouse; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13316-001, and the Code, §26.121, by failing to comply with permit limits for total suspended solids (TSS); PENALTY: $1,200; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Sherman Wire Company; DOCKET NUMBER: 2001-0416-MWD-E; IDENTIFIER: TPDES Permit Number 03582-000; LOCATION: Southmayd, Grayson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 03582-000, and the Code, §26.121, by failing to comply with permit limits for oil and grease; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(23) COMPANY: Ray Smith dba Southern Protective Coatings; DOCKET NUMBER: 2001- 0002-AIR-E; IDENTIFIER: Air Account Number HG-4469-B; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: surface coating and abrasive cleaning; RULE VIOLATED: 30 TAC §101.4 and the Code, §382.085(a) and (b), by failing to prevent paint overspray from leaving his property; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239- 5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Texas Water Services, Incorporated; DOCKET NUMBER: 2001-0078-PWS- E; IDENTIFIER: PWS Number 1050028; LOCATION: Buda, Hays County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(c), by failing to meet minimum size requirements for water lines; 30 TAC §290.45(b)(1)(D)(i) - (iv), by failing to provide well capacity of at least 0.6 gallons per minute (gpm) per connection, provide a storage capacity of at least 200 gallons per connection, provide service pump capacity of two gpm per connection, and provide pressure tank capacity of 20 gallons per connection; 30 TAC §291.93(3), by failing to submit a planning report after the water system exceeded 85% of its capacity; 30 TAC §290.43(c)(2), (4), (5), and (8), by failing to provide roof openings at least 30 inches in diameter, install a water level indicator on the Goforth Estates ground storage tank, provide proper inlet and outlet connections, and maintain the ground storage tank; 30 TAC §290.41(c)(3)(K) and (Q), by failing to cover the well casing vent and cover an opening for the air release device with screen; and

30 TAC §290.46(p)(2), (now 30 TAC §290.46(m)(1)(B)), by failing to conduct a five-year internal tank inspection for a hydro-pneumatic tank; PENALTY: $8,876; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-3939.

(25) COMPANY: Mr. Alarico Trevino dba Trevino and Sons Septic Tanks; DOCKET NUMBER: 2001-0418-OSI-E; IDENTIFIER: On-Site Sewage Facility (OSSF) Installer Certification Number 8066; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §§285.3, 285.5, and 285.20, and the Code, §366.053(a)(2), by failing to submit a complete application that demonstrates the OSSF complies with all design requirements; 30 TAC §285.58(a)(3) and the Code, §366.004 and §366.051(c), by failing to obtain proof of the necessary permitting authority's authorization; and 30 TAC §§285.32(a)(1)(B), 285.33(a)(1)(A) and (D), and 285.34(a), by failing to construct an OSSF compliant with TNRCC design criteria; PENALTY: $810; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: City of Weinert; DOCKET NUMBER: 2000-1452-MWD-E; IDENTIFIER: TPDES Permit Number 11018-001; LOCATION: Weinert, Haskell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11018-001, and the Code, §26.121, by failing to comply with permitted limits for minimum dissolved oxygen, TSS, and BOD; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(27) COMPANY: Western Rim Investors, LLC; DOCKET NUMBER: 2001-0465-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program File Numbers 00031402 and 01040502; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: apartment complex; RULE VIOLATED: 30 TAC §213.4(a), by failing to obtain approval of an Edwards Aquifer protection plan; and 30 TAC §213.4(k), by failing to comply with special conditions of an approved water pollution abatement plan; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Robert Mikesh, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(28) COMPANY: Wise County Recycling, Inc.; DOCKET NUMBER: 2001-0042-MSW-E; IDENTIFIER: Unauthorized Site Number 455040124; LOCATION: Boyd, Wise County, Texas; TYPE OF FACILITY: processing and composting; RULE VIOLATED: 30 TAC §330.5, by allowing the unauthorized storage and processing of non-recyclable material; 30 TAC §332.3(a), by failing to obtain a permit for composting sorted materials; and 30 TAC §332.4(1) and (8), and the Code, §26.121, by failing to prevent the unauthorized discharge of shredded compost material placed on the ground; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(29) COMPANY: Young Materials Corp.; DOCKET NUMBER: 2001-0097-AIR-E; IDENTIFIER: Air Account Number 94-5436-C; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: portable hot mix asphalt manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.0518(a) and §382.085(b), by failing to obtain a permit prior to constructing a portable hot mix asphalt plant or meet the conditions for a permit by rule; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Susan Johnson, (512) 239-2555; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200104918
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 21, 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 Order (AO) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **October 1, 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 the proposed AO 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 AO 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 October 1, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AO and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AO should be submitted to the TNRCC in **writing**.

(1) COMPANY: Robert D. Deaton dba Oak Hill Development West; DOCKET NUMBER: 2001-0164-PWS-E; TNRCC ID NUMBERS: 1840114; LOCATION: 3883 Fort Worth Highway, Weatherford, Parker County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: §290.46(e)(1)(A), by failing to provide a competent water works operator holding a valid Grade D or higher ground water operator's certification; §290.45(b)(1)(B)(iii), by failing to provide two or more service pumps with a minimum service capacity of 2.0 gallons per minute per connection; §290.43(c), by failing to provide a ground storage tank that prevents ponding at any point on the roof; §290.43(c)(3), by failing to provide a ground storage tank with a weighted flap valve that seats properly with a gap no more than 1/16 inch; §290.41(c)(3)(N), by failing to replace or repair the meter on the pump house discharge line; §290.46(v), by failing to install all electrical wiring in the pump house in securely mounted conduit in compliance with local or national electric codes; PENALTY: $2,938; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200104919

Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 21, 2001

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Notice of Public Hearing

The Texas Natural Resource Conservation Commission (commission) will conduct public hearings to receive testimony concerning amendments to 30 TAC Chapter 114, Subchapter A and Subchapter C, concerning Control of Air Pollution from Motor Vehicles, and a revision to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning SIPs. Both subchapters will be submitted as a revision to the SIP.

The proposed amendments would revise rules related to the implementation of the state's Motor Vehicle Emission Inspection and Maintenance (I/M) program. The proposed rulemaking requires all vehicle emissions test stations in the Dallas/Fort Worth, extended Dallas/Fort Worth, and Houston/Galveston program areas, with the exception of low volume stations, to offer both acceleration simulation mode (ASM-2) testing and on-board diagnostics (OBD) testing to the public; defines the term low volume emissions test station; requires all vehicle emissions test stations in the El Paso program area to offer both two-speed idle (TSI) testing and OBD testing to the public; adjusts the administrative portion of the test fees remitted to the state; increases fees for the El Paso area should the county opt into the low- income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; requires a test-on- resale component; incorporates the TSI and ASM-2 specifications into one equipment specification document with an amended date; provides for new equipment requirements and specifications regarding OBD equipment; deletes the section related to waivers and extensions; and creates a new section to establish an early participation incentive program.

The proposed SIP revisions clarify the new program elements such as applicability changes; state resources for the program; the new program performance standard; emissions testing network type; emissions testing; affected vehicle populations; strategies for quality control and quality assurance; data collection, analysis, and reporting; public information strategies; on-road vehicle emissions testing; and the implementation schedule. The proposed SIP excludes the Beaumont/Port Arthur ozone nonattainment area from the I/M program requirements.

The public hearings previously scheduled for this proposed rulemaking have been CANCELLED and rescheduled for the following times and locations: September 13, 2001, at 2:00 p.m., Houston City Council Chambers, 2nd Floor, 901 Bagby, Houston; September 13, 2001, at 7:00 p.m., Doubletree Hotel, 400 Dallas Street, Houston; September 17, 2001, at 2:00 p.m. and at 7:00 p.m., La Quinta Inn Arlington Conference Center, 825 N. Watson Road, Arlington; and September 17, 2001, at 7:00 p.m., City of El Paso Council Chambers, 2nd Floor, 2 Civic Center Plaza, El Paso. The only change for the September 13, 2001 hearings in Houston is a change in location for the 7:00 p.m. hearing.

The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings, and answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by 5:00 p.m. on September 17, 2001, although oral and written comments submitted at the September 17, 2001 hearings will be accepted. All comments should reference Rule Log No. 2001-035-114-AI. For further information, please contact Jill Burditt at (512) 239-0560. Copies of the proposed rules can be obtained from the commission's web site at *www.tnrcc.state.tx.us/oprd/rules/propadop.html* and SIP revisions can be obtained from the commission's web site at *www.tnrcc.state.tx.us/oprd/sips/cover.html*, or by calling Ms. Spencer at (512) 239-5017.

TRD-200104855
Ramon Dasch
Acting Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 20, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of August 15, 2001 through August 17, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AMERIPOL SYNPOL CORPORATION has applied for a renewal of TNRCC Permit No. 02487, which authorizes the discharge of steam condensate and storm water runoff essentially free from process wastewater contamination at a daily average dry weather flow not to exceed 200,000 gallons per day via Outfall 001. The applicant operates a synthetic rubber plant. The facility is located at 1215 Main Street, immediately east of the City of Port Neches, Jefferson County, Texas.

CALPINE CONSTRUCTION FINANCE COMPANY, L.P. which proposes to operate the Amelia Energy Center, a combined cycle electric power generation facility, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04322, to authorize the discharge of cooling tower blowdown, low volume wastes, and storm water at a daily average flow not to exceed 1,330,000 gallons per day via Outfall 001. The facility is located approximately 2.5 miles northwest of the intersection of U.S. Highway 90 and State Highway 364, on Old Sour Lake Road, immediately west of the City of Beaumont, Jefferson County, Texas.

MARVIN POPE AND THE ESTATE OF JANOICE COBB has applied for a renewal of TPDES Permit No. 13366-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 105,000 gallons per day. The facility is located approximately 1,000 feet east of Farm-to-Market Road 17, 4.5 miles north of the intersection of State Highway 182 and Farm-to-Market 17 (City of Alba), between Mustang Bay and Little Mustang Bay of Lake Fork Reservoir in Wood County, Texas.

TA OPERATING CORPORATION DBA TRAVELCENTERS OF AMERICA has applied for a renewal of TPDES Permit No.

13505-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located on the southwest corner of the intersection of Interstate Highway 40 and Farm-to-Market Road 1912 in Potter County, Texas.

VISION METALS, INC. has applied for a major amendment to TNRCC Permit No. 01237 to authorize the removal of Outfall 102 and to apply the limits from Outfall 102 to Outfall 002; to authorize the addition of storm water Outfalls 003, 004, and 005; to apply the effluent limitations and/or monitoring requirements found in the NPDES multi-sector storm water permit to all stormwater discharges from this facility; to authorize an increase in the daily maximum pH limit at Outfall 002 from 9.0 to 9.5 standard units; and to authorize the de-chlorination of effluent samples prior to performing toxicity testing. The current permit authorizes the discharge of storm water runoff commingled with recovered treated groundwater and treated sewage effluent on an intermittent and flow variable basis via Outfall 001, which will remain the same; the discharge of treated sewage effluent at a daily average flow not to exceed 10,000 gallons per day via Outfall 101, which will remain the same; the discharge of storm water runoff commingled with treated process wastewater, treated groundwater, and furnace condenser recycle wastewater on an intermittent and flow variable basis via Outfall 002; and the discharge of treated process wastewater and treated groundwater at a daily average flow not to exceed 215,000 gallons per day via Outfall 102. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0003026, issued on June 24, 1994 and TNRCC Permit No. 01237, issued on January 10, 1994. The applicant operates the Gulf States Tube Plant which manufactures steel pipe and tubes. The plant site is located adjacent to and on the west side of Scott Road at the Spur 529, approximately one mile north of the U.S. Highway 59/Kroesne Road intersection, and approximately three miles west of the City of Rosenberg, Fort Bend County, Texas.

TRD-200104933
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 21, 2001

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Nortex Regional Planning Commission

Request for Information

As the recipient of regional peace officer training funds from the Governor's Office, Criminal Justice Division, Nortex Regional Planning Commission requests information from law enforcement training providers qualified and willing to present courses on site at the Nortex office or other locations, as deemed appropriate, in the Nortex region, including the following counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young. The information provided will be used to compile a Register of Approved Training Providers for our law enforcement training program. Nortex Regional Planning Commission has a current training agreement with Vernon College to report Texas Commission on Law Enforcement Officer Standards and Education credits, therefore providers are not required, but may have, a training agreement or academy license.

In order to be eligible for placement on the Register of Approved Training Providers, Nortex requests a current catalog and/or other supporting materials descriptive of courses the provider is capable of offering within our local region. Once information has been received and reviewed by Nortex, your agency/name will be placed on our Register of Approved Training Providers and will remain on file during the October 1, 2001 - September 30, 2002 fiscal year.

Additional information may be obtained by contacting Darlene Skinner, Criminal Justice Director or Justin Perron, Law Enforcement Training Coordinator, Nortex Regional Planning Commission, P. O. Box 5144, Wichita Falls, Texas, 76307, (940) 322-5281 or TDD #1800-RELAYTX.

Responses to this Request For Information must be received by September 30, 2001.

TRD-200104911
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: August 20, 2001

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 14, 2001, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Cinergy Retail Power, L.P. for Retail Electric Provider (REP) certification, Docket Number 24505 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than September 7, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200104791
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 16, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 16, 2001, Rhythms Links, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60204. Applicant intends to discontinue offering Digital Subscriber Line in Texas.

The Application: Application of Rhythms Links, Inc. to Discontinue Certain Services, Docket Number 24499.

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, at P.O. Box 13326, Austin, Texas 78711-3326 no later than September 5, 2001. You may contact the PUC Customer Protection Division at (512) 936-7150. Hearing and speech- impaired individuals with text

telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24499.

TRD-200104921
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 16, 2001, Southern Telcom Network, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60459. Applicant intends to remove the resale-only restriction.

The Application: Application of Southern Telcom Network, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24511.

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, at P.O. Box 13326, Austin, Texas 78711-3326 no later than September 5, 2001. You may contact the PUC Customer Protection Division at (512) 936-7150. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24511.

TRD-200104922
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 17, 2001, Pathway Com-Tel, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60128. Applicant intends to expand its geographic area to include the area served by all incumbent local exchange companies throughout the state of Texas.

The Application: Application of Pathway Com-Tel, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24516.

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, at P.O. Box 13326, Austin, Texas 78711-3326 no later than September 5, 2001. You may contact the PUC Customer Protection Division at (512) 936-7150. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24516.

TRD-200104923
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2001

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Notice of Application to Amend Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on August 10, 2001, for a certificate of convenience for a proposed transmission line in San Patricio and Live Oak Counties pursuant to P.U.C. Substantive Rule §25.101(c)(1)(C) and §§14.001, 37.051, 37.054, 37.056 and 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows:

Docket Style and Number: Application of the South Texas Electric Cooperative (STEC) to Amend its Certificate of Convenience and Necessity for a Proposed Transmission Line in San Patricio and Live Oak Counties, Docket Number 24496.

The Application: Central Power and Light Company (CP&L) owns and operates a substation located at Mathis, Texas. In its application, STEC is requesting to interconnect the new transmission project at that substation. San Patricio Electric Cooperative serves distribution customers from STEC distribution substations. There are five project transmission routes that have been studied which will accomplish the intended result of minimizing the voltage collapse due to certain outages. Four of the routes are between 4.5 miles to 5.32 miles and these four alternatives have similar potential environmental impacts due to the close proximity of active and inactive gravel pit operations. The fifth route follows an active railroad, property lines along the railroad and property lines along cultivated fields. STEC asserts the environmental impact of this route will be minimal both on an area basis and on a distance basis. Pursuant to P.U.C. Substantive Rule §25.101(c)(4), the commission must render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such certificate. However, if the application is uncontested, pursuant to P.U.C. Substantive Rule §25.101(c)(5)(C), the application shall be approved administratively within 80 days from the date of filing a complete application.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200104785
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 15, 2001

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Notice of Workshop on the Investigation of the Need for Planning Reserve Margin Requirements

The staff of the Public Utility Commission of Texas will hold a workshop concerning the need for planning reserve margin requirements on Thursday, September 13, 2001, at 9:30 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 24255, *PUC Investigation of the Need for Planning Reserve Margin Requirements*, was established for the purpose of investigating whether

the adequacy of generating capacity reserve margins should be left to the market forces, or whether other means should be created to help ensure a minimum reserve margin and, if so, what means should be used. At the workshop, the staff of the commission will host a panel discussion of various policy issues relating to the implementation of reserve margin requirements. In addition, the PUC Commissioners will attend the workshop to ask questions and participate in the discussion. Five days prior to the workshop the commission will make available in Central Records under Project Numbers 24255 an agenda for the format of the workshop. Questions concerning the workshop or this notice should be referred to Richard Greffe, Market Oversight Division, (512) 936-7404. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200104924
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 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, a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Service Call Complete Link Pursuant to P.U.C. Substantive Rule §26.215 on or about August 27, 2001, Docket Number 24517.

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 24517. 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 Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200104941
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2001

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Public Notice of Interconnection Agreement

On August 15, 2001, Southwestern Bell Telephone Company and Beeper Systems, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24508. 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 24508. 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 September 14, 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 24508.

TRD-200104940
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2001

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Public Notice of Interconnection Agreement

On August 15, 2001, Southwestern Bell Telephone Company and NOS Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998, Supplement 2001) (PURA). The joint application has been designated Docket Number 24518. 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 24518. 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 September 14, 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 24518.

TRD-200104942
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2001

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Office of the Secretary of State

Correction of Error

The Office of the Secretary of State proposed amendments to 1 TAC §102.35, concerning Health Spas, Adjudication of Claims. The rule appeared in the August 17, 2001, issue of the *Texas Register* (26 TexReg 6074).

In proposed new subsection (d) the phrase "after first deducting the actual costs for publication of the notice" should have been published with strikeout lines to indicate the text is proposed for deletion.

TRD-200105068

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Redistricting Plans

The State of Texas has submitted its redistricting plans for the Texas House of Representatives and for the Texas Senate that were adopted July 25, 2001, by the Legislative Redistricting Board, to the United States Department of Justice for its review under Section 5 of the Voting Rights Act, 42 USC §1973c. A complete duplicate copy of the submission is available for public review in the Office of the Secretary of State, Elections Division, 208 E. 10th Street, Suite 309, Austin, Texas 78701, (800) 252-8683. The information will be available from 8:00 a.m. to 5:00 p.m., Monday through Friday. In addition, the submission letters are posted on the Secretary of State's web page at www.sos.state.tx.us.

Any comments regarding the submission may be sent to:

Chief, Voting Section

Civil Rights Division

Department of Justice

P.O. Box 66128

Washington, DC 20035-6128

TRD-200104842
Ann McGeehan
Division Director, Elections
Office of the Secretary of State
Filed: August 20, 2001

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Teacher Retirement System of Texas

Request for Qualifications

The Teacher Retirement System of Texas, a public pension fund and Texas state agency, seeks written responses from attorneys or law firms interested in providing legal services to TRS with respect to Health Care Law generally on an as needed basis during the period September 1, 2001 through August 31, 2003.

Any person wishing to obtain a copy of the Request for Qualifications ("RFQ") (including instructions) should contact: J. Carpenter, Program Administrator, Legal Services, Teacher Retirement System of Texas, 1000 red River Street, Austin, Texas 78701-2698 (512)397-6438. The RFQ may also be obtained from the "What's New" link on the TRS web site at http://www.trs.state.tx.us.

Responses to the RFQ must be received at 1000 Red River Street in Austin Texas no later than 5:00 p.m. CST time on September 10, 2001.

Subject to advance publication requirements applicable to each engagement of counsel by state agencies, TRS will tentatively pre-qualify firms through their responses and, when the need arises for counsel, make its final selection of counsel for each engagement, if any, based upon a number of criteria, including the demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability to comply with TRS contracting and invoicing requirements, absence of disqualifying relationships or conflicts, and the reasonableness of proposed fees.

The Teacher Retirement System of Texas shall not be responsible for any cost incurred in the submission of a response.

The Teacher Retirement System of Texas reserves the right to modify the qualification requirements or scope of services for any engagement and to accept and reject any or all of the responses submitted.

TRD-200104956

Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: August 22, 2001

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Texas Department of Transportation

Public Notice - Disadvantaged Business Enterprise Goals, Fiscal Year 2002

In accordance with Title 49, Code of Federal Regulations, Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Section 26.45 requires the recipients of federal funds, including the Texas Department of Transportation, to set overall goals for DBE participation in U. S. Department of Transportation assisted contracts. As part of this goal-setting process, the Texas Department of Transportation is publishing this notice to inform the public of the proposed overall goals, and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2002 DBE goals are 11.90% for highway design and construction, 11.90% for aviation and 6.03% for public transportation. The proposed goals and goal-setting methodology for each are available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days following the date of this notice. The information may be viewed in the office of the Texas Department of Transportation, Construction Division, Business Opportunity Programs Section, 200 West Riverside Drive, Austin, Texas 78704.

The department will accept comments on the DBE goals for 45 days from the date of the notice. Comments can be sent to Cynthia F. Gonzales, Construction Division, 125 E. 11th St., Austin, Texas 78701; (512) 486-5517; Fax: (512) 486-5519; or Email:

cgonza3@dot.state.tx.us

TRD-200104959
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 22, 2001

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Public Notice - TYLER - Notice of Availability of FEIS

In accordance with Title 43, Texas Administrative Code, §2.43, the Texas Department of Transportation is giving public notice of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of the Loop 49 (West Section) roadway facility around the City of Tyler in Smith County, Texas. The public and interested organizations will have 30 days following the publication of this notice to submit comments.

The proposed project consist of the construction of a controlled access freeway facility from Interstate Highway 20 south to State Highway 155, a distance of approximately 16 miles. The proposed Loop 49 facility will consist of a four lane divided roadway with both freeway and parkway sections depending on the surrounding land use. To simplify the analysis of the route alternatives the study area was divided into north and south sections, with the division point just south of State Highway 64. Three alternatives in the north section and four alternatives in the south section, in addition to the no-build alternative, are presented in the FEIS for this project. All alternatives lie between Interstate 20 and State Highway 155 in a north-south direction, but differ in their proximity to the City of Tyler. Combined alternative C-North and A-South was identified as the Preferred Alternative. This combined alternative was rated as the best by representing the best balance between environmental impacts to the natural and human environment, construction and maintenance costs roadway engineering issues, traffic and access issues and input from the public. This combined alternative is the closest to the City of Tyler and is 15.86 miles long.

The proposed Loop 49 facility is intended to alleviate future traffic congestion on existing roadways in urbanized Smith County; to provide a safer, more convenient route for the travelling public through the Tyler Area; and to increase mobility and provide access (including improved emergency service access) to the western Tyler/Smith County area. The social, economic, and environmental impacts of the Loop 49 project have been analyzed in the FEIS.

Copies of the FEIS and other information about the project may be obtained at the Texas Department of Transportation Tyler District Office located at 2709 West Front Street, Tyler, Texas 75702. For further information please contact Joe R. Moore, at (903) 510-9295. Copies of the FEIS may also be reviewed at the University of Texas at Tyler Library, Tyler Junior College Library, the office of the Smith County Judge, the City of Tyler Public Library, the Tyler Metropolitan Planning Organization, East Texas Council of Governments, and the Tyler Metropolitan Chamber of Commerce.

TRD-200104964
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 22, 2001

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Texas Workers' Compensation Commission

Request for Information

The Texas Workers' Compensation Commission (TWCC), an agency of the State of Texas, issues this Request for Information (RFI) to gather information that may assist the agency in identifying entities to determine the feasibility, development, and evaluation of regional workers' compensation healthcare networks.

INTRODUCTION AND BACKGROUND:

During the 2001 77th Texas Legislative Session, amendments were made to the Texas Labor Code Subchapter B, Chapter 408 adding §§408.0221, 408.0222, and 408.0223 through Article 2 of House Bill (HB) 2600. The revised statute states the commission shall, through competitive procurement, contract with one or more entities to determine the feasibility of, develop, and evaluate the regional workers' compensation healthcare networks established under this section. These entities will work with and under the direction of the Medical Network Advisory Committee (advisory committee), which consists of Governor-appointed representatives of labor, business, insurance carriers and health care providers. These entities shall also assist the advisory committee in developing appropriate network standards, application requirements and report card measures as well as evaluate existing health care delivery networks in target regions. Unless it is determined to be unfeasible, TWCC must initiate contracts with one or more regional health care delivery networks by December 31, 2002.

To meet statutory requirements, the regional networks established under Chapter 408 shall be:

* fee-for-service networks;

* designed to improve the quality and reduce the cost of health care for injured employees in Texas; and

* include active health care management and monitoring for a full range of health care services.

The cost for assessing the feasibility of, developing and evaluating regional health care delivery networks may not exceed $1.5 million by statute. This cost may be allocated by the advisory committee to more than one feasibility study and is dependent on the comprehensiveness and quality of the feasibility proposals received.

Participation in these regional networks would be voluntary for both employees and insurance carriers. To obtain more information on the specific provisions of HB 2600 and how they relate to this RFI, interested parties may review the bill online at www.house.state.tx.us (click on Legislation, then Bill Information and Bill Search, then Bill Number, then type in HB 2600 and review the enrolled text version of the bill). A summary of all the provisions of HB 2600 as well as two flowcharts on the legislative intent behind the regional workers' compensation networks can also be obtained online from the Research and Oversight Council on Workers' Compensation at *www.roc.capnet.state.tx.us* (click on Recent legislative changes to the Texas workers' compensation system).

Information Desired:

The purpose of this RFI is to obtain information that will assist TWCC and the advisory committee in developing either a Request for Proposals (RFP) or a Request for Quotation (RFQ) for the workers' compensation health care network feasibility study required under HB 2600. Depending on the response to this RFI, it is anticipated that an RFP or RFQ will be posted around (November 2001). TWCC invites responses to this RFI from qualified organizations that have demonstrated experience in evaluating and/or establishing health care networks.

Each RFI Respondent is expected to provide the following:

(1) Identifying Information, including:

* Name and address of business entity submitting the response.

* Name, address, business and telephone number, and fax number of the principal contact person.

(2) Description of previous work performed in this area.

(3) Feasibility proposal considerations, including:

* Description and sources of existing health care network standards (standards for either general health networks or workers' compensation health networks) and considerations/adjustments that may need to be made to accommodate occupational injuries.

* Description and sources of existing health care quality evaluation measures and methodologies (e.g., available report cards, standardized instruments, etc.) and considerations/adjustments that may need to be made to evaluate occupational injuries.

* Criteria that should be used/considered by the advisory committee to target the feasibility study on one or more particular regions in Texas.

* General information on available health care networks in those regions, including types of health care services offered by those networks, number of covered lives, geographic accessibility to care, types of volume discounts available; data collection capabilities; quality of care assurance programs; dispute resolution mechanisms; experience with occupational health issues, partnerships with local employers and any other information deemed relevant when evaluating feasibility proposals.

* Specific types and sources of available data on existing health care delivery networks that should be considered when evaluating feasibility proposals.

* Discussion of data access or confidentiality issues that should be considered when evaluating feasibility proposals.

(4) General estimated timeframes and pricing for the completion of the feasibility study in one or more regions in Texas. Respondent should provide the general timeframes and estimated cost for each of the following feasibility study components (a detailed project plan and budget are not required at this stage):

* The formulation of recommended network standards and health care quality evaluation measures and methodologies (e.g., report cards) for consideration by the advisory committee and adoption by TWCC.

* The completion of the feasibility study in one or more regions in Texas (includes the selection of one or more regions for analysis, analysis of existing health care networks in those areas, analysis of injured employee population in those areas to determine feasibility of network success, and recommendations to the advisory committee regarding the feasibility of initiating contract negotiations with one or more regional networks.

* Assisting the advisory committee and TWCC staff with contract negotiations and initial implementation as well as subsequent assessment of the impact of regional workers' compensation health care delivery networks on both the cost and the quality of medical care provided to injured employees.

Additional information the RFI Respondent may provide includes:

Responses:

Five (5) copies of the response to the RFI should be sent by mail or delivered in person marked "Response to Request for Information" and addressed to:

Sharlana Dillard, Purchasing Manager

Texas Workers' Compensation Commission, MS 77

4000 South IH 35

Austin, Texas 78704

Telephone: (512) 804-4232

E-mail: *sharlana.dillard@TWCC.state.tx.us*

Response Due Date:

All responses must be received by the Purchasing Manager at the address set forth above not later than 3:00 p.m. Central Zone Time on September 18, 2001.

Disclaimers:

Responding to this RFI is not a condition for eligibility to respond to any subsequent solicitation document that may arise from the RFI. Responses to this RFI will not have any bearing, positive or negative, on the evaluation and vendor selection of any proposals that may result from this RFI.

RFI Preparation:

All costs associated in the preparation of responses to the RFI are the responsibility of the Respondent and no payments or reimbursements for such will be made by TWCC. All information furnished and evaluation copies provided will be retained by TWCC. TWCC staff will evaluate the responses and publications and may mark, highlight and annotate any submissions.

TRD-200104970

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 22, 2001

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
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The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

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Texas Workers Compensation Commission, Title 28

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