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Cristina Medrano



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THE GOVERNOR

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Appointments

Appointments for August 27, 2010

Appointed to the Texas Lottery Commission for a term to expire February 1, 2013, J. Winston Krause of Austin (replacing David Schenck of Dallas who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2011, Janet Buckley Claborn of Muleshoe (replacing Lorraine O'Donnell of El Paso who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2011, Steven N. Nguyen of Irving (replacing John Gowan of Dallas who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2013, James L. Alexander of Caldwell (replacing Eric Ford of Lubbock who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2015, Richard L. Beard of Mesquite (Mr. Beard is being reappointed).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2015, Fred S. Brinkley, Jr. of Austin (replacing Karl Floyd of Stafford whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2015, Brenda Dever-Armstrong of San Antonio (replacing Janie Gonzalez of San Antonio whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2015, Roger Michael Ragain of Lubbock (replacing Ben Raimer of Galveston whose term expired). Dr. Ragain will serve as presiding officer of the council.

Rick Perry, Governor

TRD-201005213



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.510, §355.511

The Health and Human Services Commission (HHSC) proposes to amend §355.510, Reimbursement Methodology for Emergency Response Services (ERS), and §355.511, Reimbursement Methodology for Home-Delivered Meals, under Title 1, Part 15, Chapter 355, Subchapter E.

Background and Justification

Section 355.510 establishes the methodology for determining the reimbursement ceiling for the Emergency Response Services program and §355.511 establishes the methodology for determining the reimbursement ceiling for Home-Delivered Meals. HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to replace outdated references.

Section-by-Section Summary

The proposed amendments to §355.510 include:

Replacing references to the Department of Human Services (DHS) with the Health and Human Services Commission (HHSC) and Department of Aging and Disability Services (DADS)," and

Replacing references to Chapter 20 at 40 TAC with Chapter 355 at 1 TAC.

The proposed amendments to §355.511 include:

Replacing references to the Department of Human Services (DHS) with the Health and Human Services Commission (HHSC) and Department of Aging and Disability Services (DADS)," and

Replacing references to Chapter 20 at 40 TAC with Chapter 355 at 1 TAC.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rules are in effect there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human ser-

vices agencies. There are no fiscal implications for local governments as a result of enforcing or administering the amendments.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of these proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with these amendments. The amendments will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendments are in effect, the expected public benefit is that the rules will contain correct references to information regarding cost determination process rules and reimbursement ceiling determination, thus allowing the public to access accurate information regarding reimbursement methodology. Additionally, the rules will correctly reference HHSC as the entity responsible for determination of the reimbursement ceilings referenced in the amended rules.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Luis A. Morales in the HHSC Rate Analysis Department by telephone at (512) 491-1376. Written comments on the proposal may be submitted to Mr. Morales by facsimile at (512) 491-1998, by e-mail to luis.morales@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.510. *Reimbursement Methodology for Emergency Response Services (ERS).*

(a) General requirements. [~~Providers must apply the information in this section.~~] The Texas Health and Human Services Commission (HHSC) [~~Department of Human Services (DHS)~~] or its designee applies the general principles of cost determination as specified in §355.101 [~~§20.104~~] of this title (relating to Introduction). Whenever the term "HHSC" [~~"DHS"~~] occurs, it means the Texas Health and Human Services Commission [~~Department of Human Services~~] or its designee.

(b) General reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §355.105 [~~§20.105~~] of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(c) Reimbursement ceiling determination. When HHSC [~~DHS~~] does not require a cost report, HHSC [~~DHS~~] may adjust the rate ceiling as appropriate based upon cost data collected in the form of special surveys or reports submitted by all contracted providers, or other appropriate cost data related to the Emergency Response Services program.

(d) Reimbursement ceiling determination based on a cost-reporting process. If HHSC [~~DHS~~] deems it appropriate to require cost reporting, cost reports will be governed by the information in this subsection.

(1) Reimbursement ceiling. The reimbursement ceiling is determined for a per-month unit of service. The ceiling applies to all provider agencies uniformly, regardless of geographic location or other factors.

(2) Excused from submission of cost reports. All contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) [~~DHS~~] client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by HHSC [~~DHS~~] before the due date of the cost report.

(3) Exclusion of cost reports.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC [~~DHS~~] excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the data base reflects costs

and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the data base used for reimbursement determination if:

(i) there is a reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(4) Recommended reimbursement ceiling. HHSC [~~DHS~~] determines a recommended reimbursement ceiling in the following manner. The reimbursement ceiling is determined by the analysis of financial and statistical data submitted by provider agencies on cost reports and, as deemed appropriate, a market survey analysis of emergency response equipment suppliers.

(A) HHSC [~~DHS~~] allocates payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act, and Texas Unemployment Compensation Act.

(B) Allowable expenses, excluding depreciation and mortgage interest, are projected from the provider agency's reporting period to the next ensuing reimbursement period. HHSC [~~DHS~~] determines reasonable and appropriate economic inflators or adjusters as described in §355.108 [~~§20.108~~] of this title (relating to Determination of Inflation Indices) to calculate a prospective expense. HHSC [~~DHS~~] also adjusts reimbursement if new legislation, regulations, or economic factors affect costs as specified in §355.109 [~~§20.109~~] of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(C) Allowable reported expenses are combined into three cost areas: responder, program operations, and facility. To determine the projected cost per unit of service, a contracted provider's projected expenses in each cost area are divided by its total units of service for the reporting period.

(D) The contracted providers' projected costs per unit of service are ranked from low to high in each cost area, with corresponding units of service.

(E) The 80th percentile cost, weighted by units of service, is determined for each cost area. The recommended reimbursement ceiling is the sum of the 80th percentile costs of the three cost areas.

(F) The reimbursement determination authority for this reimbursement ceiling is specified in §355.101 [~~§20.104~~] of this title (relating to Introduction).

(e) Contract-specific unit reimbursement. The actual reimbursement for each contract is negotiated between DADS [~~DHS~~] staff and the provider agency. The contract-specific reimbursement DADS [~~DHS~~] pays the provider agency is the full cost for emergency response services. The provider agency must not bill the client for any additional charges. In no instance may the negotiated unit reimbursement exceed the per-month reimbursement ceiling.

(f) Reviews and field audits of cost reports. HHSC [~~DHS~~] staff perform either desk reviews or field audits on all contracted providers. The frequency and nature of the field audits are determined by HHSC [~~DHS~~] staff to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 [~~§20.106~~] of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 [~~§20.107~~] of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal and, if necessary, an administrative hearing to dispute an action taken by HHSC [~~DHS~~] under §355.110 [~~§20.110~~] of this title (relating to Informal Reviews and Formal Appeals).

(g) Factors affecting allowable costs. In determining whether a cost is allowable or unallowable, providers must follow the guidelines specified in §355.102 [~~§20.102~~] of this title (relating to General Principles of Allowable and Unallowable Costs). Providers must follow the guidelines for allowable and unallowable costs as specified in §355.103 [~~§20.103~~] of this title (relating to Specifications for Allowable and Unallowable Costs) and follow the guidelines for unallowable costs specific to the ERS program as specified in this subsection [~~(g) of this section~~].

(h) Unallowable cost. The unallowable cost specific to the ERS program is the expense of base station equipment at the response center.

(i) Reporting revenue. Revenue must be reported on the cost report according to §355.104 [~~§20.104~~] of this title (relating to Revenue).

§355.511. Reimbursement Methodology for Home-Delivered Meals.

(a) Reimbursement ceiling determination. When the Texas Health and Human Services Commission (HHSC) [~~Department of Human Services (DHS)~~] does not require a cost report, HHSC [~~DHS~~] may adjust the rate ceiling as appropriate, based on cost data collected through the budget worksheets or other appropriate cost data related to the program in accordance with §355.105(h) [~~§20.105(h)~~] of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). For the purposes of this section, HHSC [~~DHS~~] means the Texas Health and Human Services Commission [~~Department of Human Services~~] or its designee.

(b) Reimbursement ceiling determination based on a cost-reporting process. If HHSC [~~DHS~~] deems it appropriate to require cost reporting, cost reports will be governed by the information in this subsection. HHSC [~~DHS~~] applies the general principles of cost determination as specified in §355.101 [~~§20.101~~] of this title (relating to Introduction). The cost-reporting process is as follows:

(1) Documentation requirements. Provider agencies must follow the cost-reporting guidelines specified in §355.105 [~~§20.105~~] of this title.

(2) Excused from submission of cost reports. All contracted provider agencies must submit a cost report unless:

(A) the number of days between the date the first Texas Department of Aging and Disability Services (DADS) [~~DHS~~] client received services and the provider agency's fiscal year end is 30 days or less; or

(B) a provider agency served an average of fewer than 500 meals a month for the designated cost report period; or

(C) circumstances beyond the control of the provider agency make cost report completion impossible, such as the loss of

records due to natural disasters or removal of records from the provider agency's custody by any governmental entity.

(3) Requests to be excused from submitting a cost report. Requests to be excused from submitting a cost report must be received by HHSC [~~the Texas Health and Human Services Commission's~~] Rate Analysis [~~Department~~] before the due date of the cost report.

(4) Exclusion of cost reports.

(A) Provider agencies are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC [~~DHS~~] excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by provider agencies. The purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(5) Allowable and unallowable costs. Provider agencies must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 [~~§20.102~~] of this title (relating to General Principles of Allowable and Unallowable Costs). Provider agencies must follow the guidelines for allowable and unallowable costs as specified in §355.103 [~~§20.103~~] of this title (relating to Specifications for Allowable and Unallowable Costs).

(6) Revenue. Revenue must be reported on the cost report according to §355.104 [~~§20.104~~] of this title (relating to Revenues).

(7) Review of cost reports. HHSC [~~DHS~~] staff perform either desk reviews or field audits on all contracted provider agencies. The frequency and nature of the field audits are determined by HHSC [~~DHS~~] to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 [~~§20.106~~] of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and provider agencies will be notified of the results of a desk review or a field audit in accordance with §355.107 [~~§20.107~~] of this title (relating to Notification of Exclusions and Adjustments). Provider agencies may request an informal and, if necessary, an administrative hearing to dispute an action taken by HHSC [~~DHS~~] under §355.110 [~~§20.110~~] of this title (relating to Informal Reviews and Formal Appeals).

(c) Reimbursement ceiling. This subsection applies when a cost report is required. HHSC [~~DHS~~] staff determine the recommended reimbursement ceiling as follows.

(1) HHSC [~~DHS~~] staff allocate payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA)

or social security, Workers' Compensation Insurance (WCI), Federal Unemployment Tax Act (FUTA), and Texas Unemployment Compensation Act (TUCA).

(2) HHSC [~~DHS~~] staff project allowable expenses, excluding depreciation and mortgage interest, from each provider agency's reporting period to the next ensuing reimbursement period. HHSC [~~DHS~~] determines reasonable and appropriate economic adjusters as described in §355.108 [~~§20.108~~] of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. HHSC [~~DHS~~] staff also adjust reimbursement if new legislation, regulations, or economic factors affect costs as specified in §355.109 [~~§20.109~~] of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(3) HHSC [~~DHS~~] staff combine allowable reported costs into four cost areas.

(A) The administrative cost area includes administrative salaries, wages, and other administrative expenses.

(B) The facility cost area includes building and equipment expenses, and operation and maintenance expenses.

(C) The food preparation cost area includes raw food costs, salaries and wages of food service staff, and subcontracted costs when food preparation is purchased.

(D) The meal delivery cost area includes meal delivery expenses, including mileage paid; meal container expenses; and vehicle rental, lease, use, and/or depreciation costs.

(4) A contracted provider agency's projected expenses in each cost area are divided by its total units of service for the reporting period to determine the projected cost per unit of service.

(5) The contracted provider agency's projected costs per unit of service are ranked from low to high in each cost area.

(6) The 80th percentile cost is determined for each cost area. The recommended reimbursement ceiling is the sum of the 80th percentile costs of the four cost areas.

(d) Reimbursement determination authority. The reimbursement determination authority for this reimbursement ceiling is specified in §355.101 [~~§20.101~~] of this title.

(e) Contract-specific reimbursement. DADS [~~DHS~~] determines the actual reimbursement for each contract through negotiations between DADS [~~DHS~~] staff and the provider agency. In no instance may the negotiated unit reimbursement exceed the unit reimbursement ceiling.

This 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 September 1, 2010.

TRD-201005170

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: October 17, 2010

For further information, please call: (512) 424-6900



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.773

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

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §355.773, concerning Reporting Costs by Mental Retardation Local Authority (MRLA) Providers.

Background and Justification

Effective September 1, 2003, the Department of Aging and Disability Services (DADS) eliminated the MRLA Program and transferred individuals receiving MRLA and Home and Community-based Services - OBRA (HCS-O) waiver program services to the Home and Community-based Services (HCS) program. DADS' actions were in response to §2.76, House Bill 2292, 78th Legislature, Regular Session, 2003 which redefined the responsibilities of mental retardation authorities (MRAs), program providers, and DADS. In response to DADS' elimination of the MRLA Program, HHSC proposes to repeal the cost reporting rules for MRLA providers.

Section-by-Section Summary

The proposed repeal of §355.773 deletes obsolete information.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the proposed repeal is in effect there will be no fiscal impact to state government. The proposed repeal will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of the proposed repeal of this section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of the proposed repeal of this rule. The implementation of the proposed rule repeal reflects the change in state law that eliminated this program which eliminated the need for this reimbursement methodology.

HHSC does not anticipate that there will be any economic cost to persons as a result of the proposal. The proposal will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the repeal is in effect the expected public benefit of the proposal is that the change in state law that eliminated this program will be further implemented by eliminating this section so that there will no longer be a rate methodology rule for a program that no longer exists.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the proposal may be submitted to Ms. Hambrick by facsimile at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The repeal affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.773. *Reporting Costs by Mental Retardation Local Authority (MRLA) Providers.*

This 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 September 3, 2010.

TRD-201005185

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: October 17, 2010

For further information, please call: (512) 424-6900



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §131.15

The Texas Board of Professional Engineers proposes an amendment to §131.15, relating to Committees. The proposed amendment is related to the frequency of meetings of the General Issues Committee.

The proposed rule would change the frequency of the General Issues Committee meetings to an as-needed basis. This is intended to prevent scheduling unnecessary meetings when there is an insufficient agenda.

David Howell, P.E., Director of Licensing for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell has also determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the proposed amendment is more efficient operation of committees to the Board.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

§131.15. Committees.

(a) The board chair shall appoint the following standing committees as stated in paragraphs (1) - (5) of this subsection, composed of four board members at least one of whom is a public member. A committee quorum shall consist of three members. Committee appointments shall be made by the chair for a term of two years but may be terminated at any point by the chair. Committee members may be re-appointed at the discretion of the chair. The board chair shall appoint a committee chair.

(1) General Issues Committee. The committee shall meet as required [no less than twice each fiscal year] to evaluate issues and possibly develop proposed actions for the full board on issues of importance to the board and the profession. Such issues might include engineering ethics, professionalism in practice, legislation, board management, and engineering business issues. The vice chair of the board shall be a committee member and shall chair the committee during his or her elected term.

(2) - (5) (No change.)

(b) - (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 September 2, 2010.

TRD-201005178
Lance Kinney, P.E.
Executive Director

Texas Board of Professional Engineers
Earliest possible date of adoption: October 17, 2010
For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.25

The Texas Board of Professional Engineers (Board) proposes amendments to §133.25 relating to Application from Engineering Educators.

The proposed amendment to §133.25 clarifies the intent of this rule section by specifying that it apply to engineering professors who teach classes at colleges and universities in Texas as their primary employment. Engineers who do not perform teaching of engineering as their primary employment should obtain licensure through the standard application method.

David Howell, P.E., Director of Licensing for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an improvement in the accuracy and flexibility of the licensure processes.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and §1001.303 Application for License.

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

§133.25. Applications from Engineering Educators.

(a) Persons whose current, primary employment is as an engineering educator [who are currently engineering educators] instructing engineering courses in a recognized institution of higher education in Texas, as defined in §131.81 of this chapter (relating to Definitions) are permitted to seek licensure utilizing an alternate application.

(b) - (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 September 2, 2010.

TRD-201005179
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers

Earliest possible date of adoption: October 17, 2010
For further information, please call: (512) 440-7723



PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1

The Texas Medical Board (Board) proposes amendments to §175.1, concerning Application Fees.

The amendments to §175.1 eliminate application fees for regular temporary licenses and distinguished professor temporary licenses and add the fee amount for a regular temporary license to the application fee for full licensure, provisional licenses, telemedicine licenses, reissuance of licenses following revocation, and administrative license. In addition, due to fees associated with Texas Online, fees are increased an additional \$10 for each of the licenses mentioned.

Nancy Leshikar, General Counsel for the Board, has determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed.

Ms. Leshikar has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to ensure that the board does not lose revenue for the state as it eliminates the need for temporary licenses. The effect to individuals required to comply with the rule as proposed will be a cost of \$107 for applicants who apply for provisional licenses, and for applicants for full licensure, provisional licenses, telemedicine licenses, reissuance of licenses following revocation, and administrative license is \$10. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the prac-

tice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also authorized by §153.001 and §155.0031, Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§175.1. Application Fees.

The board shall charge the following fees for processing an application for a license or permit:

(1) Physician Licenses:

(A) Full physician license (includes surcharge of ~~\$215~~ ~~[\$205]~~--~~\$1002~~ ~~[\$885]~~).

(B) Telemedicine license (includes surcharge of ~~\$215~~ ~~[\$205]~~--~~\$1002~~ ~~[\$885]~~).

(C) Administrative medicine license (includes surcharge of ~~\$215~~ ~~[\$205]~~--~~\$1002~~ ~~[\$885]~~).

(D) Reissuance of license following revocation (includes surcharge of ~~\$215~~ ~~[\$205]~~--~~\$1002~~ ~~[\$885]~~).

(E) Temporary license:

~~[(i)] Distinguished professor--\$50.~~

~~[(ii)] State health agency--\$50.~~

~~[(iii)] Visiting physician--\$0.~~

~~[(iv)] Visiting professor--\$167.~~

~~[(v)] National Health Service Corps--\$0.~~

~~[(vi)] Faculty temporary license (includes surcharges of \$280)--\$737.~~

~~[(vii)] Postgraduate Research Temporary License--\$0.~~

~~[(viii)] Provisional license--\$107.~~

~~[(ix)] Regular--\$107.~~

(F) Licenses and Permits relating to Medical Education:

(i) Initial physician in training permit (includes surcharge of \$5)--\$202.

(ii) Physician in training permit for program transfer (includes surcharge of \$4)--\$131.

(iii) Evaluation or re-evaluation of postgraduate training program--\$250.

(iv) Physician in training permit for applicants performing rotations in Texas (includes surcharge of \$3)--\$120.

(2) Physician Assistants:

(A) Physician assistant license (includes surcharge of \$5)--\$205.

(B) Reissuance of license following revocation (includes surcharge of \$5)--\$205.

(C) Temporary license--\$107.

(3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:

(A) Acupuncture licensure (includes surcharge of \$5)--\$305.

(B) Temporary license for an acupuncturist--\$107.

(C) Acupuncturist distinguished professor temporary license--\$50.

(D) Acudetox specialist certification (includes surcharge of \$2)--\$52.

(E) Continuing acupuncture education provider--\$50.

(F) Review of a continuing acupuncture education course--\$25.

(G) Review of continuing acudetox acupuncture education courses--\$50.

(4) Non-Certified Radiologic Technician permit (includes surcharge of \$2)--\$52.

(5) Non-Profit Health Organization initial certification--\$2,500.

(6) Surgical Assistants:

(A) Surgical assistant licensure--\$300.

(B) Temporary license--\$50.

(7) Criminal History Evaluation Letter--\$100.

This 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 September 1, 2010.

TRD-201005143

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: October 17, 2010

For further information, please call: (512) 305-7016



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER RR. STANDARD PROOF OF HEALTH INSURANCE FOR MEDICAL BENEFITS FOR INJURIES INCURRED AS A RESULT OF A MOTORCYCLE ACCIDENT

28 TAC §21.5201

The Texas Department of Insurance (Department) proposes new Subchapter RR, §21.5201, concerning standard proof of health insurance for medical benefits for injuries incurred as a result of a motorcycle accident. This proposed new section is necessary to implement SECTION 8(c) and (c-2) of Senate Bill (SB) 1967, 81st Legislature, Regular Session, which amends the Transportation Code §661.003 and directs the Department to prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle.

One of the purposes of SB 1967 is to amend current law relating to the safe operation of motorcycles to provide consistency regarding the enforcement of Transportation Code §661.003 (Offenses Relating to Not Wearing Protective Headgear). Prior to the enactment of SB 1967, it was an offense under Transportation Code §661.003 to drive or ride on a motorcycle without a helmet unless the person was 21 years of age and had completed a motorcycle safety course or had health insurance. However, Texas statutes did not require all motorcyclists or the public to complete any motorcycle safety training. (TEXAS STATE SENATE TRANSPORTATION AND HOMELAND SECURITY COMMITTEE, BILL ANALYSIS (ENROLLED), SB 79, 81ST Legislature, Regular Session (Sept. 2, 2009)). In addition, the Insurance Code did not provide a standard of proof for the health insurance component of the two exceptions to Transportation Code §661.003. SB 1967 SECTION 8(c-2) requires the Department to prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described by SB 1967 SECTION 8(c). The insurance exception to Transportation Code §661.003 provides that the excepted person must be "covered by a health insurance plan providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle" to qualify for the exception.

On April 15, 2010, the Department posted an informal working draft of the proposed new subchapter on the Department's website and invited public comment. The Department held a meeting on April 29, 2010, for the stakeholder comments. The informal comment period ended on April 30, 2010. The proposal includes input from these comments.

Proposed new §21.5201 is necessary to ensure that a standard proof of health insurance exists to implement an exception to the application of the Transportation Code §661.003(a) or (b), which provides that it is an offense for a person to not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway. Proposed new §21.5201(a)(1) provides that the subchapter is applicable to an individual, group, blanket, or franchise insurance policy, insurance agreement, health maintenance organization evidence of coverage, group hospital services contract, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident while operating or riding a motorcycle. Proposed new §21.5201(a)(2) expressly provides that the subchapter is not applicable to credit-only coverage, disability coverage, specified disease coverage, long-term care coverage, dental or vision-only coverage, single-service health maintenance organization coverage, accidental death and dismemberment coverage, hospital indemnity coverage, workers' compensation coverage, or medical payments or personal injury protection coverage. Proposed new §21.5201(b) provides that upon request, a health insurance plan shall issue a standard proof of health insurance coverage identifying a person who is at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle, unless the plan already issues customary identifications cards that include the words "MOTORCYCLE HEALTH" on the face of the card. Proposed new §21.5201(c) provides two alternative ways in which a health insurance plan can remain in compliance with the subsection. Proposed new §21.5201(c)(1) provides that a health insurance plan may comply by issuing its customary identification card with the words "MOTORCYCLE HEALTH" in all capital letters, printed in at least

8-point boldface font, and prominently placed on the card. Proposed new §21.5201(c)(2) provides that a health insurance plan may comply by issuing a card, separate from its customary card, titled "Motorcycle Health: Standard Proof of Health Insurance". The separate card must contain the heading "Motorcycle Health: Standard Proof of Health Insurance," the carrier logo, the carrier name, the name of the enrollee, insured, or dependent of the enrollee or insured, the policy number, and a statement that the enrollee, insured, or dependent of the enrollee or insured is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle. All text printed on the separate card shall appear in upper and lower case, using at least 12-point boldface type for the heading and at least 10-point regular type for the text body.

Additionally, proposed new §21.5201 is not applicable to personal injury protection (PIP) and medical payment (Med Pay) coverages. The Transportation Code §661.003(c) provides that a person covered by a "health insurance plan" providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle is exempted from committing the offense of not wearing protective headgear. Section 661.003(i) defines "health insurance plan" as an "individual, group, blanket, or franchise insurance policy, insurance agreement, evidence of coverage, group hospital services contract, health maintenance organization membership, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident." PIP and Med Pay coverages are not considered health insurance plans under the Insurance Code. For instance, §1952.151 of the Insurance Code states that "personal injury protection" coverage "consists of provisions of an automobile liability insurance policy that provide for payment . . . for expenses that arise from an accident. . . ." Section 2251.202 of the Insurance Code requires the Commissioner to publish a standard rate index of rates "for each of the following coverages under a personal automobile insurance policy," including "personal injury protection" and "medical payments." Finally, a large number of other sections of the Insurance Code distinguish between coverage under a health benefit plan and medical payment insurance coverage under an automobile insurance policy, including §§544.152, 546.003, 846.001, 1274.001, 1352.002, 1357.003, 1357.053, 1358.003, 1360.003, 1366.054, and 1501.002. Since the term "health insurance plan" under the Transportation Code does not specifically include automobile coverages providing for medical benefits, and because the Insurance Code does not treat PIP or Med Pay as falling within the general scope of health insurance, such coverages will not qualify for the exemption from the offense found in the Transportation Code.

FISCAL NOTE. Judy Wooten, Project Manager of Regulatory Matters for the Life, Health and Licensing Program, has determined that for each year of the first five years the proposal will be in effect, there will be no measurable fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Wooten also has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of the proposal is that motorcyclists will have a means of obtaining proof of health insurance coverage required for proof of compliance with the Transportation Code §661.003(c). Section 661.003(c)

provides an exception to the offense committed when a person does not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway, if a person is at least 21 years old and is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle. The Department posted the draft rule and an estimate of costs consistent with the costs discussed in the following paragraphs on April 15, 2010, and requested input on the costs associated with the rule. The Department also held a stakeholder meeting on April 29, 2010. No comments on the potential costs of the rule were received. The Department has drafted the proposed amendments to maximize public benefits while mitigating costs.

The cost to persons required to comply with the proposal are as follows:

1. *Addition of the words "MOTORCYCLE HEALTH" to the customary identification (ID) card provided by the health insurance plan.* The costs associated with this option would include the cost of printing two words on the customary ID cards and the cost of programming. Programming costs may vary depending on the number of hours required, the skill level of the programmer or programmers, the complexity of the health insurance plan's information systems, and whether outside contract programmers will be involved. Each health insurance plan will have the information needed to estimate its individual costs for such programming, but the Department estimates that programming costs will be minimal and require no more than one hour of programming. Based on data from the Labor Market and Career Information Department (LMCI) of the Texas Workforce Commission, which derives its wage information from the latest DOL Wage Report, the mean hourly wage for a computer programmer working for an insurance carrier in Texas is \$37.54. The actual number, types, and cost of personnel will be determined by each health insurance plan's existing information systems and staffing. The actual cost of printing the two additional words on an ID card will similarly vary from carrier to carrier, but is expected to be minimal. A health insurance plan could choose to print the words on all of a group's ID cards when the cards are first printed, thus resulting in no additional printing costs from what is already required.

2. *Use of separate ID cards generated in response to individual requests.* The costs associated with this option would include the cost of programming, printing, and mailing one page: approximately \$.06 - \$.08 for printing and printing material, and approximately \$.44 for postage. Programming may be required to produce the printed cards for mailing, but a health insurance plan could also make the personalized cards available on the internet for an insured or enrollee to print, which would result in a one-time programming cost. The Department estimates that the amount of programming time to be between five and 20 hours for this option at the wage rates discussed above.

All of the analyses in this cost note are equally applicable to and do not vary for small or micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, part-

nership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on approximately 30 to 40 small or micro-businesses that are required to comply with the proposed rules. This estimate is based on an estimated 30 to 40 health insurers and HMOs that qualify as small or micro businesses. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Department's cost analysis and resulting estimated costs for insurers in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses.

The Department has considered the purpose of the Transportation Code §661.003(c) and (c-2) and the proposed new subchapter, which is to provide motorcyclists proof of health insurance coverage, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. It is the Department's position that to waive or modify the requirements of the proposal for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the proposal. The Department has also determined that the proposal is consistent with the health, safety, and environmental and economic welfare of the state, because providing a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle encourages motorcyclist to carry health insurance prior to engaging in the operation of a motorcycle. Therefore, the Department has determined in accordance with §2006.002(c-1) of the Government Code, for the above cited reasons there are no regulatory alternatives to this proposal that would meet the objectives of the proposal and be consistent with the health, safety, and environmental and economic welfare of the state.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though the proposal may have an adverse economic effect on small or micro-businesses that are required to comply with the proposal, the proposal does not require a regulatory flexibility analysis that is mandated by §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires that a state agency, before adopting a rule that may have an adverse economic effect on small businesses, prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 18, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Judy Wooten, Project Manager of Regulatory Matters for the Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the Transportation Code §661.003(c) and (c-2) and the Insurance Code §36.001. The Transportation Code §661.003(c) provides that it is an exception to the application of §661.003(a) or (b), which provides that it is an offense for a person to not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway, if a person is at least 21 years old and is covered by a health insurance plan providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle. The Transportation Code §661.003(c-2) provides that the Department of Insurance shall prescribe a standard of proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described by §661.003(c). The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal:

Section 21.5201, Transportation Code §661.003(c) and (c-2)

§21.5201. Identification Cards - Health Coverage for Motorcycle Injuries.

(a) Applicability.

(1) This subchapter is applicable to an individual, group, blanket, or franchise insurance policy, insurance agreement, health maintenance organization evidence of coverage, group hospital services contract, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident while operating or riding on a motorcycle.

(2) This subchapter is not applicable to:

- (A) credit-only coverage;
- (B) disability coverage;
- (C) specified disease coverage;
- (D) long-term care coverage;
- (E) dental or vision-only coverage;

(F) single-service health maintenance organization coverage;

(G) accidental death and dismemberment coverage;

(H) hospital indemnity coverage;

(I) workers' compensation coverage; or

(J) medical payments or personal injury protection coverage provided under an automobile policy.

(b) Standard Proof of Health Insurance. Upon request, a health insurance plan, as defined by the Transportation Code §661.003(i), shall issue a standard proof of health insurance coverage that satisfies the content requirements under subsection (c) of this section and identifies a person who is at least 21 years of age and covered by the health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle. A request can be made by a person who is an enrollee or an insured of the health insurance plan or who is a dependent of an enrollee or insured of the health insurance plan.

(c) Contents of Standard Proof of Health Insurance. A health insurance plan shall issue the standard proof of health insurance coverage described by subsection (b) of this section through one of the methods set forth in either paragraph (1) or paragraph (2) of this subsection:

(1) The health insurance plan may elect to add to its customary identification card the words "MOTORCYCLE HEALTH." By including the words "MOTORCYCLE HEALTH" on its customary identification card, a health insurance plan affirms that the person named on the card is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle, as addressed by the Transportation Code §661.003(c). The words "MOTORCYCLE HEALTH" must be:

(A) printed in all capital letters;

(B) printed in at least 8-point boldface font; and

(C) located in a prominent place on the card.

(2) The health insurance plan may elect to issue a card, separate from its customary identification card, titled "Motorcycle Health: Standard Proof of Health Insurance."

(A) The separate card must contain at least the following:

(i) a heading that includes only the words "Motorcycle Health: Standard Proof of Health Insurance;"

(ii) the carrier logo;

(iii) the carrier name;

(iv) the name of the enrollee, insured, or dependent of the enrollee or insured;

(v) the policy number; and

(vi) the statement: "{name of enrollee, insured, or dependent of the enrollee or insured} is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle, as addressed by the Transportation Code §661.003(c)."

(B) All text printed on the separate card shall appear in upper and lower case as appropriate.

(C) The text body shall appear in at least 10 point regular type.

(D) The heading shall appear in at least 12 point bold-face type.

This 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 September 2, 2010.

TRD-201005182

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: October 17, 2010

For further information, please call: (512) 463-6327



CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

The Texas Department of Insurance (Department) proposes amendments to §26.7 and §26.304, concerning small and large employer health insurance regulations. The amendments are proposed to: (1) provide flexibility for coverage options in situations where two married individuals eligible for coverage under a large or small employer health benefit plan are working for the same employer; and (2) implement provisions of House Bill (HB) 407, 79th Legislature, Regular Session, effective June 18, 2005, relating to coverage for school district employees where two married individuals eligible for coverage under a large or small employer health benefit plan are working for the same school district. HB 407 amended the Insurance Code Chapter 1501 to add §1501.0095, which provides that a school district employee who is eligible for coverage under a large or small employer health benefit plan providing coverage to the school district's employees and who is the spouse of another school district employee covered under the plan may elect whether to be treated under the plan as an employee or the dependent of the other employee.

The proposed amendments provide flexibility for coverage options for employees in situations where two married individuals eligible for coverage under a large or small employer health benefit plan are working for the same employer. Representatives of insurance agencies and benefits services firms provided information to the Department about the potential cost-reduction benefits of providing such flexibility for coverage options in situations where a family-coverage option for a particular employer group product or plan is more cost favorable than an employee-only plus employee-and-children coverage option. The proposed amendments facilitate the opportunity for the married individuals eligible for coverage under the plan to choose between or among coverage options instead of being restricted to each being covered as an employee.

On April 15, 2010, the Department posted on its website, for informal comment, the draft rule text and cost note estimates. On April 29, 2010, the Department held a public meeting to receive oral informal comments on the draft rule text and the note of estimated costs.

The statement of estimated costs was further considered as a result of comments received during the informal posting. As indicated in the Public Benefit/Cost Note portion of this proposal,

however, the Department did not receive information adding to or conflicting with its cost estimates.

Moreover, comments on the proposed text of the rule received during the informal posting or at the public meeting resulted in a clarifying addition to the text as informally posted, to provide that an election by a spouse to be treated as a dependent under the proposed amended rule does not impact the individual's status as an eligible employee for any other purpose under the Insurance Code Chapter 1501, except that such individual may be treated as a dependent for purposes of employer premium contributions.

The proposed amendments provide that an employee eligible for coverage under a large or small employer health benefit plan and who is the spouse of another employee covered under the plan shall be given an opportunity to elect whether to be treated as an employee or as the dependent of the other employee.

Proposed amendments to §26.7 set forth that a small employer carrier must provide married eligible employees of the same employer the option to elect to have one spouse be treated under a small employer health benefit plan as an employee or alternatively as the dependent of the other employee. The proposed amendments also provide that an election by a spouse to be treated as a dependent under the proposed amended rule does not impact the individual's status as an eligible employee for any other purpose under the Insurance Code Chapter 1501, except that such individual may be treated as a dependent for purposes of employer premium contributions.

Proposed amendments to §26.304 set forth that a large employer carrier must provide married eligible employees of the same employer the option to elect to have one spouse be treated under a large employer health benefit plan as an employee or alternatively as the dependent of the other employee. The proposed amendments also provide that an election by a spouse to be treated as a dependent under the proposed amended rule does not impact the individual's status as an eligible employee for any other purpose under the Insurance Code Chapter 1501, except that such individual may be treated as a dependent for purposes of employer premium contributions.

The proposed amendments to the sections would apply to large or small employer health benefit plans for plan years beginning on or after the effective date of the amendments as adopted.

FISCAL NOTE. Katrina Daniel, Senior Associate Commissioner for Life, Health & Licensing, has determined that for each year of the first five years the proposed amended sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal. Any potential fiscal impact to school districts would be the direct result of enactment of HB 407 and the amendment to the Insurance Code occasioned by its enactment, and not the result of adoption or administration of the rule sections as proposed to be amended.

PUBLIC BENEFIT/COST NOTE. Ms. Daniel also has determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of the proposed sections will be the increased flexibility for married eligible employees of the same employer to choose a coverage option for health benefits under large and small employer health benefit plans for themselves and their dependents, if dependent coverage is offered to employees. The proposed amended sections also will potentially increase affordability of health bene-

fit plan coverage to employers and their employees and dependents if dependent coverage is offered to employees. The proposed amended sections also will promote marketing and business practices that will increase the potential economic value of the group health benefit plan to eligible individuals affected by the amendments, and provide for access to and administration of health benefit plan coverage options not presently available to such individuals. Some health benefit plan issuers may incur additional costs as a result of the amendments depending on their marketing and business practices. The Department, however, has drafted the proposed amendments to maximize public benefits while mitigating costs to persons required to comply with the proposed amendments.

The Department has identified the following costs of compliance associated with the proposed amendments.

1. *Cost of providing election language in application or other forms.* The Department anticipates that the potential costs of compliance with the amendments to §26.7 and §26.304 will involve the addition of the election language in application or other forms.

The Department anticipates that most health benefit plan issuers will choose to include the election language for eligible employees in application materials already in use; however, some issuers might choose to create a separate election form or make the election available electronically. The number of pages an issuer will need to print will depend on the issuer's marketing and business practices, but likely will be limited to one or two pages. The cost of paper and printing is estimated at between \$.06 and \$.08 per page.

In order to make the election available, issuers might need to utilize the services of a number of different types of employees and/or independent contractors, depending on marketing and business practices. Those who might be utilized include compliance specialists, consultants, legal counsel, and/or technical writers to draft the necessary election language; computer programmers to make electronic system changes; and webpage developers if the election form is put on the internet. Staffing costs may vary depending on the skill level required, the number of staff required, and the geographic location where the work is done. Average salaries for these types of positions in Texas may be found by accessing the Wage Information Network database website operated by the Texas Workforce Commission based on data obtained from the federal Bureau of Labor Statistics: <http://www.twc.state.tx.us/customers/rpm/rpmsub3.html>. Information on average wages in other states may be obtained directly from the federal Bureau of Labor Statistics website: <http://www.bls.gov/oes/current/oesrcst.htm>. Depending on the complexity of issuers' current operations and systems, the Department estimates that revising physical forms may take between 5 and 20 staff hours, while revising electronic systems and web pages could take between 10 and 50 staff hours.

2. *Cost of filing endorsements or other forms to conform to amendments.* To the extent that health benefit plan issuers need to file endorsements or forms with the Department to conform to changes resulting solely from these amendments, the Department estimates that the cost to issuers will include a \$100 filing fee per amended form or per endorsement and a paper-and-printing cost of between \$.06 and \$.08 per page. The number of pages an issuer will need to print will depend on the issuer's marketing and business practices. Based on current practice, the Department anticipates that some issuers will file a single endorsement for use with multiple products.

In addition to the two cost items described above, health plans potentially might experience a decrease in contribution amounts to the plan and/or have to pay more in claims depending on elections made by particular married eligible employees employed by the same employer, and their particular health benefit plan utilization circumstances. Prospective election by a married eligible employee to be treated as a dependent rather than as an employee is accompanied by the possibility that the contribution amounts a health benefit plan receives in exchange for provision of coverage to persons might decrease, the dollar value of claims paid by a health benefit plan might increase, or both, depending on the dynamics of occurrences affecting plan utilization subsequent to decisions by couples making elections that they believe will be in their financial best interest.

The Department does not have data to quantify the number of married couples working for the same employer and covered under an employer health plan that would be entitled to utilize this election. It is anticipated, however, that an election made pursuant to the proposed amendments would be the result of an identified or anticipated financial benefit to married employees in the form of lower required contributions or other diminished costs occasioned by the exercise of the coverage election.

The Department is unaware of any other costs that health benefit plan issuers would incur as a result of allowing two married individuals employed by the same employer to elect whether to be treated under the plan as separate employees or as an employee plus dependent.

In its April 15, 2010 posting, the Department sought additional information on its cost estimates and components. On April 29, 2010, the Department held a public meeting to receive oral informal comments on the draft rule text and the note of estimated costs. The Department did not receive any information adding to or conflicting with its cost estimates either from issuers or from association representatives of such issuers.

The total compliance cost of the proposed amendments to a health benefit plan issuer is not dependent upon the size of the issuer, but is dependent upon the number of persons to whom the carrier markets and/or provides health coverage. Both small and micro businesses as well as the largest businesses affected by the proposed amendments will incur the same cost per unit. The cost per hour of labor should not vary between the smallest and largest businesses, based on the types of forms or systems that will require either modification or creation, and the nature of technical requirements associated with creating or updating such forms or systems. Total costs for both a small business and the largest business will depend on the percentage of applicants or insured groups for which such issuers will have to create or modify forms or systems.

Finally, the costs incurred by large or small health benefit plan issuers to comply with the proposed amendments with respect to a plan providing coverage to a school district's employees are the direct result of enactment of HB 407, which amended the Insurance Code Chapter 1501 to add §1501.0095, providing that a school district employee who is eligible for coverage under a large or small employer health benefit plan providing coverage to the school district's employees and who is the spouse of another school district employee covered under the plan may elect whether to be treated under the plan as an employee or the dependent of the other employee.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small or micro businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.001(1) does not specify a maximum level of gross receipts for a "micro business." The Government Code §2006.001(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.001(b) - (d) for small businesses.

As required by the Government Code §2006.002(c), the Department has determined that the proposed amended sections may have an adverse economic effect on 10 - 40 large or small employer health benefit plan issuers that qualify as small or micro businesses under the Government Code §2006.001(1) and (2) and that are required to comply with the proposal.

The estimated number of small and micro businesses is based on an analysis of the financial data collected by the Department, such as the annual gross premiums of large and small employer health benefit plan issuers and on self-reporting by preferred provider benefit plan issuers regarding whether they qualify as small businesses. The adverse economic impact will result from the necessary costs incurred to comply with this proposal that are discussed in the Public Benefit/Cost Note part of this proposal for health benefit plan issuers.

Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule.

Section 2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses."

As described and indicated in the Public Benefit/Cost Note portion of this proposal, the costs incurred by large or small health benefit plan issuers to comply with the proposed amendments with respect to a plan providing coverage to a school district's employees are the direct result of enactment of HB 407, which amended the Insurance Code Chapter 1501 to add §1501.0095, and its corresponding coverage election option for eligible employee spouses.

The Department considered regulatory alternatives for achieving the purpose of the Insurance Code §1501.0095 and the proposed rule amendments to minimize any adverse impact on the estimated 10 - 40 large or small employer health benefit plan issuers that qualify as small or micro businesses under the Government Code §2006.001(1) and (2).

The purpose of the Insurance Code §1501.0095 - and in a broader scope of application the proposed amendments - is to

permit a school district employee in the case of §1501.0095 - and an employee of a covered employer in the case of the proposed amendments - who is eligible for coverage under a large or small employer health benefit plan providing coverage to the employer's employees and who is the spouse of another employee covered under the plan to elect whether to be treated under the plan as an employee or the dependent of the other employee.

An alternative method considered by the Department was whether to exempt small or micro business large or small employer health benefit plan issuers from the requirements of the proposed amendments. The Department rejected the alternative as being inconsistent with the objective and intent of §1501.0095 for school district employees and inconsistent with the objective and intent of the proposed rule amendments.

If small or micro business large or small employer group health benefit plan issuers are exempted from complying with the proposed amendments, the employer groups issued plans by such exempted plan issuers will not be guaranteed the issuance of a plan that provides their applicable eligible employees the election for coverage, and its potential benefit, afforded by a plan that complies with the proposed amendments. Such method would result in disparity between applicable eligible employees with plans issued by small or micro issuers contrasted with those issued by large issuers. Such method would be inconsistent with the clear intent of §1501.0095 for school district employees.

An alternative method considered by the Department was whether to partially exempt small or micro business large or small employer health benefit plan issuers from the requirements of the proposed amendments. Such method would require compliance with §1501.0095 for plans issued to cover school district employees, but would exempt compliance for other plans. The Department rejected the alternative as being inconsistent with the objective and intent of the proposed rule amendments.

If small or micro business large or small employer group health benefit plan issuers are partially exempted from complying with the proposed amendments, the non-school district employer groups issued plans by such exempted plan issuers will not be guaranteed the issuance of a plan that provides their applicable eligible employees the election for coverage, and its potential benefit, afforded by a plan that complies with the proposed amendments. Such method would result in disparity between applicable eligible employees with non-school district plans issued by small or micro issuers contrasted with those issued by large issuers. Such method would be inconsistent with the objective and intent of the proposed rule amendments. Moreover, such a method would require that for school district plans, the costs associated with the rule amendments would nonetheless be borne by small and micro issuers, mitigating diminution of economic impact otherwise afforded by such method in the instance of small and micro issuers that issue school district plans.

As described and explained in the Public Benefit/Cost Note portion of this proposal, the costs associated with compliance with the proposed amended sections will involve the addition of the election language in application or other forms, and, to the extent that health benefit plan issuers need to file endorsements or forms with the Department to conform to changes resulting solely from the proposed amendments, the cost of filing endorsements or other necessary forms.

Also as indicated in the Public Benefit/Cost Note portion of this proposal, the total compliance cost of the proposed amendments to a health benefit plan issuer is not dependent upon the size of the issuer, but is dependent upon the number of persons to whom the carrier markets and/or provides health coverage. Total costs for both a small business and the largest business will depend on the percentage of applicants or insured groups for which such issuers will have to create or modify forms or systems.

For reasons set out in this part, the Department has determined, in accordance with the Government Code §2006.002, that regardless of the economic effect, it is neither legal nor feasible to waive or modify the requirements of the proposed rule amendments for small or micro businesses because the proposed amendments are either required by statute or waiver of requirement would result in improper differentiation of coverage options for benefits between the eligible applicants/covered individuals of small and micro issuers, compared to those coverage options for benefits provided to the applicants/covered individuals of large issuers.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 18, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to Judy Wooten, Project Manager for Regulatory Matters, Life, Health, & Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATIONS

28 TAC §26.7

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapter 1501 and §36.001. Chapter 1501 implements provisions regarding small and large employers which were necessary to comply with the federal requirements contained in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 1501.010 requires the Commissioner to adopt rules necessary to implement the Chapter 1501, and to meet the minimum requirements of federal law, including regulations, which for small and large employer health carriers are contained in HIPAA and in regulations adopted by federal agencies to implement HIPAA. Section 1501.0095 requires the Commissioner to adopt rules to govern the manner in which an election under the section must be made. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department

of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following articles are affected by this proposal: Insurance Code Chapter 1501 and §1501.0095.

§26.7. *Requirement to Insure Entire Groups.*

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

(d) A small employer carrier shall not deny two individuals who are married the status of eligible employee solely on the basis that the two individuals are married. The small employer carrier shall provide a reasonable opportunity for the individuals to submit evidence as provided in subsection (c) of this section to establish each individual's status as an eligible employee.

(1) A small employer carrier shall provide married eligible employees of the same employer the option to elect to have one spouse be treated under a small employer health benefit plan as an employee, and the other spouse treated as an employee or alternatively as the dependent of the other employee. [The two individuals will not be eligible for coverage as a dependent. Each must be covered as an employee.]

(2) (No change.)

(3) An election by a spouse to be treated as a dependent pursuant to this subsection does not impact the individual's status as an eligible employee for any other purpose under the Insurance Code, Chapter 1501, except that such individual may be treated as a dependent for purposes of employer premium contributions.

(e) - (n) (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 September 3, 2010.

TRD-201005190

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: October 17, 2010

For further information, please call: (512) 463-6327



SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATION

28 TAC §26.304

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapter 1501 and §36.001. Chapter 1501 implements provisions regarding small and large employers which were necessary to comply with the federal requirements contained in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). Section 1501.010 requires the Commissioner to adopt rules necessary to implement the Chapter 1501, and to meet the minimum requirements of federal law, including regulations, which for small and large employer health carriers are contained in HIPAA and in regulations adopted by federal agencies to implement HIPAA. Section 1501.0095 requires the Commissioner to adopt rules

to govern the manner in which an election under the section must be made. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following articles are affected by this proposal: Insurance Code Chapter 1501 and §1501.0095

§26.304. *Requirement to Insure Entire Groups.*

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

(d) A large employer carrier shall not deny two individuals who are married the status of eligible employee solely on the basis that the two individuals are married. The large employer carrier shall provide a reasonable opportunity for the individuals to submit evidence as provided in subsection (c) of this section to establish each individual's status as an eligible employee.

(1) A large employer carrier shall provide married eligible employees of the same employer the option to elect to have one spouse be treated under a large employer health benefit plan as an employee, and the other spouse treated as an employee or alternatively as the dependent of the other employee. [The two individuals will not be eligible for coverage as a dependent. Each must be covered as an employee.]

(2) (No change.)

(3) An election by a spouse to be treated as a dependent pursuant to this subsection does not impact the individual's status as an eligible employee for any other purpose under the Insurance Code, Chapter 1501, except that such individual may be treated as a dependent for purposes of employer premium contributions.

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

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

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TRD-201005189

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §137.5

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes new §137.5, regarding Case Manager Certification. This new section is necessary to implement statutory amendments to Labor Code §401.011(5-a) and §413.021 under House Bill (HB) 7, enacted

by the 79th Legislature, Regular Session, effective September 1, 2005 and Senate Bill (SB) 1814, enacted by the 81st Legislature, Regular Session, effective June 19, 2009. One of the objectives of HB 7 was to amend Labor Code §413.021 to require insurance carriers to evaluate compensable injuries that could potentially result in lost time from employment as early as practicable to determine if skilled case management is necessary for the injured employee's case. HB 7 amended Labor Code §413.011 to allow the Commissioner to adopt rules relating to return-to-work guidelines and disability management that are designed to improve return-to-work outcomes through appropriate management of work-related injuries or conditions.

In addition, HB 7 defined case management in Labor Code §401.011(5-a) as "a collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes." HB 7 also provided that case managers must be appropriately licensed in this state to perform services and that insurance adjusters cannot serve as case managers. SB 1814 modified Labor Code §413.021 from requiring that case managers be appropriately licensed in Texas to requiring that case managers be appropriately certified.

Initially the Division formally proposed new §137.5 (regarding Certified Case Managers) in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8460). Notice of a public hearing regarding this proposal was published in the January 1, 2010, issue of the *Texas Register* (35 TexReg 137) and the hearing was held on January 11, 2010 at the Division's central office in Austin, Texas. After the public hearing and receipt of public comments, the Division withdrew the proposed rule from the April 23, 2010, issue of the *Texas Register* (35 TexReg 3246).

The Division conducted a survey of all states' regulations regarding case managers in other workers' compensation systems and 40 responded. Ten states have some level of required qualifications for case managers. These states include Arkansas, Georgia, Kentucky, Maryland, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, and West Virginia. North Carolina and Tennessee allow supervised non-certified case managers to operate under the supervision of a case manager who is certified.

The Division then informally posted a revised draft new rule to the Division's website on May 18, 2010 and received informal comments before formally submitting this proposal to the *Texas Register*.

The purpose of proposed new §137.5 is to establish certification standards for case managers used by insurance carriers for non-network workers' compensation claims. Case management requirements for certified network claims are governed by Insurance Code §1305.303 and 28 TAC §10.81. New §137.5(a) provides that the rule is applicable to all case management services provided by an insurance carrier under the Labor Code. Pursuant to Labor Code §§412.041(i), 412.0125(b)(4), 413.021(a) and 501.002(a) this rule is also applicable to the State Office of Risk Management (SORM). The Division proposes in new §137.5(a) that the rule shall become effective September 1, 2011 to allow system participants ample time to implement these certification requirements. New §137.5(b) elaborates on the limitations of the rule, indicating it does not apply to case management services provided by a certified workers' compensation network, by certain political subdivisions, or by a health care provider subject to §134.204 of this title (relating to Medical Fee Guideline

for Workers' Compensation Specific Services). New §137.5(c) establishes a requirement for a case manager to obtain certification from a national accrediting agency in one of six certification categories. These are the same requirements and certification categories that currently apply to case managers who perform case management services for claims in certified workers' compensation networks under §10.81 of this title (relating to Quality Improvement Program).

The six certification categories are case management, case management administration, continuity of care, disability management, occupational health, or rehabilitation case management. New §137.5(d) requires an insurance carrier to use a case manager who is appropriately certified in accordance with this section when conducting evaluations to determine if case management services are required for an injured employee's case in accordance with the provisions of the Labor Code, including Labor Code §413.021(a). New §137.5(e) requires the use of either a certified case manager or a skilled, non-certified case manager when providing any other case management services to an injured employee. New §137.5(f) defines the eligibility requirements for skilled, non-certified case managers to provide services other than those identified in subsection (d) of this title. New §137.5(g) prohibits a skilled, non-certified case manager from providing case management services for no more than 18 months unless the skilled, non-certified case managers become certified in accordance with §137.5(c). New §137.5(h) requires insurance carriers to verify and document that the case managers they use are complying with the requirements of §137.5(d), (e) and (f). New §137.5(i) provides that an adjuster may not also serve as a case manager for an injured employee's claim. New §137.5(j) clarifies that case managers shall be reimbursed according to their contractual agreement with the insurance carrier and not according to adopted fee guidelines in Division rules. New §137.5(k) provides that an insurance carrier may be held liable for administrative violations in accordance with Labor Code provisions and Division rules if the requirements of this section are not met.

Matthew Zurek, Executive Deputy Commissioner for Healthcare Management and System Monitoring, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal because the statutory requirements for case managers in non-networks has existed since September 1, 2005 under Labor Code §413.021, and the same requirements have existed for certified networks since 2006 under Insurance Code §1305.103(f) and §1305.303 and §§10.80 - 10.83 of this title (relating to Network Operations). Additionally, there will be no measurable effect on local employment or the local economy as a result of this proposed rule since the proposed rule continues to allow both certified and skilled, non-certified case managers to provide services within the Texas workers' compensation system.

Mr. Zurek has also determined for each year of the first five years the section is in effect, the public benefits anticipated for all system participants as a result of proposed new §137.5 will be more effective case management of an injured employee's rehabilitation, recovery, or return to work. In addition, the new rule is expected to facilitate greater continuity of care for the injured employee. There may be some regulatory costs for insurance carriers to comply with the new rule even though SB 1814 required case managers to be appropriately certified since June

19, 2009. The September 1, 2011 implementation date should provide current system participants an appropriate amount of time to achieve compliance with the new rule.

According to a 2005 national case management salary survey by ADVANCE, which is a national magazine and internet publication, and the Case Management Society of America the median salary for case managers in the south central region of the country, which includes Texas, was \$56,868 while the median national salary of a case manager who worked specifically in workers' compensation was \$57,000. In addition, 59 percent of the case managers who responded to the survey were certified. The average reported salary of the responding case managers who were certified was approximately \$58,970. Non-certified case managers reported an average salary of \$54,444 which is eight percent lower than those who were certified. In June of 2010, the Division reviewed various website job postings for case managers throughout Texas. For case managers without certifications, job postings reviewed by the Division have salary offers ranging from \$39,000 to \$52,000. As for case managers with a certification, job postings reviewed by the Division have salary offers ranging from \$60,000 to \$70,000. This represents approximately a 25 to 40 percent increase in salary for case managers with a certification as opposed to those without a certification. Location of employment (i.e., urban versus rural) and qualification (i.e., RN case manager versus clinical case manager) contributes to the wide gap between the offered salaries.

Therefore, the Division estimates that insurance carriers may have an increased cost of a range of approximately eight percent to 40 percent when employing or contracting for a case manager with a certification as opposed to a case manager without a certification. The impact to insurance carriers will vary and depends upon their current business model in the use of case managers. Specific factors such as the current use of certified or noncertified case managers by insurance carriers; the use of in-house case managers versus contracting for these services with case management companies; the variable salary structures for each type of case manager; the individual insurance salary structure; and the frequency and intensity of the use of case management services by insurance carriers on individual claims, all contribute to the costs associated with this proposed rule. Furthermore, it is unclear to the Division how often insurance carriers utilize case managers. Consequently, the Division is unable to predict the specific impact on each individual insurance carrier; however, each insurance carrier will have the information available to determine the costs and the extent of the adverse economic impact if any.

In addition, the Division estimates there will be a minimal cost incurred by non-certified case managers utilized by insurance carriers for non-network claims, which will be the cost to become certified, such as taking the certification examination and continuing education, and fees associated with maintaining certification. An accurate accounting of these costs is difficult to ascertain due to the variety of certifications that a skilled, non-certified case manager may obtain to comply with the proposed rule since each certification has different requirements and costs. According to the Commission for Case Manager Certification the application fee is \$150 and the examination fee is \$175 in order to receive a certification as a Certified Case Manager (CCM). To receive a certification as a Certified Occupational Health Nurse (COHN) from the American Board of Occupational Health Nurses the application is \$125, the examination is \$350, and there is a \$320 certification maintenance fee upon passing the exam.

Consequently, the cost to become certified ranges from approximately \$325 to \$795. Many case managers who are employed or contracted by workers' compensation non-network insurance carriers already have a certification that would comply with the proposed new rule, therefore the costs associated with these system participants would be the fees required to maintain their certification. The certification renewal costs range from \$150 for a CCM to \$400 for a COHN. The certification and renewal as a CCM or a COHN are each valid for a five year period.

In addition, a CCM must complete 80 continuing education hours and a COHN must complete 60 continuing education hours within five years of certification to maintain their certification. Continuing education credits can cost approximately \$7.00 per credit hour. Therefore, the cost per year to obtain a certification ranges from approximately \$65 to \$157, and the cost to renew a certification per year ranges from approximately \$142 to \$164. Case managers may be certified in several other areas not addressed in this example, but their cost of certification and renewal is within the general range discussed. As a result, the estimated costs to case managers for the next five years will be less than \$82. Therefore, insurance carriers will likely not experience any significant increased costs; however, certain skilled, non-certified case managers will experience additional costs to become certified and maintain that certification.

As required by the Government Code §2006.002(c), the Division has determined that the proposal may have a minimal adverse economic impact on small and micro business. Such businesses impacted would be insurance carriers, case management companies, and case managers. Department records as of May 2010 show there are 30 insurance carriers licensed in Texas receiving workers' compensation or excess workers' compensation premiums that qualify as a small or micro business. According to Division research conducted in 2009, the American Board for Occupational Health Nurses reported there are 81 certified Registered Nurse Case Managers (RN-CM) in Texas; according to the American Nurses Credentialing Center there are 89 certified Registered Nurses Board Certified (RN-BC) in Texas; according to the Disability Management Specialists there are 113 Certified Disability Management Specialists (CDMS) in Texas; according to the Commission for Case Manager Certification there are 2,085 Certified Case Managers (CCM) in Texas; according to the Nursing Certification Board there are 518 Certified Registered Rehabilitation Nurses (CRRN) in Texas; and according to the Commission on Rehabilitation Counselor Certification there are 720 Certified Rehabilitation Counselors (CRC) in Texas. There is no accurate way to account for all case manager companies or all skilled, non-certified case managers who may qualify as small businesses or micro businesses because these companies or individuals may operate in Texas while being located outside of Texas and they are not tracked or registered with any government agency.

The Division projects the adverse economic effect on small or micro-businesses will be the same minimal costs previously discussed regarding all others persons who are required to comply with the rule as proposed, certification costs and possible increased salaries for case managers with a certification as opposed to one without. The Division believes that this cost would not be significant and would not represent a significant adverse economic impact on small or micro-businesses.

While the requirements to become certified as a case manager may have some affiliated costs, these requirements and their consequential costs are mandated by statute not rule. The rule

proposal implements the legislative goal of requiring appropriately certified case managers so injured employees may receive appropriate case management services. The Division is not required to consider alternative methods of achieving the purpose of the proposed rule to minimize any adverse impacts on small or micro business if the alternatives would not protect the health and safety of the State. Allowing case managers to either defer or opt out of certification requirements would deviate from the purpose of the Texas Legislature's goal of assuring appropriate care is received by injured employees by their case managers which would not protect the health and safety of the State. Therefore, it is neither legal nor feasible to waive the requirements of the new section for small or micro-businesses and the preparation of a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002(c), is not required.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. CST on October 18, 2010. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/index.html>, by email at rulecomments@tdi.state.tx.us or by mailing your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing should be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The new section is proposed under Labor Code §§413.021, 401.011(5-a), 413.011(e) and (g), 412.0125, 412.041(i), 501.002(a), 402.00111, and 402.061.

Pursuant to Labor Code §413.021, an insurance carrier shall evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as practicable to determine if skilled case management is necessary for the injured employee's case. As necessary, case managers who are appropriately certified shall be used to perform these evaluations. Additionally, a claims adjuster may not be used as a case manager. Labor Code §401.011(5-a) defines case management as a "collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes." Pursuant to Labor Code §413.011(e) and (g), the Commissioner may adopt rules relating to return-to-work guidelines and disability management that are designed to improve return-to-work outcomes through appropriate management of work-related injuries or conditions. The Commissioner by rule may identify claims in which application of disability management activities is required and prescribe at what point in the claim process a treatment plan is required. The determination may be based on any factor considered relevant by the Commissioner.

Labor Code §412.0125 provides that as part of return-to-work coordination services, SORM shall implement any other services provided under Labor Code §413.021 that will facilitate the reintegration of an injured employee. Labor Code §412.041(i) provides that the director of SORM is subject to the rules, orders and decisions of the Commissioner of Workers' Compensation in the same manner as a private employer, insurer, or association. Labor Code §501.002(a) provides that specific chapters of the Labor Code apply and are included with regards to workers compensation insurance coverage for state employees. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rule making authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§401.011(5-a), 412.0125(b)(4), 413.011 and 413.021.

§137.5. Case Manager Certification.

(a) This section applies to all case management services as defined by Labor Code §401.011(5-a) that are provided under Labor Code Title 5 to injured employees by an insurance carrier on or after September 1, 2011.

(b) This section does not apply to case management services:

(1) subject to Insurance Code Chapter 1305;

(2) subject to Labor Code §504.053(b)(2); or

(3) of a health care provider subject to §134.204 of this title (relating to Medical Fee Guideline for Workers' Compensation Specific Services).

(c) Case managers who are certified must be certified by an established accredited organization including the National Commission for Certifying Agencies, the American Board of Nursing Specialties, or other national accrediting agencies with similar standards for case management certification. Case managers must be certified in one or more of the following areas:

(1) case management;

(2) case management administration;

(3) continuity of care;

(4) disability management;

(5) occupational health; or

(6) rehabilitation case management.

(d) When conducting evaluations to determine if case management services are required, insurance carriers shall utilize case managers who are certified in accordance with subsection (c) of this section.

(e) When providing case management services other than those specified in subsection (d) of this section, an insurance carrier shall utilize case managers who are:

(1) appropriately certified in accordance with subsection (c) of this section; or

(2) skilled, non-certified case managers as specified in subsection (f) of this section.

(f) Skilled, non-certified case managers are eligible to provide services other than those identified in subsection (d) of this section when:

(1) they meet all of the requirements to sit for a case management certification examination, with the exception of experience; and

(2) they are working under the direct supervision of an identified case manager that is certified in accordance with subsection (c) of this section in order to meet the experience requirements to sit for a case management certification examination.

(g) Individuals shall only be employed as skilled, non-certified case managers as specified in subsection (f) of this section for no more than 18 months. After 18 months, these individuals shall not conduct case management services until a certification is obtained in accordance with subsection (c) of this section.

(h) Insurance carriers shall be responsible for verifying and documenting in writing compliance with the requirements of subsections (d), (e) and (f) of this section. Insurance carriers shall provide this verification and documentation information to the division upon request.

(i) Claims adjusters shall not be used as case managers. This does not prohibit claims adjusters from performing claims services that are within the scope of licensure in accordance with the Insurance Code Chapter 4101.

(j) Reimbursement policies and maximum allowable reimbursement rates set forth in the adopted fee guidelines under §134.204 of this title between the treating doctor and other health care providers does not apply to the reimbursement of case managers employed or contracted by insurance carriers under this section.

(k) If the requirements of this section are not met, the insurance carrier may be held liable for administrative violations in accordance with Labor Code provisions and division 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 September 3, 2010.

TRD-201005193

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: October 17, 2010

For further information, please call: (512) 804-4703

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.5

The Commission proposes amendments to the following sections of Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.3

Subchapter B. Certificates of Approval, §807.11 and §807.16

Subchapter F. Instructors, §807.81

Subchapter H. Courses of Instruction, §807.122 and §§807.130 - 807.132

Subchapter I. Application Fees and Other Charges, §807.151

Subchapter L. Progress Standards, §807.223

Subchapter M. Attendance Standards, §807.245

Subchapter N. Cancellation and Refund Policy, §807.263

Subchapter P. Complaints, §807.301

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 807 rule change is to address changes in the career school and college industry. To identify options for simplifying processes and eliminating duplicative regulation, Agency staff met with the Career Colleges and Schools of Texas, a group of industry representatives, to discuss amendments to Chapter 807, Career Schools and Colleges rules. The goal was to identify rule and process changes to:

--streamline the Commission's regulation of career schools and colleges; and

--eliminate requirements that do not improve student protections, but that unnecessarily restrict career schools and colleges' ability to respond to changing needs for training.

In addition, the proposed amendments to Chapter 807 are to:

--clarify exemption requirements based on changes in the Texas Higher Education Coordinating Board (THECB) rules, which now recognize national accrediting bodies that approve baccalaureate or higher-level degrees; and

--better inform students of regulations governing licensed career schools and colleges, and grievance processes available to students.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§807.3. Memorandum of Understanding for Regulation of Schools

Section 807.3 deletes an incorrect reference to 40 TAC §800.205.

New §807.5. Exemptions

New §807.5 clarifies requirements for an exemption from the requirement for a certificate of approval to align with rule changes enacted by THECB (referred to as the Coordinating Board in this chapter). Texas Education Code, Chapter 61, allows THECB to authorize some career schools and colleges to offer baccalaureate or higher-level degrees. By rule, THECB recognizes certain national accrediting agencies that accredit career schools and colleges. If a career school or college is accredited by a recognized accreditor, the school or college can apply to THECB for a certificate of authorization to offer any degree program(s) up to, and including, a specific degree level cited in the certificate. This creates an opportunity for career schools and colleges in Texas with baccalaureate or higher-level degree programs to apply to the Commission for an exemption under Texas Education Code §132.002(a)(6).

The Commission's intent is to provide consistent and clear standards regarding the applicability of exemptions pursuant to Texas Education Code, Chapter 132.

New §807.5(1) - (5) sets forth that under the requirements of Texas Education Code §132.002(d), a career school or college application for an exemption from the provisions of Texas Education Code §132.002(a)(6) must provide evidence that:

(1) the school or college has been licensed for at least one year;

(2) the school or college has a certificate of authorization from THECB to grant baccalaureate or higher-level degrees or a letter from THECB indicating THECB approval is not required;

(3) the school or college is accredited by a THECB-recognized accrediting body;

(4) the school or college is in good standing with the designated accrediting body and not subject to:

(A) probation;

(B) a directive to show cause as to why accreditation should not be revoked; or

(C) any other action that, as defined by the accrediting agency, will prevent the school from seeking approval of its degree programs; and

(5) at least a simple majority (51 percent) of credits earned in the educational programs of the school or college are transferable to educational programs that are:

(A) at an equivalent or higher academic level (e.g., baccalaureate to baccalaureate or higher);

(B) at a junior college, college, or university supported entirely or partly by taxation from a local or state source; and

(C) within the same local/regional service area as the offered program, as determined by the Agency.

SUBCHAPTER B. CERTIFICATES OF APPROVAL

The Commission proposes the following amendments to Subchapter B:

§807.11. Original Approvals

Section 807.11(b) adds that schools must complete the Agency's application requirements within 180 days of receipt of the original application or the application may be considered withdrawn.

Section 807.11(c) states that a school's failure to respond to any Commission request for additional information within 30 days may result in withdrawal of the application by the Commission.

Section 807.11(d) requires that to reapply, a school shall submit:

- (1) a complete application as required under §807.11(a); and
- (2) an affidavit stating that the school will not reopen until it has been issued a Certificate of Approval.

§807.16. Degrees

Section 807.16 replaces the section title "Associate Degrees" with "Degrees" to align with THECB rules.

Section 807.16(a) removes the term "associate" because THECB now approves several levels of degrees.

Section 807.16(b) states that the Commission may recognize the approval to grant degrees upon receipt of notice issued by THECB and adds that additional notice by the school's accreditor also may be required. These changes are made to align with THECB rules.

SUBCHAPTER F. INSTRUCTORS

The Commission proposes the following amendments to Subchapter F:

§807.81. Instructor Qualifications

Section 807.81(a) replaces the term "program" with "course of instruction" to clarify that instructors for both programs and seminars must comply with this section.

Section 807.81(b)(1)(D) replaces the term "includes" with "is supplemented by" to further specify the requirements for a master's degree.

Section 807.81(b)(2)(A) adds the term "satisfactory completion of" to further specify the requirements for a bachelor's degree.

Section 807.81(b)(2)(D) replaces the term "includes" with "is supplemented by" to further specify the requirements for a bachelor's degree.

Section 807.81(b)(3)(B) replaces the term "includes" with "is supplemented by" to further specify the requirements for an associate's degree.

Section 807.81(b)(4) makes editorial changes to the language to align with the other subsections.

Section 807.81(b)(5) makes editorial changes to the language to align with the other subsections.

Section 807.81(c)(5) replaces the term "awareness course" with "seller training program" to align with terminology used by the Texas Alcoholic Beverage Commission.

Section 807.81(d) adds the term "proficiency" to address an editorial omission in the subsection.

SUBCHAPTER H. COURSES OF INSTRUCTION

The Commission proposes the following amendments to Subchapter H:

§807.122. General Information for Courses of Instruction

Section 807.122 adds new subsections (a) - (c) to reduce paperwork and allow flexibility in evaluating courses of instruction. The application process is modified for schools that are approved by an accrediting body recognized by the U.S. Secretary of Education and a variance to the general requirements is allowed, under certain conditions. Career schools and colleges must respond rapidly to changing market demands to improve their capability to

compete with other educational institutions. Currently, courses in accredited career schools and colleges undergo two review and approval processes--first by the Agency and second by the appropriate accrediting agency--which delays the implementation of courses developed to meet students' changing needs.

Section 807.122(a) states that a school is not required to submit applications for additional courses of instruction or for course revisions to the Commission for approval, if the school:

- (1) has been licensed for at least one year under current ownership;
- (2) is accredited by an agency recognized by the U.S. Secretary of Education; and
- (3) is in good standing with its designated accrediting agency and not subject to:
 - (A) probation;
 - (B) a directive to show cause as to why accreditation should not be revoked; or
 - (C) any other action, as defined by the accrediting agency, that would otherwise prevent the school from seeking approval to add or revise a course of instruction.

Section 807.122(b) requires that immediately upon receipt of the approval of the course of instruction from the accrediting agency, the school shall provide a copy to the Commission.

Section 807.122(c) sets forth that the Commission may require the school director of an accredited school to file applications for nondegree programs if there have been two substantiated complaints regarding programs in the previous year.

Section 807.122(h), formerly §807.122(e), replaces the term "programs" with "courses of instruction" to indicate that both programs and seminars must comply with this subsection.

Certain subsections have been relettered to accommodate additions.

§807.130. Admission Requirements Relating to Courses of Instruction

Section 807.130 replaces the section title "Admission Requirements Relating to Programs" with "Admission Requirements Relating to Courses of Instruction" to establish that both programs and seminars must comply with this section.

Section 807.130(a) and (b) replaces the term "program" with "course of instruction" to establish that both programs and seminars must comply with this section.

§807.131. School Responsibilities Relating to Courses of Instruction

Section 807.131 replaces the section title "School Responsibilities Regarding Programs" with "School Responsibilities Relating to Courses of Instruction" to establish that both programs and seminars must comply with this section.

Section 807.131(a) adds the requirement that schools must identify any portion of instruction "conducted by distance education."

Section 807.131(b)(2) adds the phrase "as established by the Commission" to clarify that the Commission establishes minimum employment rates in jobs related to the stated occupation.

§807.132. Course of Instruction Revisions

Section 807.132 replaces the section title "Course of Instruction Program" with "Course of Instruction Revisions" to establish that both programs and seminars must comply with this section.

Section 807.132(a) - (c) replaces the term "program" with "course of instruction" to establish that both programs and seminars must comply with this section.

SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

The Commission proposes the following amendments to Subchapter I:

§807.151. Fee Schedule

Section 807.151(13) changes the fee for investigation of a complaint from \$400 to \$600 to conform with Texas Education Code §132.201(e).

SUBCHAPTER L. PROGRESS STANDARDS

The Commission proposes the following amendments to Subchapter L:

§807.223. Progress Requirements for Asynchronous Distance Education Schools

Section 807.223 replaces the section title "Progress Requirements for Distance Education Schools" with "Progress Requirements for Asynchronous Distance Education Schools" to clearly exclude synchronous distance education schools only from the requirements of this particular section.

Section 807.223(a) adds the term "asynchronous" to clearly exclude synchronous distance education schools only from the requirements of this particular section.

SUBCHAPTER M. ATTENDANCE STANDARDS

The Commission proposes the following amendments to Subchapter M:

§807.245. Leaves of Absence

Section 807.245 reduces paperwork, allows flexibility, and improves potential student outcomes by allowing courses of instruction eligible for payment from Title IV funds under 20 U.S.C. §1070 et seq. to adopt a leave of absence policy consistent with that of the U.S. Secretary of Education.

Section 807.245(c) adds the phrase "except as provided in subsection (d) of this section" to clarify the exception to the leave of absence policy set forth in this subsection.

Section 807.245(d) allows programs with a course time of more than 600 hours, and that are eligible for Title IV funding, to have a leave of absence policy consistent with the U.S. Department of Education policy at 34 C.F.R. §668.22(d).

Certain subsections have been relettered to accommodate additions to this section.

SUBCHAPTER N. CANCELLATION AND REFUND POLICY

The Commission proposes the following amendments to Subchapter N:

§807.263. Refund Requirements

Section 807.263 replaces the section title "Refund Requirements for Residence Schools" with "Refund Requirements" to clarify that the information contained in this section applies to all types of schools.

Section 807.263(e) removes the phrase "combination distance education-residence" to give students the same right to cancel as provided to other residence school students. More schools are offering hybrid programs, and having one distance education subject should not remove the student's right to cancel after a tour.

SUBCHAPTER P. COMPLAINTS

The Commission proposes the following amendments to Subchapter P:

§807.301. School Policy Regarding Complaints

Section 807.301 adds the requirement for schools to post critical information to enhance student awareness about the regulation of the school and the student grievance processes, as well as the Agency's role in the process. Currently, the Agency's Career Schools and Colleges unit receives frequent phone calls and written communications from students, indicating a lack of awareness of a school's grievance process and of their ability to file a complaint with the Agency. Adding this requirement will enable schools to facilitate greater awareness and more direct discussions with students by conveying grievance policy information to both current and prospective students in key locations at school facilities and on the school's Web site, in addition to providing materials to students as already required.

Section 807.301(5) requires that schools post a visible notice on the school's Web site and centrally located at or near the school's main entrance; in at least one of the student common areas (e.g., the student cafeteria and/or breakroom); in places where student solicitation, financial aid assistance, and enrollment activities take place; and other locations as necessary to respond to problems with career schools rule compliance, which states that:

(A) the school has a certificate of approval from the Agency, and provides the Agency-assigned school number;

(B) the school's programs are approved by the Agency and may also be approved by other state agencies or accrediting bodies, and provides the name of any accrediting body and state agency, as applicable;

(C) students must address their concerns about an educational program by following the school's grievance process outlined in the school catalog;

(D) students who are dissatisfied with the school's response to their complaints can file a formal complaint with the Agency, as well as with the school's accrediting body, if applicable; and

(E) additional information on complaint procedures is located on the Agency's Career Schools and Colleges Web site.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

The Commission anticipates no significant economic cost to persons or small or microbusinesses (in this case, interpreted as small career schools and colleges) required to comply with this rule.

These rules will not have adverse economic effects on small businesses or microbusinesses (in this case, interpreted as small career schools and colleges) as the purpose of the proposed rule changes is to simplify processes and eliminate duplicative regulation.

The reasoning for these conclusions is as follows:

--Amendments to make technical wording changes in Subchapter F, Subchapter H, and Subchapter L are not substantive.

--Amendments to add new §807.5, Exemptions, and to amend §807.16, Associate Degrees, to align with rule changes enacted by THECB, pursuant to Texas Education Code, Chapter 61, are not anticipated to have significant foreseeable implications relating to the cost to or revenues of those affected by the rules (career schools and colleges, including small career schools and colleges) or the state.

--The amendment to change the fee for investigation of a complaint from \$400 to \$600 is largely technical, as it is being made to conform with Texas Education Code §132.201(e). Program staff does not expect that the increase will be significant, will result in significant increases or decreases in revenue to the state, or result in significant economic cost to persons regulated by the rule (career schools and colleges, including small career schools and colleges).

--Amendments to add new §807.122 subsections to reduce paperwork and enhance flexibility, as well as amendments to change references from "programs" to "courses of instruction" for clarification in §§807.122, 807.130, 807.131, and 807.132 will not result in significant economic cost to persons regulated by the rule (career schools and colleges, including small career schools and colleges).

--Amendments to provide clarification of references in §807.223 and §807.263 will not result in economic costs, as well the amendment in §807.245 to allow flexibility and improve potential student outcomes by authorizing adoption of a leave of absence policy consistent with that of the U.S. Secretary of Education.

--The amendment in §807.301 to require schools to post critical information to enhance student awareness about the student grievance processes, as well as the Agency's role in regulating career schools and colleges, will not result in significant economic cost to persons regulated by the rule (career schools and colleges, including small career schools and colleges).

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing

the proposed rules will be to regulate career schools and colleges as efficiently as possible by avoiding duplicative regulatory actions and providing career school and college students with enhanced information about institutions performance and their recourses for complaints.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of the Career Colleges and Schools of Texas, an organization representing career schools and colleges, the major national accreditors of career schools and colleges and THECB. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §807.3, §807.5

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.3. Memorandum of Understanding for Regulation of Schools. The Act requires the Commission to execute a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. [~~Said memorandum of understanding is set out at §800.205 of this title.~~] Copies are available at the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778.

§807.5. Exemptions. Texas Education Code §132.002(d) requires that a career school or college application for an exemption from the provisions of Texas Education Code §132.002(a)(6) must provide evidence that:

(1) the school or college has been licensed for at least one year;

(2) the school or college has a certificate of authorization from the Coordinating Board to grant baccalaureate or higher-level degrees or a letter from the Coordinating Board indicating the Coordinating Board approval is not required;

(3) the school or college is accredited by a Coordinating Board-recognized accrediting body;

(4) the school or college is in good standing with the designated accrediting body and not subject to:

(A) probation;

(B) a directive to show cause as to why accreditation should not be revoked; or

(C) any other action that, as defined by the accrediting agency, will prevent the school from seeking approval of its degree programs; and

(5) at least a simple majority (51 percent) of credits earned in the educational programs of the school or college are transferable to educational programs that are:

(A) at an equivalent or higher academic level (e.g., baccalaureate to baccalaureate or higher);

(B) at a junior college, college, or university supported entirely or partly by taxation from a local or state source; and

(C) within the same local/regional service area as the offered program, as determined by the Agency.

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

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SUBCHAPTER B. CERTIFICATES OF APPROVAL

40 TAC §807.11, §807.16

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.11. *Original Approvals.*

(a) A complete application for an original certificate of approval shall consist of the following:

(1) a completed application form provided by the Commission;

(2) complete and correct financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(3) the application fee as specified in this chapter; and

(4) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(b) Schools shall fully satisfy the Agency application requirements within 180 days of receipt of the original application or the application may be considered withdrawn.

(c) If a school fails to respond to a request for additional information within 30 days, the Commission may withdraw the application.

(d) To reapply, a school shall submit:

(1) a complete application as required in subsection (a) of this section; and

(2) an affidavit stating that the school will not reopen until it has been issued a Certificate of Approval.

§807.16. *[Associate] Degrees.*

(a) For approval [If a school desires authorization] to grant [associate] degrees, the school shall make application to the Coordinating Board.

(b) The Commission may recognize the approval [authorization] to grant degrees upon receipt of notice [a copy of the letter of authorization] issued by the Coordinating Board. Additional notice by the school's accreditor also may be required.

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

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SUBCHAPTER F. INSTRUCTORS

40 TAC §807.81

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.81. *Instructor Qualifications.*

(a) The instructor shall be of good reputation and shall not be a current student in the same or similar course of instruction [program], as determined by the Agency [Commission], in which the instructor teaches.

(b) Instructors shall possess and affirm on forms provided by the Agency [Commission] that the instructor has one of the following qualifications that applies to the course area to be taught. In such cases where the practical experience is gained on a seasonal basis as an industry standard, the season of at least three months of experience shall be considered as one year of experience.

(1) The instructor has a master's degree or higher that:

(A) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the class to be taught;

(B) includes satisfactory completion of three semester credit hours or four quarter credit hours in the course area and one

year of related practical experience within the ten years immediately preceding employment by the school, if the class to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours, or four quarter credit hours in the course area to be taught, if the class to be taught is in a non-technical field; or

(D) ~~is supplemented by [includes]~~ one year of related practical experience in the class to be taught within the ten years immediately preceding employment by the school, if the class to be taught is in a non-technical field.

(2) The instructor has a bachelor's degree that:

(A) includes satisfactory completion of nine semester hours or 12 quarter hours related to the course area to be taught;

(B) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the course area to be taught and one year of related practical experience within the ten years immediately preceding employment by the school, if the class to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours or four quarter credit hours in the course area and one year of related practical experience within the ten years immediately preceding employment by the school, if the class to be taught is in a non-technical field; or

(D) ~~is supplemented by [includes]~~ two years of related practical experience within the ten years immediately preceding employment by the school.

(3) The instructor has an associate's degree that:

(A) includes satisfactory completion of nine semester credit hours or 12 quarter hours in the course area to be taught and two years of related practical experience within the ten years immediately preceding employment by the school; or

(B) ~~is supplemented by [includes]~~ three years of related practical experience within the ten years immediately preceding employment by the school.

(4) The instructor has a secondary education that ~~[if it]~~ includes a certificate of completion from a recognized postsecondary school for a program with course time of at least 900 hours in a relevant course area and four years of related practical experience within the ten years immediately preceding employment by the school; or

(5) The instructor has proof of satisfactory completion of secondary education and ~~[if accompanied by]~~ five years of related practical experience within the ten years immediately preceding employment by the school.

(c) In addition to the other applicable requirements for instructors, including the good reputation requirement, the following qualifications apply to the specific instructors listed in this subsection.

(1) The Commission requires that a court reporting instructor of only machine shorthand theory and speedbuilding shall have:

(A) an associate's degree or higher and certificate of completion of machine shorthand theory requirements in an accredited court reporting program;

(B) an associate's degree in court reporting from any state-recognized school;

(C) a Registered Professional Reporter or Certified Shorthand Reporter certification from any state; or

(D) a certificate of completion of a court reporting program from a state-certified school.

(2) The Commission requires that a court procedures and technology instructor shall have:

(A) a Registered Professional Reporter or Certified Shorthand Reporter certification; and

(B) one year of court reporting experience.

(3) The Commission requires that a modeling instructor shall have, at a minimum:

(A) a secondary education and certificate of completion from a modeling program of at least 45 hours of course time from a state recognized school and at least five verifiable paid modeling jobs completed within the past five years; or

(B) a secondary education and at least ten verifiable paid modeling jobs completed within the past five years.

(4) The Commission requires that a truck driving instructor shall have, at a minimum:

(A) a secondary education;

(B) certified proof of successful completion of course time of 40 hours in safety education and driver training as required by this chapter; and

(C) three years of full-time tractor trailer driving experience within the ten years immediately preceding employment by the school.

(5) The Commission requires that a bartending instructor shall be certified by the Texas Alcoholic Beverage Commission as having completed the required seller training program ~~[awareness course]~~.

(d) The director shall ensure that an instructor applicant demonstrates sufficient language proficiency to teach the class for which the instructor is applying to teach.

(e) For those instructors who return to the school prior to one full year of absence, and who will be teaching the same classes as previously approved, the school shall document the leave and reinstatement dates in the instructor's personnel file. When an instructor begins teaching new classes or the absence was more than one year, the school shall submit a new application 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.

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SUBCHAPTER H. COURSES OF INSTRUCTION

40 TAC §§807.122, 807.130 - 807.132

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.122. General Information for Courses of Instruction.

(a) A school is not required to submit applications for additional courses of instruction or for course revisions to the Commission for approval, if the school:

(1) has been licensed for at least one year under the current ownership;

(2) is accredited by an agency recognized by the U.S. Secretary of Education; and

(3) is in good standing with its designated accrediting agency and not subject to:

(A) probation;

(B) a directive to show cause as to why accreditation should not be revoked; or

(C) any other action, as defined by the accrediting agency, that would otherwise prevent the school from seeking approval to add or revise a course of instruction.

(b) Upon receipt of the approval of the course of instruction from the accrediting agency, the school shall provide a copy to the Commission.

(c) The Commission may require the school director of an accredited school to file applications for nondegree programs if there have been two substantiated complaints regarding programs in the previous year.

(d) [(a)] A school submitting applications for approval of seminars shall use abbreviated forms provided by the Commission.

(e) [(b)] No class or program shall be approved by the Commission unless the school demonstrates that the program's quality, content, and length reasonably and adequately imparts the job skills and knowledge necessary for the student to obtain employment in the stated occupation.

(f) [(c)] A school may not solicit students, otherwise advertise, or conduct classes for a course of instruction prior to the Commission's approval of the course of instruction. Any such activity by the school, prior to the Commission's approval of the course of instruction, shall constitute a misrepresentation by the school and shall entitle each student in the course of instruction to a full refund of all tuition and fees paid by the student and release from all obligations.

(g) [(d)] The school shall establish and maintain a formal advisory committee of at least five members, unless the Commission approves a lesser number of persons in advance, for each type of program with course time in excess of 200 hours in length. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Commission. If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.

(h) [(e)] If the applicant requests approval to measure courses of instruction [programs] in credit hours, the following conversion table shall be used.

(1) One academic quarter credit hour equals a minimum course time of:

(A) 10 hours of classroom lecture;

(B) 20 hours of laboratory experience; or

(C) 30 hours of externship.

(2) One academic semester credit hour is equal to a minimum course time of:

(A) 15 hours of classroom lecture;

(B) 30 hours of laboratory experience; or

(C) 45 hours of externship.

(3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each class, rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a class.

§807.130. Admission Requirements Relating to Courses of Instruction [Programs].

(a) The school shall submit, for approval by the Commission, its admission requirements for each course of instruction [program] with justification for the requirements.

(b) The school shall ensure that the student demonstrates to the school sufficient proficiency in the language of instruction to successfully complete the training course of instruction [program].

§807.131. School Responsibilities Relating to Courses of Instruction [Regarding Programs].

(a) As a condition of program approval or renewal, the school shall identify any portion of instruction that is self-paced, conducted by distance education, or not conducted in English.

(b) To maintain program approval, the school shall demonstrate the following:

(1) a reasonable student completion rate for each program; and

(2) a minimum employment rate, as established by the Commission, for program graduates in jobs related to the stated occupation.

(c) When a school is approved to offer a program, the school shall maintain sufficient instructors to teach all subjects for completing the program during the length of time stipulated in the school catalog, regardless of the size of the class.

(d) The school shall schedule classes so that students will be able to complete the program during the length of time stipulated in the school catalog.

(e) The school shall ensure that students receive the lecture and laboratory experience hours with sufficient instructors and scheduling. An instructor may not be simultaneously supervising a laboratory experience and a lecture even if they are in the same room.

(f) A school shall provide course outlines to students at the beginning of each subject which lists students' performance objectives, references and resources, and a general content outline for the subject.

(g) A school shall have and use lesson plans for all subjects.

(h) A school may not use classes from one or more approved programs to create a new program and award a certificate of completion without prior approval.

(i) The student-to-instructor ratio shall be sufficient for students to learn, practice, and demonstrate the necessary knowledge and skills. These ratios may be varied at the discretion of the Commission to conform to conditions in an individual school. The following student-instructor ratios may be acceptable for single classes:

- (1) business lecture or laboratory--30 to one;
- (2) technical, vocational, or allied health lecture--30 to one;
- (3) technical lab (examples: computer programming, data processing, electronics)--20 to one;
- (4) vocational lab (examples: auto mechanics, air conditioning and refrigeration, drafting)--20 to one; and
- (5) intensive language instruction (beginning)--15 to one; (intermediate to advanced)--20 to one.

§807.132. *Course of Instruction [Program] Revisions.*

(a) The school shall submit a revised course of instruction [~~program~~] application for any proposed changes in the course of instruction [~~program~~] that shall be reflected in the school catalog's course of instruction [~~program~~] information.

(b) The school shall receive approval of proposed course of instruction [~~program~~] revisions in writing from the Commission before implementing the revisions.

(c) The school shall work closely with employers in its job market to ensure that the course of instruction [~~program~~] meets employers' needs.

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

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SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

40 TAC §807.151

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.151. *Fee Schedule.*

The Commission shall collect fees according to the following schedule.

- (1) The initial fee for a certificate of approval for a small school is \$1,001.
- (2) The initial fee for any other school is \$3,000.

(3) In the event of a change in ownership of the school, the new owner shall pay the same fee as that charged for an initial fee for a school.

- (4) The initial registration fee for a representative is \$90.
- (5) The annual renewal fee for a representative is \$45.
- (6) The fee for a change of name of the school or owner is \$150.
- (7) The fee for a change of address of a school is \$270.
- (8) The fee for a change in the name or address of a representative or a change of the name or address of a school that causes the reissuance of the notice of permitted representative is \$15.

(9) The application fee for a course of instruction that is an additional program is \$225.

(10) The application fee for a course of instruction that is a seminar program is \$35.

(11) The application fee for a school director, administrative staff member, or instructor is \$20.

(12) The fee for an inspection of classroom facilities that are separate from the main campus is \$375.

(13) The fee for an investigation of a complaint against a school is \$600 [~~\$400~~], if assessed.

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

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SUBCHAPTER L. PROGRESS STANDARDS

40 TAC §807.223

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.223. *Progress Requirements for Asynchronous Distance Education Schools.*

(a) Asynchronous distance [~~Distance~~] education schools shall evaluate progress as the school receives each lesson assignment. The school shall maintain the record of progress on forms approved by the Commission. Forms shall include:

- (1) the date course materials are mailed to the student;
- (2) the date the lesson assignment is received from the student;
- (3) the grade on a per-lesson basis;

- (4) the instructor's name;
 - (5) the date graded assignments are returned to the student;
- and
- (6) the final grade for the program with completion date indicated.

(b) If at the end of the time period specified in the enrollment agreement, the student has not completed the program, the student's enrollment shall be terminated.

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

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SUBCHAPTER M. ATTENDANCE STANDARDS

40 TAC §807.245

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.245. Leaves of Absence.

- (a) Seminars and small schools with programs with course time of 40 hours or less shall not grant leaves of absence.
- (b) A school director may grant a leave of absence after determining that good cause is shown.
- (c) Except as provided in subsection (d) of this section, in ~~Ha~~ a 12-month calendar period, a student may have no more than two leaves of absence. For a program with course time of 200 hours or less, a student may be on leave of absence for a total of 30 calendar days. For programs with course time of more than 200 hours, a student may be on leave of absence for a total of 60 calendar days.

(d) Programs with a course time of more than 600 hours, and that are eligible for Title IV funding, may have a leave of absence policy consistent with the U.S. Department of Education policy at 34 C.F.R. §668.22(d).

(e) ~~[(d)]~~ School attendance records shall clearly define the dates of the leave of absence. A written statement as to why the leave of absence was granted, signed by both the student and the school director indicating approval, shall be placed in the student's permanent file.

(f) ~~[(e)]~~ In addition to the requirements concerning leaves of absence in this subchapter, a school offering degree programs that schedules their courses on an academic quarter or academic semester basis may include in their attendance policies provisions for summer

leaves of absence. These leaves of absence shall not exceed the lesser of 120 days or the interval between the end of the spring academic quarter or academic semester and the start of the fall academic quarter or academic semester.

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SUBCHAPTER N. CANCELLATION AND REFUND POLICY

40 TAC §807.263

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.263. Refund Requirements ~~[for Residence Schools]~~.

(a) Students are entitled to a full refund for classes attended if the school does not provide a class with:

- (1) an approved instructor;
- (2) an instructor for whom an application has been properly submitted to the Commission; or
- (3) a temporary instructor for whom the school submitted notice to the Commission.

(b) If a class has no instructor for more than one class period, students are entitled to a full refund for each such class attended.

(c) The length of a program, for purposes of calculating refunds owed, is the shortest scheduled time period in which the program may be completed by continuous attendance of a full-time student.

(d) A non-Title IV school, or a Title IV school voluntarily taking attendance, shall calculate refunds for students based upon scheduled hours of classes through the last date of attendance. A Title IV school shall calculate refunds for students based upon scheduled hours of classes through the last documented day of an academically related activity. Neither type of school shall count leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations for purposes of calculating a student's refund.

(e) For all schools other than distance education~~[, combination distance education-residence,]~~ and seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within three days, excluding Saturdays, Sundays, and legal holidays following:

- (1) the first day of the student's scheduled classes if the student is not provided an opportunity to tour the school facilities, which

includes inspection of equipment, before signing an enrollment contract; or

(2) the day the tour of the school facilities, including inspection of the equipment, is completed, when provided before the first day of the student's scheduled classes.

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

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SUBCHAPTER P. COMPLAINTS

40 TAC §807.301

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.301. *School Policy Regarding Complaints.*

The school shall:

(1) submit a written grievance procedure designed to resolve disputes between current and former students and the school for Commission approval;

(2) provide a copy of the grievance procedure to each student and maintain proof of such delivery;

(3) maintain records regarding grievance filings and resolutions; ~~and~~

(4) diligently work to resolve all complaints at the local school level; and [-]

(5) post a visible notice on the school's Web site and centrally located at or near the school's main entrance; in at least one of the student common areas (e.g., the student cafeteria and/or breakroom); in places where student solicitation, financial aid assistance, and enrollment activities take place; and other locations as necessary to respond to problems with career school rule compliance, which states that:

(A) the school has a certificate of approval from the Agency, and provides the Agency-assigned school number;

(B) the school's programs are approved by the Agency and may also be approved by other state agencies or accrediting bodies, and provides the name of any accrediting body and state agency, as applicable;

(C) students must address their concerns about an educational program by following the school's grievance process outlined in the school catalog;

(D) students who are dissatisfied with the school's response to their complaints can file a formal complaint with the Agency, as well as with the school's accrediting body, if applicable; and

(E) additional information on complaint procedures is located on the Agency's Career Schools and Colleges Web site.

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

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CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

40 TAC §815.29

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 815, relating to Unemployment Insurance:

Subchapter B. Benefits, Claims, and Appeals, §815.29

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission proposes new rules to comply with the benefit coordination provisions of the Unemployment Compensation Extension Act of 2010, Public Law (P.L.) 111-205, enacted July 22, 2010.

P.L. 111-205 §3, Coordination of Emergency Unemployment Compensation with Regular Compensation, speaks to circumstances in which an individual qualifies for a new benefit year pursuant to Texas Labor Code §201.011(5) but retains entitlement for emergency unemployment compensation (EUC) benefits from an immediately prior benefit year. In such cases, the Commission must determine whether the individual qualifies for a weekly benefit amount of regular compensation that is at least either \$100 or 25 percent less than the individual's weekly benefit amount in the prior benefit year. The purpose of this section is to address cases in which individuals take intermittent, part-time work to augment their unemployment benefits. Such part-time work, inconsistent with their normal occupation and wage, comprises the base period wage credits of a new benefit year, qualifying the individual for a substantially reduced weekly benefit amount.

In such instances, the Act dictates that a state shall implement procedures that allow an individual to continue receiving the higher weekly benefit amount by continuing payment of EUC

before payment of regular compensation or by paying both types of claims simultaneously. P.L. 111-205 allows the state to use one of the following options:

(A) The state shall, if permitted by state law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year;

(B) The state shall, if permitted by state law, defer the establishment of a new benefit year (which uses all the wages and employment that would have been used to establish a benefit year but for the application of this section), until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year;

(C) The state shall pay, if permitted by state law:

(i) regular compensation equal to the weekly benefit amount established under the new benefit year, and

(ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

(D) The state shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

In evaluating the options available under the federal law, the Commission has determined that Option A--establishing a new benefit year, but deferring the payment of regular compensation until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year--is the most financially sound, efficient, and beneficial method to comply with this new, temporary requirement. After exhaustive analysis, the Commission believes this option can be implemented through a mix of automation changes in the unemployment insurance (UI) Benefits System and changes to existing manual staff processes.

Option B--deferring the establishment of a new benefit year (which uses all the wages and employment that would have been used to establish a benefit year), until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year--is not permitted under Texas Labor Code §201.011.

Option C--paying regular compensation under the new benefit year and paying emergency unemployment compensation from the prior benefit year equal to the difference between the two weekly benefit amounts--requires extensive, costly modifications to the Commission's UI Benefits System as well as extensive changes to the UI claims-taking process. This option would pay benefits immediately from the already strained state unemployment compensation fund. Accordingly, the Commission has determined that it is not a cost-effective option.

Option D--allowing the individual to elect not to file a claim for regular compensation under the new benefit year--could be implemented within a relatively short period of time, but it puts claimants at the greatest risk of losing benefits eligibility. It requires claimants to make complex decisions about receipt of benefits based on potential future monetary eligibility. The Commission has found that Option A presents less risk to claimants than found under Option D.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

The Commission proposes the following amendment to Subchapter B:

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation

New §815.29 adds a temporary provision. It establishes a new benefit year, but defers the payment of regular compensation for that new benefit year until exhaustion of all emergency unemployment compensation payable for the prior benefit year--if the weekly benefit amount of regular compensation in a new benefit year is at least \$100 or 25 percent less than the individual's weekly benefit amount in the immediately preceding benefit year. This section is repealed when the federal requirement no longer exists.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

LaSha Lenzy, Director of the Unemployment Insurance Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be to ensure compliance with federal and state requirements.

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

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission the authority to

adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Labor Code, Title 4, the Texas Unemployment Compensation Act. Chapter 815.

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation.

(a) The Commission shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least \$100 or 25 percent less than the individual's weekly benefit amount in the immediately preceding benefit year.

(b) This section continues in effect as long as the provisions of P.L. 111-205 §3, or any amendments thereto, remain in effect. At such

time that these federal provisions are no longer in effect, this section is repealed.

This 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 31, 2010.

TRD-201005132

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

Earliest possible date of adoption: October 17, 2010

For further information, please call: (512) 475-0829



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.13, 153.15, 153.17

The Texas Appraiser Licensing and Certification Board withdraws the proposed amendments to §§153.13, 153.15, and

153.17 which appeared in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4835).

Filed with the Office of the Secretary of State on September 3, 2010.

TRD-201005191
Devon V. Bijansky
General Counsel

Texas Appraiser Licensing and Certification Board
Effective date: September 3, 2010

For further information, please call: (512) 465-3938



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §7.125 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 17, 2010, issue of the Texas Register.)

The Texas State Library and Archives Commission is adopting an amendment to §7.125 regarding local government retention schedules for the records of Public School Districts (SD) and Justice and Municipal Courts (JC) with changes to the proposed text published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3565). The adopted amendments update these retention schedules.

Changes to the proposed text include the removal of proposed amendments to local government retention schedules for the records of County Clerks (CC) and District Clerks (DC).

No comments were received concerning adoption of the rule.

The amended section was proposed and is adopted under Government Code §441.158 that permits the commission to adopt minimum retention periods for local governments and under Government Code §441.160 that allows the commission to revise the schedules. The amendment affects Government Code §441.158 and §441.160.

§7.125. Records Retention Schedules.

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted by reference. Copies of the schedules are available from the State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927; (512) 421-7200.

- (1) Local Schedule LC: Records of Justice and Municipal Courts.
- (2) Local Schedule TX: Records of Property Taxation, 2nd Edition.
- (3) Local Schedule EL: Records of Elections and Voter Registration.

(4) Local Schedule HR: Records of Public Health Agencies.

(5) Local Schedule UT: Records of Utility Services.

(b) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, 3rd Edition.

Figure: 13 TAC §7.125(b)(1) (No change.)

(2) Local Schedule PW: Records of Public Works and Services.

Figure: 13 TAC §7.125(b)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, 2nd Edition.

Figure: 13 TAC §7.125(b)(3)

(4) Local Schedule DC: Records of District Clerks, 2nd Edition.

Figure: 13 TAC §7.125(b)(4)

(5) Local Schedule PS: Records of Public Safety Agencies, 2nd Edition.

Figure: 13 TAC §7.125(b)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, 2nd Edition.

Figure: 13 TAC §7.125(b)(6)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.

Figure: 13 TAC §7.125(b)(7)

(c) The retention periods in the records retention schedules adopted under subsections (a) and (b) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

This agency 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 September 2, 2010.

TRD-201005181



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.3, 153.5, 153.8 - 153.11, 153.16, 153.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §§153.1, 153.3, 153.5, 153.8 - 153.11, 153.16, and 153.18, concerning Rules Relating to Provisions of the Texas Licensing and Certification Act. The rules are being adopted without changes to the proposed text as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4835), with the exception of §§153.13, 153.15, and 153.17 which are being withdrawn and appear elsewhere in this issue. Sections 153.13, 153.15, and 153.17 will be repropose in a future issue. The amendments result from the Board's rule review process and reflect both substantive and non-substantive changes.

The amendments to §153.1, Definitions, add definitions of "ACE" (appraiser continuing education), "administrative law judge," "complex appraisal," "pleading," and "rule". The amendments to this section also delete the definition of "appraisal," which is in conflict with the statutory definition, and clarify the definitions of "contested case," "federally-related transaction," and "person." Amendments in this section and elsewhere in the rules replace the term "non-resident temporary registration" to "temporary out of state appraiser" to be more consistent with the statutory language.

The amendments to §153.3, The Board, eliminate those subsections that are duplicative of statutory provisions and clarify that members shall continue to serve after their terms are finished until their successors are qualified to serve.

The amendments to §153.5, Fees, combine the application and education evaluation fees for all license types that are currently required to submit an education evaluation and fee before submitting an application, as these processes and fees are being combined into a single application process (see §153.9, below). Individual online fee provisions are also combined into a single reference to Department of Information Resources online fees, and the National Registry fee is restated as a reference to the fee charged by the Appraisal Subcommittee (ASC). The amendments would further implement a new \$20 fee for filing non-electronic documents that could be filed online, as well as increased renewal fees for late renewals at a rate of 1.5 times the regular fee for renewals up to 90 days late and two times for renewals from 91 days to one year after expiration, which replace a \$100 fee required for late renewals that has been eliminated through

process changes. Last, a number of non-substantive revisions are being made to improve readability.

The amendments to §153.8, Scope of Practice, consolidate the requirement that all license types comply with USPAP and establish specific provisions regarding a disabled appraiser's use of an unlicensed assistant.

The amendments to §153.9, Applications, combine the education evaluation and application processes, allowing applicants to submit an application for license or certification before or concurrently with submitting documentation of their coursework. In addition to streamlining the process for the agency and to better implement the new licensing database, this will allow prospective licensees to apply for licensure or certification without first submitting a request for education evaluation and waiting for their education to be approved. These amendments would also repeal the promulgated application and application-related forms, allowing the Board to approve (rather than adopt) forms and better respond to process changes and new requirements. Other changes better accommodate online application, renewal, and notification processes or reflect non-substantive changes to improve readability.

Amendments to §153.10, Date of Licensure, clarify that licenses and certifications are valid for two years, while a trainee approval is valid for one year and registration as a temporary out-of-state appraiser is valid for no longer than six months, and that a license, certification, approval, or registration is not effective until it is issued by the board.

Amendments to §153.11, Examinations, are primarily a non-substantive update of the examination requirements, including a clarification that while calculators are allowed, cellular phones may not be used as calculators. In accordance with the Appraisal Qualifications Board's (AQB) Real Property Appraiser Qualification Criteria, the amendments also clarify that successful completion of the examination is valid for 24 months.

Amendments to §153.16, Provisional License, reorganize the section for readability and constitute a non-substantive rewrite of the requirements for provisional licenses.

Amendments to §153.18, Appraiser Continuing Education, eliminate provisions regarding changes to trainee education requirements that became effective on March 1, 2006, as the distinction in the rules is no longer necessary. The amendments also clarify that only the 7-hour national USPAP update course or its equivalent, taught by an AQB-certified USPAP instructor who is also a certified appraiser, qualifies for USPAP update course credit, and make other non-substantive changes to improve readability.

The reasoned justification for these amendments as adopted is greater clarity, consistency, and efficiency in TALCB's licensing processes.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this adoption is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the amendments.

This agency 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 31, 2010.
TRD-201005111
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 20, 2010
Proposal publication date: June 11, 2010
For further information, please call: (512) 465-3938



22 TAC §153.7

The Texas Appraiser Licensing and Certification Board (TALCB) adopts the repeal of §153.7, concerning Categories of Appraiser Certification and Licensing, without changes to the proposal as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4847). The repeal results from the Board's rule review process.

The repeal of §153.7, Categories of Appraiser Certification and Licensing, is adopted because its provisions have been incorporated into Chapter 1103 of the Texas Occupations Code (the Texas Appraiser Licensing and Certification Act).

The reasoned justification for the repeal is greater clarity and consistency in TALCB's licensing processes.

No comments were received regarding the repeal as proposed.

The repeal is adopted under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this repeal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the 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 31, 2010.
TRD-201005112
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 20, 2010
Proposal publication date: June 11, 2010
For further information, please call: (512) 465-3938



PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

(Editor's Note: The Texas Medical Board submitted the following notice of rule adoption for publication in the September 10, 2010, issue of the Texas Register (35 TexReg 8351). Due to omissions in the agency's submission, the notice failed to address comments submitted in response to the proposed rulemaking. In addition, §172.17 was adopted with changes from the proposal, but the preamble stated that it was adopted without change and it was not republished. The corrected notice is as follows.)

The Texas Medical Board (Board) adopts amendments to §§172.2, 172.3, 172.5, and 172.16 and new §172.17, concerning Temporary and Limited Licenses. Sections 172.2 and 172.17 are adopted with changes, and the remaining sections are adopted without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6424) and will not be republished.

The amendment to §172.2, concerning Construction and Definitions, adds definitions for controlled substances and dangerous drugs.

The amendment to §172.3, concerning Distinguished Professors Temporary License, clarifies that applicants for a distinguished professor temporary license must complete all provisions of an application for a full license and updates the name of the American Osteopathic Association Commission on Osteopathic College Accreditation.

The amendment to §172.5, concerning Visiting Physician Temporary Permit (VPTP), creates a category for visiting physician temporary permits for those who are enrolled in the Texas A&M KSTAR program.

The amendment to §172.16, concerning Provisional Licenses for Medically Underserved Areas, amends language to be consistent with Texas Occupations Code §155.101.

New §172.17, concerning Limited License for Practice of Administrative Medicine, establishes the criteria for obtaining a limited license for the practice of administrative medicine. The creation of this type of license permits applicants to practice administrative medicine under this license, rather than applying for full licensure and having their practice limited to administrative medicine under a disciplinary order even though the applicants only issue is not actively practicing clinical medicine in one of the two years prior to the date of application for licensure.

The Texas Medical Board received written comments; however, no one appeared to testify at the public hearing held on August 27, 2010, regarding §§172.2, 172.3, 172.5, 172.16, and 172.17. No written comments were received regarding §§172.2, 172.3, and 172.16.

Written comments were received regarding §172.5 and §172.17, as follows:

The Board received comments from two individuals regarding §172.5.

Comment: One individual commented that a disciplinary action by a licensing entity for a professional boundary violation should not automatically disqualify an applicant for a KSTAR visiting physician permit as the term "boundary violation" is broad in nature and encompasses more than sexual boundary violations.

Comment: Another individual's comments included the above concerns raised with the term "boundary violation" and the need for the Board to decide such issues of eligibility on a case-by-case basis.

Response: The Board has responded to these comments by agreeing that a disciplinary action by a licensing entity for a professional boundary violation should not automatically disqualify an applicant for a KSTAR visiting physician permit, and that the rule shall be amended to give the Board authority to use discretion in making determinations of eligibility on this issue. The Board believes that this revision will satisfy the concerns expressed by this comment. The Board adopts the rule without

changes at this time; however, the Board will incorporate the revision in a future proposal.

The Board received comments regarding §172.17 from the Texas Association of Health Plans (TAHP) and Scott and White Healthcare.

Comment: TAHP commented that the proposed definition of "administrative medicine" in §172.17(b) is extremely broad and how that definition provides that administrative medicine includes "administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician and capable of affecting the health and safety of the public or any person" that is under the statutory authority of the Texas Department of Insurance (TDI).

Response: The Board disagrees with this comment. Medical necessity determinations, as opposed to benefit determinations, are considered to be the practice of medicine as such decisions require medical judgment and may affect medical care. Further Board rule 22 TAC §190.8(1)(H) provides a licensed physician shall be considered to have practiced medicine inconsistent with public health and welfare for improper utilization review. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published.

Comment: Scott and White Healthcare commented that the proposed rules: (1) will affect current arrangements between medical schools and private providers where medical staff are also academic instructors; (2) do not provide a clear process how to go from a limited license back to a full license; (3) may create a conflict with TDI rules that require plans to have full time medical directors and forcing individuals to obtain this limited license; (4) would give the Medical Board jurisdiction over medical directors and medical necessity determinations; and (5) are not clear on how "active practice of medicine" is calculated.

Response: The Board disagrees with these comments. The proposed rule is intended to apply to individuals applying for licensure in Texas and not those physicians already licensed in Texas under a full medical license. Physicians who currently have unrestricted licenses, but during the course of their careers have changed to the practice of administrative medicine are not required under the rule to apply for an administrative medicine license and may maintain their current licensure status. Applicants for licensure who intend to practice administrative medicine and cannot demonstrate the active practice of medicine as defined by Board rule 22 TAC §163.11, will be able to choose between an administrative medicine license as authorized under Texas Occupations Code §155.009, or they can apply for a full license that will be restricted to administrative medicine under an agreed order. The reason for these restrictions is that the Board has determined that physicians who have not actively practiced clinical medicine or been on the active teaching faculty of an acceptable approved medical school in either of the two years preceding the date of application may or not be able to safely treat patients without some type of remediation.

Finally, as stated in the Board's response to Comment 1, the Board does have authority over medical necessity determinations as those determinations are considered the practice of medicine.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §172.2

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §§153.001, 155.009, and 155.101, Texas Occupations Code.

§172.2. Construction and Definitions.

(a) Unless otherwise indicated, temporary license holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees in the Medical Practice Act and board rules. Temporary license holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Temporary and limited license holders under this chapter shall cooperate with the board and board staff involved in investigation, review, or monitoring associated with the license holder's practice of medicine. Such cooperation shall include, but not be limited to, written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) In accordance with the Medical Practice Act, the board shall retain jurisdiction to discipline a temporary or limited license holder whose license has been terminated, canceled, and/or expired if the license holder violated the Medical Practice Act or board rules during the time the license was valid.

(d) The issuance of a temporary or limited license shall not be construed to obligate the board to issue subsequent permits or licenses. The board reserves the right to investigate, deny a permit, temporary or limited license, or full licensure, and/or discipline a physician regardless of when the information was received by the board.

(e) Nothing in this chapter shall be construed to prevent the board from issuing temporary or limited licenses to those physicians awaiting full licensure pursuant to §172.11 of this title (relating to Temporary Licensure--Regular) or to those licensees who qualify for CME temporary licenses pursuant to §166.2(k) of this title (relating to CME temporary licenses).

(f) All applicants for temporary or limited licenses whose applications have been filed with the board in excess of one year will be considered expired.

(1) If the Executive Director determines that the applicant clearly meets all requirements for the temporary or limited license, the Executive Director or a person designated by the Executive Director, may issue a license to the applicant, to be effective on the date of issuance without formal board approval, as authorized by §155.002(b) of the Act.

(2) If the Executive Director determines that the applicant does not clearly meet all requirements for a temporary or limited license, a license may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(3) If the Executive Director determines that the applicant is ineligible for a temporary or limited for one or more reasons that are not subject to exception by statute or rule, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee

overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(g) In addition to other definitions that may apply to licensure, the following words and terms, when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Act that is part of patient care service--Any diagnosis, assessment, or treatment including the taking of diagnostic imaging studies as well as the preparation of pathological material for examination.

(2) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 as described under the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(3) Dangerous drug--A device or a drug that is unsafe for self medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription."

(4) Episodic consultation--Consultation on an irregular or infrequent basis involving no more than 24 patients of a physician's diagnostic or therapeutic practice per calendar year. Multiple consultations may be performed for one or more patients up to 24 patients per calendar year.

(5) Informal consultation--Consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation of or exchange of direct or indirect compensation.

(6) Patient care service initiated in this state--Any act constituting the practice of medicine as defined in this chapter in which the patient is physically located in Texas at the time of diagnosis, treatment, or testing.

(7) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(8) Practice of medicine--A person shall be considered to be practicing medicine under any of the following circumstances listed in subparagraphs (A) - (D) of this paragraph. This definition does not negate the responsibility of applicants to demonstrate engagement in the active practice of medicine as set forth in §163.11 of this title (relating to Active Practice of Medicine).

(A) the person publicly professes to be a physician or surgeon and diagnoses, treats, or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method or to effect cures thereof;

(B) the person diagnoses, treats or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method and to effect cures thereof and charges therefor, directly or indirectly, money or other compensation;

(C) the person exercises medical judgment, renders an opinion, or gives advice concerning the diagnosis or treatment of a patient, or makes any determination regarding the appropriate or necessary medical response to a particular patient's medical condition that affects the medical care of the patient; or

(D) the person is physically located in another jurisdiction, other than the state of Texas, and through any medium performs an act that is part of patient care service initiated in this state that would affect the diagnosis or treatment of the patient.

(9) State--Any state, territory, or insular possession of the United States and the District of Columbia.

This agency 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 30, 2010.

TRD-201005088

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: September 19, 2010

Proposal publication date: July 23, 2010

For further information, please call: (512) 305-7016



SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.3, §172.5

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §§153.001, 155.009, and 155.101, 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.

Filed with the Office of the Secretary of State on August 30, 2010.

TRD-201005089

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: September 19, 2010

Proposal publication date: July 23, 2010

For further information, please call: (512) 305-7016



SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.16, §172.17

The amendment and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment and new rule are also authorized by §§153.001, 155.009, and 155.101, Texas Occupations Code.

§172.17. *Limited License for Practice of Administrative Medicine.*

(a) Pursuant to §155.009, Texas Occupations Code, the board may issue to an applicant a license that is limited to administrative medicine.

(b) "Administrative medicine," as used in this section means administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician, and capable of affecting the health and safety of the public or any person.

(c) An administrative medicine license does not include the authority to practice clinical medicine, prescribe dangerous drugs or controlled substances, or delegate medical acts or prescriptive authority.

(d) An applicant for an administrative medicine license must complete the same application and meet the same requirements as an applicant for a full Texas medical license, except that the applicant for an administrative medicine license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in §163.11 of this title (relating to Active Practice of Medicine). Applicants for administrative medicine licenses must demonstrate that they have practiced administrative medicine in either of the two years preceding date of application or otherwise demonstrate that they are competent to practice administrative medicine.

(e) The holder of an administrative medicine license shall be required to pay the same fees and meet all other requirements for issuance and renewal of the license as a person holding a full Texas medical license.

(f) The holder of an Administrative Medicine License shall be subject to the Medical Practice Act and the Rules of the board as a person holding a full Texas medical license.

(g) This section shall have no effect on any full Texas medical license issued prior to the effective date of this rule. The license of any physician who has agreed to a board order restricting the license to administrative medicine based solely on the failure to meet the licensure requirement to be engaged in the active practice of medicine, upon request of the physician, may be converted to an administrative medicine license and the board order regarding such physician shall be terminated, provided that the only requirement of the order is the restriction to administrative medicine.

This agency 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 30, 2010.

TRD-201005090

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: September 19, 2010

Proposal publication date: July 23, 2010

For further information, please call: (512) 305-7016



CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.12

The Texas Medical Board (Board) adopts an amendment to §172.12, concerning Out-of-State Telemedicine License, with-

out changes to the proposed text as published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3389) and will not be republished.

The amendment to §172.12 renames special purpose telemedicine licenses as out-of-state telemedicine licenses and limits the use of this type of license for the interpretation of diagnostic testing and reporting results to a physician fully licensed and located in Texas or for the follow-up of patients where the majority of patient care was rendered in another state.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendment is also authorized by §151.056, 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.

Filed with the Office of the Secretary of State on September 3, 2010.

TRD-201005186

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: September 23, 2010

Proposal publication date: April 30, 2010

For further information, please call: (512) 305-7016



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

SUBCHAPTER R. ISSUANCE OF CERTIFICATES OF FREE SALE AND SANITATION AND/OR CERTIFICATES OF ORIGIN AND SANITATION

25 TAC §§229.301 - 229.307

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§229.301 - 229.306 and new §229.307, concerning the Issuance of Certificates of Free Sale and Sanitation and/or Certificates of Origin and Sanitation without changes to the proposed text as published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3407) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to update the department's name, clarify program policies and procedures, and update the

fee schedule. The amendments also make clear the primary distinction between the two types of certificates: "Certificates of Free Sale and Sanitation" are issued for distribution of products from Texas and "Certificates of Origin and Sanitation" are issued only for products manufactured in Texas. Additional revisions are made to §§229.301 - 229.306 to include new definitions, new language, clarification on minimum requirements for certificate applicants, and other editorial corrections.

New §229.307 is added to provide for appeal procedures for certificate applicants.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.301 - 229.306 have been reviewed and the department has determined that the reasons for adopting the sections continue to exist and, therefore, the rules on this subject continue to be needed.

SECTION BY SECTION SUMMARY

The title of Subchapter R is amended to add the words: "and Sanitation" after the words "Certificates of Origin" to clarify the scope of the rule.

Amendments to §229.301 update the department's name from "Texas Department of Health" to "Department of State Health Services." Throughout the rule, the words "and sanitation" were added after the words "certificate of origin" to clarify the scope of the rules and to be consistent throughout all sections of the rule. The second sentence in §229.301 adds the word "only" after the words "Certificates are issued;" adds the words "Texas licensed" before "manufacturers;" adds the word "or" after the words "manufacturers and/" and replaces "importing" with "exporting" to clarify the intent of the rule. Additionally, §229.301 adds the following sentence to provide specific product requirements, "Products shall be manufactured in Texas and/or distributed, warehoused, and sold from Texas." The following new sentence is added to §229.301 to specify the requirements for issuing certificates for cosmetics: "Certificates for cosmetics can only be issued after the department has inspected the Texas manufacturing and/or warehousing facility." Also, the last sentence of §229.301 has been changed from "Certificates for meat and poultry products, which have been inspected by the United States Department of Agriculture (USDA), can only be issued to distributors of those products" to "Certificates for meat and poultry products can only be issued by the United States Department of Agriculture (USDA)" to clarify that the USDA, and not the department, issues certificates of this nature for meat and poultry products.

Throughout §229.302(1), all references to "manufacturer and/or" and "manufacturer or" are deleted to clarify that free sale certificates are issued for distribution of products from Texas. In addition, §229.302(1) replaces the words "the United States of America" with the word "Texas" to further clarify the scope of the rule.

Section 229.302(2) adds the words "and can only be issued to a Texas manufacturer" after the words "the State of Texas" to clarify that origin certificates are issued only for products manufactured in Texas.

The definitions of "Common or usual name," "Private Labeler," and "Properly labeled" are added to §229.302 to clarify minimum requirements for applicants of a certificate of free sale and sanitation and/or certificate of origin and sanitation. A definition for

"Custom certificates" also is provided. Changes are reflected in new §229.302(3), (6), (8) and (9). Subsequent paragraphs of this section are renumbered as a result of the new definitions.

Concerning new renumbered §229.302(7), the department's name is updated from "Texas Department of Health" to "Department of State Health Services."

Section 229.303(b)(1) extends the time frames for current inspections for distributors or wholesalers of foods, drugs, or medical devices from 12 months to 24 months. In addition, §229.303(b)(1) deletes "manufacturers" before "distributors" and deletes "dietary supplements, or drug products" before "within" since the specified inspection time frame does not apply to these types of establishments. "Drugs, or medical devices" is added after "foods" to include these types of establishments in the 24-month inspection time frame.

New §229.303(b)(2) establishes the time frame of 12 months for current inspections of manufacturers of foods, drugs, or medical devices. The subsequent paragraph is renumbered as a result of the new paragraph.

New renumbered §229.303(b)(3) replaces the 12-month time frame with the new 24-month time frame for current inspections of manufacturers, distributors, or wholesalers of cosmetic products.

Current §229.303(b)(3) and (4), concerning manufacturers and distributors of medical devices, are deleted because these paragraphs are no longer necessary due to the new proposed clarified language in §229.303(b)(1). Subsequent paragraphs are renumbered as a result of the deleted paragraphs.

New §229.303(c) is added to provide requirements for applicants for certificates of free sale and sanitation who meet the definition of private labelers and to clarify that certificates of origin and sanitation can not be issued to private labelers.

New §229.303(d) is added to clarify the minimum requirements for the products eligible for issuance of certificates of free sale and sanitation and/or certificates of origin and sanitation. The products must originate or be physically present in Texas. The subsequent subsection is relettered as a result of adding new subsections (c) and (d) to this section.

New relettered §229.303(e) provides that those whose applications for certificates are denied may appeal the adverse decision under the procedures set out in new §229.307.

Amendments to §229.304(a) update the agency name and contact information by deleting the words "Bureau of Food and Drug Safety, Texas Department of Health," and replacing them with "Department of State Health Services" and updating the Licensing Group's website by deleting "www.tdh.state.tx.us/bfds/bfds-hom.htm" and replacing it with "www.dshs.state.tx.us/fdlicense." In addition, §229.304(a) deletes the address "1100 West 49th Street, Austin, Texas 78756-3182" since this address is not applicable to this section.

Section 229.304(b) and paragraphs (1), (4), and (5) add verbiage to clarify the minimum information required to properly complete applications for these certificates. Subsection (b) adds "and verified" after "signed" and replaces "furnished" with "authorized" to clarify the intent of the rule. Section 229.304(b)(1) adds "and/or licensed" after "conducted" for clarification. Concerning §229.304(b)(4), "required" is replaced with "requested" to clarify the intent of the rule. Section 229.304(b)(5) adds "full, common or usual" before "name of the product" and adds: "Each product

size shall be submitted as a separate product. Products on the certificate will be listed exactly as submitted."

Amendments to §229.304(c) clarify the terms under which an application for a certificate is deemed complete by adding: "An application is not considered complete unless all information including the correct fee and any supplemental information is submitted and meets all regulatory requirements." In addition, the word "must" is deleted after the word "Applications" and before the words "be completely filled out and shall be accompanied by the appropriate fee" and replaced with the word "shall" for consistency in language throughout the rule.

Section 229.304(d) adds "distribution records" after "clearance letters" to clarify the term "supplemental information." The following new language is added to §229.304(d) to clarify requirements for product labeling in a foreign language: "If labeling is in a foreign language, applicant shall provide English translation. Labeling information shall be in final format. Label prototypes and drafts will not be accepted."

Concerning §229.304(e), the sentence, "If the applicant requests additional information be included on the certificate, an additional fee will be charge" is deleted to limit and standardize the information that will be listed on all certificates of free sale and sanitation and/or all certificates of origin and sanitation.

Concerning §229.305, new subsection (a) undesignated title head is being added to comply with *Texas Register* format. New renumbered §229.305(a)(1) replaces "Within 10" with "No later than 15" before "business days" to extend the department's time frame to issue a certificate, deny a certificate, request supplemental information and/or schedule an inspection after receiving a completed application. Section 229.305(a)(1) also adds new language to clarify conditions for suspending the new 15 business day time frame by adding, "Time frames are suspended any time the applicant is requested to submit additional information, the applicant submits additional information, or the applicant requests a custom certificate."

New renumbered §229.305(a)(2) replaces "Within 30" with "No later than 45" before "business days" to extend the department's time frame to inspect an establishment that requires a current compliant inspection. Section 229.305(a)(2) also adds new language to clarify conditions for suspending time frames if substantive violations exist. The new language is as follows: "If substantive violations exist the department shall notify the applicant. Time frames are suspended any time substantive violations exist."

Amendments to §229.305(a)(3) replace "Within" with "No later than" before "30 business days" to clarify the time frames for the department to issue certificates of free sale and sanitation and/or certificates of origin and sanitation. In addition, §229.305(a)(3) adds "or acceptable documentation of correction of substantive violations after "requested supplemental information" and replaces "the supplemental" with "all" after "the department shall review" to specify the information required by the department. In the second sentence of §229.305(a)(3), "supplemental" is deleted before "information;" "if" is removed before "the establishment;" and "all fees" replaces "if the fees for review of the supplemental information" before "have been received" to clarify the conditions for the department to review and approve the issuance of the certificate. Section 229.305(a)(3) also adds the following new language to clarify conditions for suspending time frames if an applicant is requested to submit supplemental

information, "Time frames are suspended any time the applicant is requested to submit supplemental information."

New §229.305(a)(4) clarifies conditions that must be met for the department to consider an application withdrawn by adding "If any time frame is suspended for 60 business days or more with no response from the applicant, the application is considered withdrawn."

New §229.305(b) is added to clarify the dates by which these certificates expire and are rendered invalid.

Section 229.306(a) increases the fees that will be charged for these certificates. The phrase "of \$50 for the certificate and \$.10 per product to be listed on the certificate" which appears after "nonrefundable fee" is deleted and replaced with the following new fee schedule, one that enables the programs to recover the costs of these regulatory activities as required by the legislature:

"\$50 for 1 - 50 products; \$5 for each additional identical certificate."

"\$60 for 51 - 200 products; \$6 for each additional identical certificate."

"\$75 for 201 - 500 products; \$8 for each additional identical certificate."

"\$100 for 501 - 1000 products; \$10 for each additional identical certificate."

"\$150 for 1001+ products; \$15 for each additional identical certificate."

Section 229.306(b) deletes reference to "Cosmetic products" and adds "Non-licensed Establishments" and deletes the word "cosmetic" and replaces it with "any" establishments to clarify that this requirement is applicable to any establishment not required to be licensed with the state. In addition, §229.306(b) deletes the current fee of "\$50 for the certificate, \$.10 per product to be listed on the certificate, and \$328" for an inspection conducted by the department staff and replaces it with the new inspection fee of "\$400" for any establishments not required to be licensed by the department but which must have a current compliant inspection for a certificate to be issued. The following language is added to §229.306(b), after "required," to specify that these establishments are also subject to the costs outlined in §229.306(a), "in addition to costs outlined in subsection (a) of this section."

New §229.306(c) is added to specify that a fee is required for single service container establishments regulated by the department. Subsequent subsections are relettered as a result of this new subsection.

New relettered §229.306(d) adds language to clarify that applicants who request a supplemental information review are responsible not only for the fees outlined in new §229.306(a), but also for the nonrefundable review time fees, by adding the words, "in addition to fees as outlined in subsection (a) of this section," before "Nonrefundable fees." Additionally, §229.306(d) increases the fees for supplemental information reviews from \$33 to \$72 per hour and establishes a minimum one-half hour charge for applicants of certificates of free sale and sanitation and/or certificates of origin and sanitation. In addition, a grammatical correction for clarity and language consistency was made to §229.306(d) by deleting the words "This fee must" and adding the words "These fees shall" before the words "be paid prior to the certificate being issued."

Current §229.306(d) that specifies a \$1 fee per page for each additional identical original certificate is deleted because this subsection is no longer necessary due to the new clarified fee schedule in §229.306(a).

New §229.306(e) adds language to clarify minimum requirements and applicable fees for applicants for issuance of custom certificates. The new §229.306(e) also specifies that fees shall be paid before a certificate can be issued.

New §229.306(f) prohibits the forging or tampering with these certificates.

New §229.306(g) provides that the certificates will be delivered by first class U.S. mail and that applicants are responsible for the cost of delivery by any other means.

New §229.307 is added to specify the appeal procedures for applicants for certificates of free sale and sanitation and/or certificates of origin and sanitation whose applications were denied.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments and new rule are authorized by House Bill 2292, 78th Legislative Session, 2003; Health and Safety Code, §§431.202, 431.204, 431.222, 431.224, 431.241, 431.272, 431.276, 435.006, 435.009, 436.103, 436.112, 436.113, 440.006, 440.012, and 440.013 which require the department to charge fees to recover the costs of performing activities and for issuing or renewing licenses or permits; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency 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 September 1, 2010.

TRD-201005152

Lisa Hernandez
General Counsel

Department of State Health Services

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Proposal publication date: April 30, 2010

For further information, please call: (512) 458-7111 x6972



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

SUBCHAPTER L. PREPAID TUITION UNIT UNDERGRADUATE EDUCATION PROGRAM: TEXAS TOMORROW FUND II

34 TAC §§7.122, 7.125, 7.136, 7.141

The Comptroller of Public Accounts (comptroller) adopts the amendment to §7.122, concerning definitions, §7.125 concerning redemption of tuition units, §7.136 concerning transfers to institutions on redemptions of tuition units, and §7.141 concerning effect of program termination on contract, without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5789). These sections are amended to implement amendments to the Education Code by Senate Bill 1941, 81st Legislature, 2009 by adding career schools to the program and conforming calculation of the transfer value of tuition units to the year units are transferred or redeemed. The prepaid tuition unit undergraduate education program was created in the 80th Legislature by House Bill 3900 which allows a person to prepay the costs of all or a portion of a beneficiary's undergraduate tuition and required fees at a general academic teaching institution, two-year institution of higher education, private or independent institution of higher education, or accredited out-of-state institution of higher education.

Senate Bill 1941 enables beneficiaries of Texas Tuition Promise Fund contracts to use tuition units towards the cost of tuition and required fees at career schools. Previously, tuition units could only be used towards the cost of tuition and required fees at general academic teaching institutions, two-year institutions of higher education, private or independent institutions of higher education, or accredited out-of-state institutions of higher education.

Senate Bill 1941 also clarifies that the calculation of the transfer value of tuition units is determined by data from the year in which the units are transferred or redeemed rather than data from the year in which the units were purchased.

Section 7.122, new paragraph (4) is added to define 'career school' and paragraphs (4) through (29) are renumbered. Paragraphs (2), (5), (15), and (27) are amended to add 'career school' to the list of educational institutions. Paragraph (26) is amended to clarify that the calculation of Transfer Value is determined by data from the year in which tuition units are transferred or redeemed rather than from the year in which tuition units are purchased.

Section 7.125, subsections (a) and (e) are amended to include 'career school' in the list of educational institutions.

Section 7.136, subsection (b) is amended to include 'career school' in the list of educational institutions eligible to receive payment.

Section 7.141, subsection (a) is amended to include 'career school' in the list of educational institutions.

No comments were received regarding adoption of the amendments.

The rule amendments are adopted under Texas Education Code, §54.752(b)(1) which authorizes the Board to adopt rules to implement the Program.

The adopted amendments implement Texas Education Code, §§54.751, 54.753, 54.754, 54.765, 54.767, 54.7671, 54.769, 54.774, and 54.775.

This agency 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 September 1, 2010.

TRD-201005172

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: September 21, 2010

Proposal publication date: July 2, 2010

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (Commission) adopts the following new sections, without changes to Chapter 815, relating to Unemployment Insurance, as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4966):

Subchapter B. Benefits, Claims, and Appeals, §815.25

Subchapter C. Tax Provisions, §815.136

The Commission adopts amendments, without changes, to the following section of Chapter 815, relating to Unemployment Insurance, as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4966):

Subchapter A. General Provisions, §815.1

The Commission adopts the repeal, without changes, of the following section of Chapter 815, relating to Unemployment Insurance, as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4966):

Subchapter B. Benefits, Claims, and Appeals, §815.25

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 815 rule changes is to:

--implement the provisions of House Bill (HB) 2120, enacted by the 80th Texas Legislature, Regular Session (2007), which amended, in part, Texas Labor Code §207.002 and §207.004, regarding benefit wage credits;

--clarify under what circumstances training is considered *approved* for the purposes of Texas Labor Code §207.022; and

--implement the provisions of HB 2360 enacted by the 81st Texas Legislature, Regular Session (2009), which added Chapter 104 to the Texas Labor Code, regarding the Earned Income Tax Credit (EITC).

Benefit Wage Credits

Texas Labor Code §207.002 and §207.004 relate to the operation of the unemployment compensation (UC) system and computation of an individual's UC benefits. Prior to enactment of HB 2120, Texas Labor Code, Title 4, Subtitle A (Texas Unemployment Compensation Act) provided that an individual was entitled to UC benefits based upon wages actually received during that individual's base period of employment. Benefit wage credits determine whether an individual qualifies monetarily for UC benefits, but the Commission had no authority to credit wages that were owed but not actually paid to an individual.

Texas Labor Code §207.002(a) enables the Commission to count as benefit wage credits those wages determined by a final order of the Commission to be paid (pursuant to Texas Labor Code, Chapter 61)--even if those wages have not been paid to the claimant by the employer--provided the wages were due to be paid to the claimant during the claimant's base period. The statute stipulates that, by rule, the Commission must determine the method for crediting such wages to the claimant's base period. To address this mandate, new §815.1(7) of this chapter adds a definition of "benefit wage credits."

Commission-Approved Training

The Federal Unemployment Tax Act (FUTA) §3304(a)(8) and (9) requires all states to include provisions in their laws that prevent denial of unemployment insurance (UI) benefits if a UI claimant is enrolled in training with the approval of the state agency. Such prohibition of benefit denial must be related to availability for work, active work search, and refusal to accept suitable work.

New §815.25 clarifies under what circumstances training must be considered *approved* for the purposes of Texas Labor Code §207.022. The Commission's intent is that approval of training takes the following into account:

--Whether the individual's skills make it unlikely that he or she will return to work within a reasonable time to an industry or occupation that requires those skills;

--Whether the training will facilitate the individual's reemployment in an occupation for which there is substantial and recurring demand; and

--Whether the individual is attending and making satisfactory progress in the training.

The Commission also intends that the training's funding source not be a factor in whether the training is approved except in limited circumstances.

Finally, the Commission reaffirms that approval of training must not be denied Texas claimants solely because they reside outside the state, as required by FUTA §3304(a)(9).

Earned Income Tax Credit

Texas Labor Code, Chapter 104, requires that employers provide their employees with information on the federal EITC no later than March 1 of each year. Section 104.002 requires that employers provide their employees with information on the gen-

eral eligibility requirements for EITC through one of the following methods:

- In person
- E-mail
- A flyer with the employee's paycheck
- U.S. first-class mail

However, Texas Labor Code, Chapter 104, does not reference the specific information to be provided. Section 104.003 indicates that the notice is something other than:

- Internal Revenue Service (IRS) publications on EITC;
- information prepared by the Texas Comptroller of Public Accounts under Texas Government Code §403.025 relating to EITC; or
- federal income tax forms necessary to claim federal EITC.

While Texas Labor Code §104.003 excludes IRS publications and forms from the required information, it does not exclude notices. IRS Notice 797, "Possible Federal Tax Refund Due to the Earned Income Credit (EIC)" supplies information regarding general eligibility requirements for EITC.

Texas Labor Code §104.004 sets forth the Commission's duties, which include:

- periodically notifying employers regarding the requirements of Chapter 104 as part of any other periodic notice sent to employers; and
- posting a notice on its Web site.

Texas Labor Code, §104.004 provides the authority to the Commission to establish rules.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§815.1. Definitions

New §815.1(7) defines "benefit wage credits" as wages received by an individual for employment from an employer during the individual's base period and wages ordered to be paid to an individual by a final Commission order, provided the wages ordered were due to be paid during the claimant's base period; such wages will be credited to the quarter in which the wages were originally due to be paid.

Certain subparagraphs have been renumbered to accommodate the addition of new §815.1(7).

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

The Commission adopts the following amendments to Subchapter B:

§815.25. Approval of Training

Section 815.25 is repealed and replaced by new §815.25.

New §815.25(a) provides that the Agency must approve training:

- (1) if the individual's existing skills make reemployment in his or her customary industry or occupation unlikely within a reasonable period or his or her earning potential or ability to maintain secure employment will be enhanced by the training; and

--(2) if the training will help the individual obtain employment in an occupation with substantial and recurring demand.

New §815.25(b) provides that an individual will be in approved training, pursuant to Texas Labor Code §207.022, if the Agency approves the training and the individual is attending the training as shown by the following:

--(1) If, at the request of the Agency, the individual and/or the training facility provides the Agency with satisfactory evidence of the individual's attendance and progress; and

--(2) If, at claim certification, the individual affirms his or her attendance at the training during the benefit period or whether he or she had good cause for failure to attend the training.

New §815.25(c) prohibits the Agency from considering the source of funding of the training as approval criteria, except when the training occurs under the auspices of the Texas Department of Assistive and Rehabilitative Services; the Texas Department of Aging and Disability Services; or federal or state veterans' services. These entities conduct their own assessment of an individual's likelihood for reemployment and the necessity for the training. Training provided by these entities, by its very nature, is designed to enhance the individual's employability.

New §815.25(d) reiterates that the Agency must not deny approval of training solely because the individual does not live in Texas. It affirms that the Agency can rely on the recommendation of the agent state when determining whether the training should be approved.

New §815.25(e) requires the Commission to develop and issue procedural guidelines to be used by Agency staff and the Boards when evaluating an individual's request to have his or her training designated as *approved*. These guidelines will be consistent with the elements of new §815.25.

SUBCHAPTER C. TAX PROVISIONS

The Commission adopts the following amendment to Subchapter C:

§815.136 Earned Income Tax Credit

New §815.136 provides guidance to employers on what constitutes acceptable EITC information to be provided to employees as required by Texas Labor Code, Chapter 104. The section specifies that the information regarding general eligibility requirements for the federal EITC in Texas Labor Code §104.002 means IRS Notice 797 or a written statement that provides the same wording as IRS Notice 797.

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.1

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Title 4, the Texas Unemployment Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 31, 2010.

TRD-201005133

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

40 TAC §815.25

The rule is repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, Title 4, the Texas Unemployment Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

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40 TAC §815.25

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Title 4, the Texas Unemployment Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Workforce Commission

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SUBCHAPTER C. TAX PROVISIONS

40 TAC §815.136

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Title 4, the Texas Unemployment Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

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For further information, please call: (512) 475-0829



CHAPTER 821. TEXAS PAYDAY RULES

The Texas Workforce Commission (Commission) adopts the following new sections, *without* changes, to Chapter 821, relating to Texas Payday Rules, as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5511):

Subchapter A. General Provisions, §821.7

Subchapter B. Payment of Wages, §821.29

The Commission adopts amendments to the following sections, *without* changes, of Chapter 821, relating to Texas Payday Rules, as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5511):

Subchapter A. General Provisions, §821.4

Subchapter B. Payment of Wages, §§821.25 - 821.27

Subchapter C. Wage Claims, §§821.41 - 821.43 and 821.46

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for re-adoption, revision, or repeal each rule adopted by that agency.

The Commission has conducted a rule review of Chapter 821, Texas Payday Rules, and adopts the following amendments:

--Clarification of definitions involving political subdivisions of the state, notice of paydays, severance pay, and fringe benefits;

--Clarification regarding commissions and bonuses, wage deductions, and voiding of determination orders and decisions; and

--Requirements for claimant withdrawal of a wage claim.

House Bill (HB) 762, enacted by the 81st Texas Legislature, Regular Session (2009) amends Texas Labor Code, Chapter 61 (Texas Payday Law):

--to allow a wage claim to be filed by fax to a number designated by the Commission or by any other means adopted in Commission rule; and

--to remove the requirement that a wage claim must be filed in writing.

Therefore, the Commission also adopts amendments to Chapter 821 by clarifying that a wage claim may be filed in a manner prescribed by the Commission, including by fax, to a number designated by the Commission and associated timeliness-of-receipt provisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§821.4. Political Subdivision

Section 821.4 provides the criteria by which entities are considered to be political subdivisions of the state and, thus, are not considered to be employers under the Texas Payday Law.

New §821.4(d)(17) - (19) provides a list of some of the entities statutorily defined as political subdivisions. For example, pursuant to Texas Local Government Code §392.006, a housing authority is a governmental entity for all purposes, and is thus exempt from Texas Labor Code, Chapter 61.

§821.7. Notice of Paydays

New §821.7 specifically allows employers to post notices of designated paydays electronically.

Texas Labor Code §61.012(c) requires employers to post, in conspicuous places in the workplace, notices indicating the paydays. The adopted rule allows employers to post such notices on a company Web site or otherwise make the notice available electronically to employees.

SUBCHAPTER B. PAYMENT OF WAGES

The Commission adopts the following amendments to Subchapter B:

§821.25. Fringe Benefits

Section 821.25(a) specifies that vacation and sick leave are accrued pay payable to an employee upon separation from employment only if a written agreement with the employer or a written policy of the employer specifically provides for the payment.

Section 821.25(b) removes references to length of prior service and to specify that neither amounts paid to an employee because of a lack of notice of termination nor payments made in accordance with post-employment agreements are considered severance pay.

The Commission believes that current §821.25(b) is vague and difficult to interpret. The existing rule describes severance pay as "payment by an employer to an employee beyond the employee's wages on termination of employment, usually based on the employee's length of prior service, and is not attributable to any period of time subsequent to termination." Payments made pursuant to agreements made at separation, such as contractual

liquidated damages claims or releases of liability claims¹ must not be construed as severance pay under Texas Labor Code, Chapter 61. Also, amounts paid to an employee because of a lack of notice of separation must not be construed as severance pay.

In addition, the current rule may overemphasize "length of service" as a prerequisite to severance pay. The key issue is that severance pay is based on the employee's prior service. In fact, written agreements of employers' policies may vary regarding how length of service is treated. Rather than limiting employers' options, the Commission believes the definition of severance pay must be modified to focus only on prior service.

New §821.25(g) is added to allow "paid time off" (PTO) and "paid days off" (PDO) to be considered fringe benefits under Texas Labor Code §61.001(7)(B) unless the employer's written policy or written agreement with an employee defines PTO or PDO as something other than a combination of sick leave, vacation leave, holiday leave, and other fringe benefits specified in statute. The adopted subsection further clarifies that PTO or PDO would not be due at separation from employment unless specifically called for in the employer's policy.

The definition of "wages" in Texas Labor Code §61.001(7)(B) includes compensation owed by an employer for fringe benefits such as vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay owed to an employee under a written agreement with the employer or under a written policy of the employer. Employer policies have evolved to include other names for fringe benefits such as PTO and PDO. It is common for employers to combine their leave types under PTO or PDO, which usually includes, but is not limited to, a combination of sick leave, vacation leave, and holiday leave.

§821.26. Commissions or Bonuses

Section 821.26 includes bonuses, thereby ensuring conformity with Texas Labor Code §61.015, which addresses the payment of both commissions and bonuses and does not distinguish between them. However, current §821.26 addresses only commissions.

§821.27. Loans

Section 821.27 includes a reference to new §821.29 to clarify that an employer may only recoup loans made to an employee subject to the requirement of a written authorization under Texas Labor Code §61.018, unless the loan falls under the wage advances criteria in adopted new §821.29.

§821.29. Wage Advances

New §821.29 clarifies that wage advances recovered from the next regularly scheduled paycheck are not considered deductions or withholdings under Texas Labor Code §61.018 and better aligns the current rules with practice that the Agency's Labor Law department has historically followed.

Wage advances are normally an advance on wages yet to be earned during a particular pay period. As such, the employer's recovery (crediting) of the wage advance from an employee's next scheduled paycheck is a reimbursement to the employer and not a deduction or a withholding of the employee's wages--i.e., the employee received full payment of wages on or before the scheduled payday for that pay period. The Commission believes that Chapter 821 requires clarification to:

--assist employers that seek to recover wage advances from an employee's next paycheck issued after the wage advance; and

--provide guidance to employers and workers regarding an employer's ability to recover wage advances.

SUBCHAPTER C. WAGE CLAIMS

The Commission adopts the following amendments to Subchapter C:

§821.41. Validity of Claim/Filing and Investigative Procedures

Section 821.41(a) is removed to comply with Texas Labor Code §61.051(d), effective September 1, 2009. The statute addresses contemporary means of document transmission by allowing faxed wage claims.

New §821.41(a) describes the current permitted methods of filing a wage claim under Texas Labor Code §61.051(d): in person, by mail, or by fax.

Section 821.41(b) is removed to allow the Agency to streamline the wage claim process while still ensuring safeguards are in place.

Current §821.41(b) expressly disallows the submission of photocopied wage claims. Although Texas Labor Code §61.051(d) describes the way in which a wage claim can be submitted to the Agency, it does not require the submitted wage claim to be an original. In fact, the recent amendment allowing wage claims to be faxed indicates that the Texas legislature does not intend to require original signatures on wage claims. Accordingly, there is no statutory bar to accepting properly submitted photocopied wage claims. As long as the identity of the claimant can be established and validated, and the document is sufficiently legible and complete in order to allow the Agency to contact the employer, there is no programmatic or operational difference between a document with an original signature and a photocopied document. Moreover, Agency records retention practices have been modernized from hard-copy document storage to scanning technology.

Section 821.41(c) is relettered as new §821.41(b) to accommodate the changes.

§821.42. Timeliness

Section 821.42 specifies the filing date of a wage claim that is faxed to the Commission as permitted by Texas Labor Code §61.051(d). The filing date must be the date faxed and received by the Commission.

§821.43. Wage Claim Withdrawal

Section 821.43(a) allows a claimant to withdraw a wage claim at any time up until the Agency's written decision becomes final. After that point, a claimant may withdraw a wage claim by submitting a form to the Agency with the claimant's signature certifying that the wage claim is satisfied.

Currently this subsection allows a claimant to withdraw a wage claim only at certain points in the process, which the Commission believes creates a bureaucratic burden. Thus, the Commission believes this change aligns Commission rule with recent case law and removes procedural obstacles for claimants and employers.

§821.46. Void Determination Orders and Decisions

Section 821.46 broadens staff authority to void determination orders and decisions in which Agency staff has determined that an entity, with no discernible relationship to the wage claimant, is improperly named as the liable employer. This change improves the Agency's efficiency in collecting from liable employers.

Currently, §821.46 limits the Agency's authority to void preliminary wage determination orders and decisions only to those instances in which a nonexistent entity is ordered to pay wages. This overly narrow interpretation prevents the Agency from correcting wage determination orders in which the Agency determines that an existing--but entirely wrong--employer has been named. Thus, an erroneously named employer may be liable for wages it never owed, particularly if this employer does not respond to an erroneous payday wage claim notice or fails to file a timely appeal.

¹ *Contractual liquidated damages*--a situation in which an employee has a written contract of employment that provides some penalty if the employer terminates the contract early.

Payment in exchange for a release of liability claims--a situation in which an employer, at the time of the employee's separation, offers the employee a payment of a certain sum of money in exchange for the employee signing an agreement stating that he or she will not sue the company for anything that happened during the employee's term of employment.

No comments were received.

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

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §821.4, §821.7

The rules are adopted under Texas Labor Code §301.0015(6) and §302.002(d), 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 adopted rules affect Texas Labor Code, Chapter 61.

This agency 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 31, 2010.

TRD-201005137

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

Effective date: September 20, 2010

Proposal publication date: June 25, 2010

For further information, please call: (512) 475-0829



SUBCHAPTER B. PAYMENT OF WAGES

40 TAC §§821.25 - 821.27, 821.29

The rules are adopted under Texas Labor Code §301.0015(6) and §302.002(d), 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 adopted rules affect Texas Labor Code, Chapter 61.

This agency 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 31, 2010.
TRD-201005138
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: September 20, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 475-0829



SUBCHAPTER C. WAGE CLAIMS

40 TAC §§821.41 - 821.43, 821.46

The rules are adopted under Texas Labor Code §301.0015(6) and §302.002(d), 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 adopted rules affect Texas Labor Code, Chapter 61.

This agency 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 31, 2010.

TRD-201005139
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: September 20, 2010
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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 43, concerning Insurance Coverage. 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 Senate Bill 178, 76th Legislature.

The Division's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt the following rules:

§43.5. Notice That Employer Has Become Subscriber.

§43.10. Termination of Coverage.

§43.15. Sanctions.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on October 18, 2010 and submitted to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-201005236

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 8, 2010



The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 45, concerning Employer's Report of Injury or Disease. 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 Senate Bill 178, 76th Legislature.

The Division's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt the following rules:

§45.5. Forms.

§45.10. Employer's Report of Injury and Disease.

§45.13. Wage Statement.

§45.20. Board Request for Additional Information.

§45.25. Employer's Supplemental Report of Injury.

§45.30. Sanctions.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on October 18, 2010 and submitted to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-201005237

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 8, 2010



The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 53, concerning Carrier's Report of Initiation and Suspension of Compensation Payments. 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 Senate Bill 178, 76th Legislature.

The Division's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt the following rules:

§53.5. Payment of Benefits Without Prejudice.

§53.10. Written Notice of Injury Defined.

§53.15. Board Notice to Carrier of Injury.

§53.20. Notice of Initiation of Compensation; Mode of Payment of Compensation.

§53.22. Application To Change the Benefits Payment Period.

§53.25. Contents of Statement of Controversion or Statement of Position.

§53.30. Filing of Wage Statement.

§53.35. Notice of Suspension of Compensation.

§53.40. Transmittal Letters.

§53.45. Maximum Payment to Minor.

§53.48. Payment of Partial Benefits for General Injuries.

§53.50. Resumption of Compensation.

§53.55. Payment for Amputation.

§53.60. Application for Suspension of Compensation.

§53.63. Suspension of Weekly Compensation.

§53.64. Nonpayment of Compensation Based on Another Carrier's Liability.

§53.65. Certification Procedure.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on October 18, 2010 and submitted to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-201005238

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 8, 2010



The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 64, concerning Representing Claimants Before the Board. 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 Senate Bill 178, 76th Legislature.

The Division's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt the following rules:

§64.25. Discharged Attorney.

§64.30. Adverse Representation in Claims for Death Benefits.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on October 18, 2010 and submitted to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-201005239

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 8, 2010



The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rule contained in Chapter 67, concerning Allegations of Fraud. 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 Senate Bill 178, 76th Legislature.

The Division's reason for adopting the rule contained in this chapter continues to exist and it proposes to readopt the following rule:

§67.5. Referral to Attorney General.

Comments regarding whether the reason for adopting this rule continues to exist must be received by 5:00 p.m. on October 18, 2010 and submitted to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-201005240

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 8, 2010



The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rule contained in Chapter 109, concerning Workers' Compensation Coverage for State Employees. 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 Senate Bill 178, 76th Legislature.

The Division's reason for adopting the rule contained in this chapter continues to exist and it proposes to readopt the following rule:

§109.1. State Agencies: General Provisions.

Comments regarding whether the reason for adopting this rule continues to exist must be received by 5:00 p.m. on October 18, 2010 and submitted to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-201005241

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 8, 2010



Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intent to review Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules*. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 38552 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section of Chapter 26 continue to exist. If it is determined during this review that any section of Chapter 26 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intent to review Chapter 26 has no effect on the sections as they currently exist.

Scottie Aplin, Attorney, Legal Division, and Gordon Van Sickle, Infrastructure Reliability Division, have determined that for each year of the first five-year period the sections are in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering these sections that are not already in effect as a result of the previous adoption of these sections.

Ms. Aplin and Mr. Van Sickle have determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be protection of the public

interest inherent in the rates and services of public utilities, and monitoring of the established regulatory system to assure rates, operations, and services that are just and reasonable to the consumers and utilities. There will be no new effect on small businesses or micro-businesses as a result of enforcing these sections that is not already in effect as a result of the previous adoption of these sections. There are no new anticipated economic costs to persons who are required to comply with these sections as noticed for review that are not already in effect as a result of the previous adoption of these sections.

Ms. Aplin and Mr. Van Sickle have also determined that for each year of the first five years the sections are in effect there should be no effect on a local economy as a result of this review, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the review of Chapter 26 (16 copies) shall be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by October 18, 2010 (30 days after publication). Reply comments shall be submitted by November 1, 2010 (45 days after publication). When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 38552.

The rule chapter subject to this review is proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007, Supplement 2009) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (Vernon 2008, Supplement 2009) which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act, §11.002 and §14.002; Texas Government Code §2001.039.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

- §26.1. Purpose and Scope of Rules.
- §26.3. Severability Clause.
- §26.4. Statement of Nondiscrimination.
- §26.5. Definitions.
- §26.6. Cost of Copies of Public Information.
- §26.7. Local Exchange Company Assessment.
- §26.9. Classification System for Violations of Statutes, Rules, and Orders Applicable to Telecommunications Service Providers.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

- §26.21. General Provisions of Customer Service and Protection Rules.
- §26.22. Request for Service.
- §26.23. Refusal of Service.
- §26.24. Credit Requirements and Deposits.
- §26.25. Issuance and Format of Bills.
- §26.26. Foreign Language Requirements.
- §26.27. Bill Payment and Adjustments.
- §26.28. Suspension or Disconnection of Service.

- §26.29. Prepaid Local Telephone Service (PLTS).
- §26.30. Complaints.
- §26.31. Disclosures to Applicants and Customers.
- §26.32. Protection Against Unauthorized Billing Charges ("Cramming").
- §26.34. Telephone Prepaid Calling Services.
- §26.37. Texas No-Call List.

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

- §26.51. Reliability of Operations of Telecommunications Providers.
- §26.52. Emergency Operations.
- §26.53. Inspections and Tests.
- §26.54. Service Objectives and Performance Benchmarks.
- §26.55. Monitoring of Service.
- §26.57. Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its Provider of Last Resort Obligation.

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

- §26.71. General Procedures, Requirements and Penalties.
- §26.72. Uniform System of Accounts.
- §26.73. Annual Earnings Reports.
- §26.74. Reports on Sale of Property and Mergers.
- §26.75. Reports on Sale of 50% or More of Stock.
- §26.76. Gross Receipts Assessment Report.
- §26.78. State Agency Utility Account Information.
- §26.79. Equal Opportunity Reports.
- §26.80. Annual Report on Historically Underutilized Businesses.
- §26.81. Service Quality Reports.
- §26.85. Report of Workforce Diversity and Other Business Practices.
- §26.87. Infrastructure Reports.
- §26.89. Information Regarding Rates and Services of Nondominant Carriers.

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

- §26.101. Certification Criteria.
- §26.102. Registration of Pay Telephone Service Providers.
- §26.103. Affiliate Guidelines for Certificates of Convenience and Necessity Holders.
- §26.107. Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers.
- §26.109. Standards for Granting of Certificates of Operating Authority (COAs)
- §26.111. Standards for Granting Service Provider Certificates of Operating Authority (SPCOAs).
- §26.113. Amendment of Certificate of Operating Authority (COA) or Service Provider Certificate of Operating Authority (SPCOA).

§26.114. Suspension or Revocation of Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs).

SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

§26.121. Privacy Issues.

§26.123. Caller Identification Services.

§26.124. Pay-Per-Call Information Services Call Blocking.

§26.125. Automatic Dial Announcing Devices (ADADs).

§26.127. Abbreviated Dialing Codes.

§26.128. Telephone Directories.

§26.129. Standards for Access to Provide Telecommunications Services at Tenant Request.

§26.130. Selection of Telecommunications Utilities.

§26.131. Competitive Local Exchange Carrier (CLEC)-to-CLEC and CLEC-to-Incumbent Local Exchange Carrier (ILEC) Migration Guidelines.

§26.133. Business and Marketing Code of Conduct for Certificated Telecommunications Utilities (CTUs)

§26.134 Market Test to be Applied in Determining if Markets with Populations Less than 30,000 Should Remain Regulated on or After January 1, 2007.

SUBCHAPTER G. ADVANCED SERVICES

§26.141. Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications.

§26.142. Integrated Services Digital Network (ISDN).

§26.143. Provision of Advanced Services in Rural Areas.

SUBCHAPTER I. ALTERNATIVE REGULATION

§26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.

§26.172. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.

§26.175. Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs).

SUBCHAPTER J. COSTS, RATES AND TARIFFS

§26.201. Cost of Service.

§26.202. Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991.

§26.203. Rate Policies for Small Local Exchange Companies (SLECs).

§26.205. Rates for Intrastate Access Services.

§26.206. Depreciation Rates.

§26.207. Form and Filing of Tariffs.

§26.208. General Tariff Procedures.

§26.209. New and Experimental Services.

§26.210. Promotional Rates for Local Exchange Company Services.

§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

§26.214. Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs).

§26.215. Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services.

§26.216. Educational Percentage Discount Rates (E-Rates).

§26.217. Administration of Extended Area Service (EAS) Requests.

§26.219. Administration of Expanded Local Calling Service Requests.

§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.

§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.

§26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.

§26.225. Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies.

§26.226. Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

§26.228. Requirements Applicable to Chapter 52 Companies.

§26.229. Requirements Applicable to Chapter 59 Electing Companies.

§26.230. Requirements Applicable to Chapter 65 One-day Informational Notice Filings.

SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

§26.271. Expanded Interconnection.

§26.272. Interconnection.

§26.274. Imputation.

§26.276. Unbundling.

§26.283. Infrastructure Sharing.

SUBCHAPTER M. OPERATOR SERVICES

§26.311. Information Relating to Operator Services.

§26.313. General Requirements Relating to Operator Services.

§26.315. Requirements for Dominant Certificated Telecommunications Utilities (DCTUs).

§26.317. Information To Be Provided at the Telephone Set.

§26.319. Access to the Operator of a Local Exchange Company (LEC).

§26.321. 9-1-1 calls, "0-" calls, and End User Choice.

SUBCHAPTER N. PAY TELEPHONE SERVICE

§26.341. General Information Relating to Pay Telephone Service (PTS).

§26.342. Pay Telephone Service Tariff Provisions.

§26.343. Responsibilities for Pay Telephone Service (PTS) of Certificated Telecommunications Utilities (CTUs) Holding Certificates of Convenience and Necessity (CCNs).

§26.344. Pay Telephone Service Requirements.

§26.345. Posting Requirements for Pay Telephone Service Providers.

§26.346. Rates and Charges for Pay Telephone Service Providers.

§26.347. Fraud Protection for Pay Telephone Service.

SUBCHAPTER O. NUMBERING

§26.375. Reclamation of Codes and Thousand-Blocks and Petitions for Extension of Code and Thousands-Block Activation.

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

§26.401. Texas Universal Service Fund (TUSF).

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

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

§26.406. Implementation of the Public Utility Regulatory Act §56.025.

§26.408. Additional Financial Assistance (AFA).

§26.410. Universal Service Fund Reimbursement for Certain IntraLATA Service.

§26.412. Lifeline Service Program.

§26.413. Link Up Service Program.

§26.414. Telecommunications Relay Service (TRS).

§26.415. Specialized Telecommunications Assistance Program (STAP).

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

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

§26.419. Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

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

§26.421. Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas.

§26.422. Subsequent Petitions for Service in Uncertificated Areas.

§26.423. High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.

§26.424. Audio Newspaper Assistance Program.

SUBCHAPTER Q. 9-1-1 ISSUES

§26.431. Monitoring of Certain 911 Fees.

§26.433. Roles and Responsibilities of 9-1-1 Service Providers.

§26.435. Cost Recovery Methods for 9-1-1 Dedicated Transport.

SUBCHAPTER R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

§26.461. Access Line Categories.

§26.463. Calculation and Reporting of a Municipality's Base Amount.

§26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers.

§26.467. Rates, Allocation, Compensation, Adjustments and Reporting.

§26.468. Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting.

§26.469. Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records.

TRD-201005180

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 2, 2010



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 issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Notice - Public Hearing on the Long-Term Plan for Persons with Intellectual and Developmental Disabilities and Related Conditions 2012-13

The Department of Aging and Disability Services (DADS) will conduct a public hearing to receive comments on the Long-Term Care Plan for Persons with Intellectual and Developmental Disabilities and Related Conditions under the requirements of Texas Health and Safety Code, Section 533.062. The plan reflects the legislative appropriations request proposed for the: 1) state supported living centers and community-based intermediate care facilities (licensed or approved as meeting license requirements), and 2) capacity of the various home and community-based services waiver programs for persons with intellectual and developmental disabilities or related conditions.

DADS will hold a public hearing in Austin on September 23, 2010, at 2:00 p.m. in the Public Hearing Room (125E) at DADS, John H. Winters Building, 701 W. 51st Street, Austin, Texas 78751. The hearing is 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 be permitted during the hearing; however, DADS and Health and Human Services Commission

(HHSC) staff members will briefly discuss the proposal at the beginning of the hearing.

If you are unable to attend the meeting in person, you may provide your testimony via telephone during the meeting. If you choose to call in to the meeting, call 1-877-226-9790 between 2:00 p.m. and 4:00 p.m. on September 23, 2010. At the prompt enter Access Code 4764735.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Laura Arce at (512) 438-3512. Requests should be made no later than 5:00 p.m. on Tuesday, September 21, 2010.

Written comments may be submitted to Kevin Estes, Mail Code W-578, Department of Aging and Disability Services, P.O. Box 149030, Austin, Texas 78714-9030, or faxed to (512) 438-5768. Electronic comments may be submitted via email to kevin.estes@dads.state.tx.us. Comments must be received by 12:00 noon (CDT), September 24, 2010. Copies of the proposed Long-Term Care Plan can be obtained from the DADS website at <http://www.dads.state.tx.us/homepage/stakeholdersmtg2010.html>. For additional information contact Kevin Estes at (512) 438-4910.

Long-Term Care Plan for Persons with Intellectual and Developmental Disabilities and Related Conditions 2012-13

The Texas Health and Human Services Commission (HHSC), pursuant to Section 533.062 of the Texas Health and Safety Code, approves this proposed Long-Term Care Plan for People with Intellectual and Developmental Disabilities and Related Conditions. Section 533.062 requires the plan to be developed prior to each legislative session and adjusted following legislative action on appropriations for long-term care services specific to this population. HHSC publishes the plan solely to reflect the legislative appropriations request proposed for the 1) state supported living centers and community-based intermediate care facilities (licensed or approved as meeting license requirements), and 2) capacity of the various home and community-based services waiver programs for persons with intellectual and developmental disabilities and related conditions.

As required by Section 533.062 of the Texas Health and Safety Code, the numbers appearing in the tables below are consistent with the projected amounts to be requested by HHSC in the consolidated health and human services budget. Effective September 1, 2004, the Texas Department of Aging and Disability Services (DADS) operates all of the programs included in this report.

This report includes information on the following programs:

- Intermediate Care Facility for Persons with Mental Retardation or a Related Condition (ICF-MR/RC) Program;
- Home and Community-based Services (HCS) Program;
- Texas Home Living (TxHmL) Program;
- Community Living Assistance and Support Services (CLASS) Program;
- Deaf-Blind with Multiple Disabilities (DBMD) Program; and
- Consolidated Waiver Program (CWP).

Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR)

This is a Medicaid funded program that provides services to people with intellectual and developmental disabilities and related conditions in residential settings of four or more beds with 24-hour supervision. These services are provided in two settings: state supported living centers and community facilities.

State Supported Living Centers

State Supported Living Centers provide services to people with intellectual and developmental disabilities and related conditions admitted to one of thirteen centers around the state. They are located in Abilene, Austin, Brenham, Corpus Christi, Denton, El Paso, Lubbock, Lufkin, Mexia, Richmond, Rio Grande, San Angelo, and San Antonio.

Proposed Average Number of Individuals Served per Month in State Supported Living Centers	
<i>FY 2012</i>	<i>FY 2013</i>
3892	3686

Community Facilities

Community facilities, as the name implies, provide services to people with intellectual and developmental disabilities and related conditions in community settings. Both public and private providers operate these facilities. The public providers are local mental retardation authorities (MRAs).

Proposed Average Number of Individuals Served per Month in Community-based ICFs/MR	
<i>FY 2012</i>	<i>FY 2013</i>
5772	5769

Waiver Programs

Section 1915(c) of the Social Security Act provides, that upon federal approval, states may "waive" some federal Medicaid requirements to provide an array of support services in the community as an alternative to institutional care. Medicaid expenses for people in waiver programs cannot exceed, in the aggregate, Medicaid expenses for institutional services for people with similar needs.

The 2006-07 General Appropriations Act (Article II, Department of Aging and Disability Services, S.B. 1, 79th Legislature, Regular Session, 2005) authorized appropriations for a significant expansion of all waiver programs administered by the Department of Aging and Disability Services (DADS). The 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, H.B. 1, 80th Legislature, Regular Session, 2007) allocated additional funds in D.1.1. Strategy: Waiting/Interest List Reduction in the amounts of \$42,605,333 for fiscal year 2008 and \$130,632,915 for fiscal year 2009. The 2010-11 General Appropriations Act (Article II, Department of Aging and Disability Services, S.B. 1, 81st Legislature, Regular Session, 2009) authorized appropriations of \$92.5 million for FY 2010 and \$270.8 million for FY 2011 for expanding community-based services.

In the tables below, "Community Expansion" is the label used by the Legislature for the additional waiver funding (as well as additional funding for Social Services Block Grants/Title XX services and In-Home and Family Support services) that HHSC was granted for FY 2010-11.

The Texas Promoting Independence and Money Follows the Person programs work to transition adults and children residing in nursing facilities and ICFs/MR to the most integrated community settings of their choice by providing services such as thorough assessments, intensive case management, housing assistance, and funds to set up a community-based residence.

The Home and Community-based Services (HCS) Program

The HCS Program is for individuals with intellectual and developmental disabilities or related conditions who qualify for a Level of Care I. HCS provides individualized services and supports for individuals living in their family home, their own home, in a foster/companion care setting, or in a residence with no more than four individuals who receive similar services.

Proposed Average Number of Individuals Served per Month in HCS Program		
	<i>FY 2012</i>	<i>FY 2013</i>
Maintain August 2011 number	21,690	21,690
Promoting Independence	248	714
Community Expansion (HHSC)	1,505	4,515
Total	23,443	26,919

The Texas Home Living (TxHmL) Program

The TxHmL Program provides community services for individuals with intellectual and developmental disabilities or related conditions who qualify for a Level of Care I. Selected essential services and supports are provided to individuals so they can continue to live with their families or in their own homes.

Proposed Average Number of Individuals Served per Month in TxHmL Program		
	<i>FY 2012</i>	<i>FY 2013</i>
Maintain August 2011 number	994	994
Community Expansion (HHSC)	25	75
Total	1,019	1,069

The Community Living Assistance and Support Services (CLASS) Program

The CLASS Program provides home and community-based services to adults and children with related conditions so they can live with their families or in their own homes as a cost-effective alternative to ICF-MR/RC institutional placement. Individuals with related conditions have a diagnosis listed on the DADS Approved Diagnostic Codes for Persons with Related Conditions¹. The diagnosis must originate before age 22 and limit the individual’s ability to perform activities of daily living.

Proposed Average Number of Individuals Served per Month in CLASS Program		
	<i>FY 2012</i>	<i>FY 2013</i>
Maintain August 2011 number	5856	5856
Community Expansion (HHSC)	528	1584
Total	6,384	7,440

Deaf-Blind with Multiple Disabilities (DBMD) Program

The DBMD Program provides home and community-based services for people who are deaf-blind with multiple disabilities. Individuals live with their families, in their own homes, or in residences with no more than six individuals who receive services. The program focuses on increasing opportunities for individuals to communicate and interact with their environment.

Proposed Average Number of Individuals Served per Month in DBMD Program		
	<i>FY 2012</i>	<i>FY 2013</i>
Maintain August 2011 number	153	153
Community Expansion (HHSC)	4	12
Total	157	165

The Consolidated Waiver Program (CWP)

The purpose of CWP is to test the feasibility of consolidating five of the state’s other Section 1915(c) Medicaid waiver programs over time. The program is limited to Bexar County, and serves individuals who will qualify for nursing facility or for ICF/MR/RC level of care I or VIII.

The 2010-11 General Appropriations Act (Article II, Department of Aging and Disability Services, S.B. 1, 81st Legislature, Regular Session, 2009) did not re-authorize funding for this program, in effect directing DADS to discontinue the CWP waiver. However, in accordance with Sections 4 and 7 of S.B. 705, 81st Legislature, Regular Session, 2009, DADS will continue to operate CWP so as not to endanger federal economic stimulus funding made available through the American Recovery and Reinvestment Act of 2009.

Targeted Average Number of Individuals Served per Month in CWP Program		
	<i>FY 2012</i>	<i>FY 2013</i>
Maintain August 2011 number	159	159
Community Expansion (HHSC)	4	12
Total	163	171

¹ http://www.dads.state.tx.us/providers/guidelines/ICD-9-CM_Diagnostic_Codes.pdf

Health and Safety Code Section 533.062

Plan on Long-Term Care Facilities for Persons with Mental Retardation

The department (TDMHMR legacy agency) shall biennially develop a proposed plan on long-term care for persons with mental retardation.

The proposed plan must specify the capacity of the HCS waiver program for persons with mental retardation and the number and levels of new ICF/MR-RC beds to be authorized in each region. In developing the proposed plan, the department shall consider the needs of the population to be served; projected appropriation amounts for the biennium; and requirements of applicable federal law.

Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the Health and Human Services Commission for approval.

The Health and Human Services Commission may modify the proposed plan as necessary before its final approval. In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the (legacy agency) Texas Department of Human Services.

The Health and Human Services Commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 13, Article 4413(502).

After legislative action on the appropriation for long-term care for persons with mental retardation or related conditions, the Health and Human Services Commission shall adjust the plan to ensure that the ICF/MR-RC beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

After any necessary adjustments, the Health and Human Services Commission shall approve the final biennial plan and publish the plan in the Texas Register.

The department may submit proposed amendments to the plan to the Health and Human Services Commission.

In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).

TRD-201005211
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Filed: September 7, 2010

◆ ◆ ◆
Office of the Attorney General

Notice of Amendment and Extension to a Major Consulting Contract

The Office of the Attorney General of Texas (OAG) announces the amendment and extension of contract #08-C0074 with Deloitte Consulting, LLP, an entity with a principal place of business at 400 West 15th Street, Suite 1700, Austin, Texas 78701. Under the amended and extended contract, the contractor will provide "Development and Continuity Assurance" by creating requirements for the OAG approved projects, as well as the continuity necessary from the previous contract terms to enable the OAG to achieve its vision. The contractor will also build-out the remaining technical environments necessary to implement the approved recommendations.

The total value of the contract amendment will not exceed \$9,998,823. The contract has been extended to August 31, 2011, unless extended or terminated sooner by the OAG. The contractor must complete and submit all deliverables under the contract to the OAG by August 31, 2011. The contract includes an OAG option for up to a four calendar month extension that can be exercised at OAG's sole discretion.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201005212
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 7, 2010

◆ ◆ ◆
Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 13, 2010, through August 19, 2010. 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 this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on September 8, 2010. The public comment period for this project will close at 5:00 p.m. on October 8, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: U.S. Army Corps of Engineers, Galveston District; Location: The project site will consist of the area below the mean high tide, along all the beaches and bays of the Texas coastline, in the Galve-

ston District. Project Description: The Corps is proposing a Regional General Permit (RGP) to authorize applicants to remove debris, including garbage and seaweed, from below the mean high tide as part of a continuing beach clean-up and/or maintenance schedules. This RGP will be valid for each specific work project for two calendar years from the date of issuance. CMP Project No.: 10-0168-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00240 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.state.tx.us. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201005219
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 8, 2010

◆ ◆ ◆
Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications #197b (RFQ) related to these contract awards was published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3526).

The contractors will provide Professional Contract Examination Services as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that 27 contracts were awarded as of September 1, 2010 as follows:

A contract is awarded to Randall J. Robinson, 205 East Main, Whitehouse, Texas 75791. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Paul Hernandez, 1938 Crisfield Drive, Sugar Land, Texas 77479. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, Texas 78682. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any

one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Brenda Maldonado, 2095 Savannah Trace, Beaumont, Texas 77706. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Stephanie (Clark) Jackson, 2700 Blanchette Street, Beaumont, Texas 77701. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to William R. Smith, 5319 Cerro Vista, San Antonio, Texas 78233. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Stephen T. Broad, 1218 Gordon Boulevard, San Angelo, Texas 76905. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Jean Chan, 6119 Jereme Trail, Dallas, Texas 75252. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Art Koenings, Jr., CPA, 15712 Spillman Ranch Loop, Austin, Texas 78738. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Homer Max Wiesen, CPA, 1009 Panhandle, Denton, Texas 76201. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Paul D. Underwood, P.O. Box 566, Odem, Texas 78370. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Terra Hillman, 2174 East Michael Square, Lake Charles, Louisiana 70611. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner

shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Marina Roy Buenaventura, CPA, 4042 Chenna Drive, Houston, Texas 77025-4702. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, Texas 77083. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, Texas 75077. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Max Dwain Martino, PC, 373 1/2 West 19th Street, Suite C-2, Houston, Texas 77008. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Nicole Y. Thomas, 5414 Cactus Forest Drive, Houston, Texas 77088. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Philip E. Tan, 8815 Crazy Horse Trail, Houston, Texas 77064. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Jodie Moore, 2707 Bent Creek Drive, Pearland, Texas 77584. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Dibrell P. Dobbs d/b/a State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Donald E. Pearson, 4231 Torrey Creek Lane, Houston, Texas 77014. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to David Tran d/b/a Lone Star Sales Tax Consulting, 1144 N. Plano Road, Suite 133, Richardson, Texas 75081. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Cherise D. Collins, 17011 Driver Lane, Sugar Land, Texas 77498. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to Trevor Garrett d/b/a Garrett Tax Service, 1911 Broadway Boulevard, Kilgore, Texas 75662. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

A contract is awarded to D. Smith Consulting, 418 Sonora Drive, Garland, Texas 75043. Examinations will be assigned in \$60,000, \$75,000 and \$90,000 packages but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2010 through August 31, 2011, with two one year options to renew.

The 27 contracts above are the final awards that the Comptroller will make under this RFQ.

TRD-201005195
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 3, 2010



Notice of Request for Proposals

Pursuant to Chapters 403, 447, 2305, §2305.032, and Chapter 2156, §2156.121, Texas Government Code; and the American Recovery and

Reinvestment Act of 2009 (ARRA) Public Law (PL) 111-5 (2009), and related laws, rules and regulations, as amended, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces its Request for Proposals (RFP #199b) and invites proposals from qualified, interested firms for a mail-in State Energy Efficient Appliance Rebate Program (Program). Firms should have demonstrated experience with state mail-in appliance rebate program implementation, as well as providing other related services as and when necessary. The Comptroller reserves the right to award more than one contract under the terms of this RFP. If a contract award is made under the terms of this RFP, the Selected Contractor will be expected to begin performance of the contract on or about November 5, 2010, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, September 17, 2010, after 10:00 a.m. Central Standard Time (CST) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CST on Friday, September 17, 2010.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CST) on Friday, September 24, 2010. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, October 1, 2010, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CST), on Friday, October 15, 2010. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - September 17, 2010, after 10:00 a.m. CST; Non-Mandatory Letters of Intent and Questions Due - September 24, 2010, 2:00 p.m. CST; Official Responses to Questions posted - October 1, 2010; Proposals Due - October 15, 2010, 2:00 p.m. CST; Contract Execution - November 5, 2010, or as soon thereafter as practical; Commencement of Services - November 5, 2010, or as soon thereafter as practical.

TRD-201005215

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 8, 2010

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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/13/10 - 09/19/10 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/13/10 - 09/19/10 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 09/01/10 - 09/30/10 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 09/01/10 - 09/30/10 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

TRD-201005218
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 8, 2010

Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas in relation to contracts awarded for specified Health Maintenance Organizations ("HMOs") to provide HMO services under the Texas Employees Group Benefits Program for Fiscal Year 2011. The selected contractors are:

Community First Health Plans, Inc.

12238 Silicon Drive, Suite 100

San Antonio, Texas 78249

Scott and White Health Plan

2401 South 31st Street

Temple, Texas 76508

The combined costs of the contracts for Fiscal Year 2011 are estimated to be \$156 million. The contracts were executed on August 31, 2010, and are for a term of September 1, 2010 through August 31, 2011.

TRD-201005188
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: September 3, 2010

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and 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 18, 2010**. 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 indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 18, 2010**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission 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 shall be submitted to the commission in **writing**.

(1) COMPANY: Craig E. Adams; DOCKET NUMBER: 2010-0902-PWS-E; IDENTIFIER: RN102320231; LOCATION: Harris County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: \$2,068; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: American Heritage Housing Corporation; DOCKET NUMBER: 2010-0860-PWS-E; IDENTIFIER: RN101224046; LOCATION: Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the consumer confidence report (CCR) to each bill paying customer and by failing to submit to the TCEQ a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$237; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Benbrook Texas Limited Partnership; DOCKET NUMBER: 2009-0628-MWD-E; IDENTIFIER: RN102963238; LOCATION: Tarrant County; TYPE OF FACILITY: wastewater

treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ001479201, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for total suspended solids, flow, chlorine, and five-day biochemical oxygen demand (BOD₅); PENALTY: \$21,200; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Central Freight Lines, Inc.; DOCKET NUMBER: 2010-1368-PST-E; IDENTIFIER: RN101628485; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: Chemtrade Refinery Services, Inc.; DOCKET NUMBER: 2010-0991-IWD-E; IDENTIFIER: RN100218932; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: inorganic chemicals manufacturing plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0000647000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121, by failing to comply with permitted effluent limits for chemical oxygen demand; PENALTY: \$5,940; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2010-0671-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 1295, Special Condition (SC) IV-6-A, Federal Operating Permit (FOP) Number O-02292, Special Terms and Conditions Number 10 and General Terms and Conditions, and THSC, §382.085(b), by failing to demonstrate 98.5% control of volatile organic compounds; PENALTY: \$19,200; Supplemental Environmental Project (SEP) offset amount of \$7,680 applied to Texas Air Quality Research Center at Lamar University - *Flare Speciation and Air Quality Modeling*; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2010-0795-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: synthetic organic chemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Permit Number 19198/PST-TX-760M7, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$17,950; SEP offset amount of \$7,180 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Clean School Buses; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Malcom Agheshen dba Good Luck; DOCKET NUMBER: 2010-0676-PST-E; IDENTIFIER: RN101544336; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate;

30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection for the USTs; and 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$11,791; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Good Shepherd Residential Treatment Centre, Inc.; DOCKET NUMBER: 2010-0892-PWS-E; IDENTIFIER: RN101232692; LOCATION: Tomball, Harris County; TYPE OF FACILITY: residential center with a PWS; RULE VIOLATED: 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change to the facility's production, treatment, storage, pressure maintenance, or distribution system; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the commission for review and approval; and 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; PENALTY: \$997; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot; DOCKET NUMBER: 2010-0865-AGR-E; IDENTIFIER: RN102180957; LOCATION: Brown County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULE VIOLATED: 30 TAC §321.36(c) and §321.37(d), TPDES CAFO General Permit Number TXG920256 Part II.A., and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharges of waste from a CAFO; and 30 TAC §321.46(a)(7)(6) and TPDES CAFO General Permit Number TXG920256 Part III.A.2.(a), by failing to properly update the pollution prevention plan site map; PENALTY: \$16,147; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: IZZA, Inc. dba Cullen Mobil; DOCKET NUMBER: 2010-0724-PST-E; IDENTIFIER: RN102376720; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$4,519; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: JD Cambridge Enterprise, Inc. dba Kwik Mart 3 Beverages; DOCKET NUMBER: 2010-0944-PST-E; IDENTIFIER: RN101444172; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$4,182; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: KIE ENTERPRISES, Inc. dba Mr. Friendly Mart; DOCKET NUMBER: 2010-0882-PST-E; IDENTIFIER: RN101740835; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE

VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that the USTs are monitored in a manner which will detect a release at a frequency of at least once every month; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; PENALTY: \$3,344; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Live Oak Resort, Inc.; DOCKET NUMBER: 2010-0411-PWS-E; IDENTIFIER: RN101269926; LOCATION: Washington County; TYPE OF FACILITY: recreation resort with a PWS; RULE VIOLATED: 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.43(d)(3), by failing to equip the air injection line on the pressure tank with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank; 30 TAC §290.45(c)(1)(B)(ii) and THSC, §341.0315(c), by failing to provide a ground storage capacity of 35 gallons per connection; and 30 TAC §290.45(c)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps which have a total capacity of one gallon per minute (gpm) per connection; PENALTY: \$1,638; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Longview Bridge and Road, Limited; DOCKET NUMBER: 2010-1367-WR-E; IDENTIFIER: RN105951776; LOCATION: Newton County; TYPE OF FACILITY: water rights; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$1,638; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Lukes Mobile Home Park, Inc.; DOCKET NUMBER: 2010-0067-PWS-E; IDENTIFIER: RN101271245; LOCATION: Parker County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(c), by failing to provide a total well capacity of 0.6 gpm per connection; 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the facility's reproduction, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a total pressure tank capacity of 20 gallons per connection; and 30 TAC §290.46(n)(3) and TCEQ Agreed Order Docket No. 2007-0621-PWS-E, Ordering Provision 2.c.iii, by failing to provide well completion data for well number one; PENALTY: \$1,313; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 490-3096; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Marathon Petroleum Company, LLC; DOCKET NUMBER: 2010-0952-AIR-E; IDENTIFIER: RN100210608; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical refinery; RULE VIOLATED: 30 TAC §116.715(a), New Source Review (NSR) Permit Number 22433, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emission event; PENALTY: \$7,300; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OF-

FICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: MUREE VALLEY INTERNATIONAL, INC. dba Circle M Food Mart; DOCKET NUMBER: 2010-1045-PST-E; IDENTIFIER: RN101630267; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,173; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: NABLUS Number 1, INC.; DOCKET NUMBER: 2010-0930-PST-E; IDENTIFIER: RN102351152; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.51(b)(2)(B) and the Code, §26.3475(c)(2), by failing to equip each tank with spill and overflow prevention equipment; PENALTY: \$7,918; ENFORCEMENT COORDINATOR: J.R. Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: City of Port Arthur; DOCKET NUMBER: 2010-0048-MSW-E; IDENTIFIER: RN100225390; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: municipal solid waste (MSW) landfill; RULE VIOLATED: 30 TAC §330.165(g) and MSW Permit Number 1815A, Site Operating Plan (SOP), Section 4.17.5, by failing to repair eroded areas of the intermediate cover within five days of detection; 30 TAC §§330.15(a), 330.207(b), and 330.305(g), MSW Permit Number 1815A, SOP, Section 4.20, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of waste into and adjacent to the water in the state; 30 TAC §330.305(b) and (c) and MSW Permit Number 1815A, SOP, Section 4.20, by failing to design, construct, and maintain a run-on control system and a runoff management system capable of preventing flow onto or from the active portion of the landfill; 30 TAC §330.133(a) and MSW Permit Number 1815A, SOP, Section 4.4, by failing to maintain appropriate signs regarding directions and prohibited waste; 30 TAC §330.143(a) and MSW Permit Number 1815A, SOP, Section 4.7, by failing to maintain the visibility of all required landfill markers, the benchmark, and by failing to inspect landfill markers on a monthly basis and maintain records of all inspections at the facility; 30 TAC §330.73(a) and MSW Permit Number 1815A, SOP, Section 2.1, by failing to amend the SOP prior to deviating from the operational requirements of the SOP; 30 TAC §330.127(5)(B) and (C) and MSW Permit Number 1815A, SOP, Section 2.2, by failing to maintain records of all inspections and training for appropriate facility personnel responsible for inspecting or observing loads to recognize prohibited waste; and 30 TAC §330.331(a)(2) and MSW Permit Number 1815A, SOP, Section 4.21, by failing to maintain less than 30 centimeter depth of leachate over the landfill liner; PENALTY: \$23,825; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: City of Premont; DOCKET NUMBER: 2010-0799-PWS-E; IDENTIFIER: RN101389849; LOCATION: Premont, Jim Wells County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well; 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazard exists; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation which includes high level and floor level screened vents in enclosures where chlorine gas is stored or fed; 30 TAC §290.41(c)(3)(Q), by failing to ensure that the openings to the air-release devices on the discharge piping of each well are covered with a 16-mesh or finer corrosion resistant screen; 30 TAC §290.46(e)(4)(C), by failing to employ at least two operators who hold a Class "C" or higher groundwater license for groundwater systems serving more than 1,000 connections; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gpm per connection; PENALTY: \$3,970; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: RUDY'S TEXAS BAR-B-Q, LLC dba Rudy's Country Store & Bar-B-Q; DOCKET NUMBER: 2010-0984-PST-E; IDENTIFIER: RN103065736; LOCATION: Waco, McLennan County; TYPE OF FACILITY: restaurant with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(2) and §334.72, by failing to report to the TCEQ a suspected release within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: \$6,100; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: Shamrock Realty, Limited; DOCKET NUMBER: 2010-0876-WQ-E; IDENTIFIER: RN105920540; LOCATION: Waco, McLennan County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(24) COMPANY: SHIN-ETSU SILICONES OF AMERICA, INC.; DOCKET NUMBER: 2010-1006-IWD-E; IDENTIFIER: RN100885102; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: organic chemical manufacturing plant with an associated wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004362000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for BOD₅ and pH; PENALTY: \$24,875; ENFORCEMENT COORDINATOR: J.R. Cao, (512) 239-2543; REGIONAL OFFICE: 5424 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: TBNL Investments, Inc. dba Texaco; DOCKET NUMBER: 2010-0900-PST-E; IDENTIFIER: RN102022266; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC

§115.246(4) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.245(3) and THSC, §382.085(b), by failing to provide written notification to the agency at least ten working days in advance of the test; PENALTY: \$4,179; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5424 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2010-0873-MWD-E; IDENTIFIER: RN102177961; LOCATION: Orange County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011457001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for chlorine, pH, and TSS; 30 TAC §305.125(17) and TPDES Permit Number WQ0011457001, Sludge Provisions, Section II. F. Numbers 3 and 5, by failing to submit results at the intervals specified in the permit; and 30 TAC §21.4(e) and the Code, §5.702, by failing to pay the Fiscal Year 2010 consolidated water quality assessment fee; PENALTY: \$3,060; SEP offset amount of \$2,448 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Martha Hott, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(27) COMPANY: Uni-Graphics Printing, Limited dba The Printing Bureau; DOCKET NUMBER: 2010-0824-AIR-E; IDENTIFIER: RN100777648; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: commercial printing plant; RULE VIOLATED: 30 TAC §115.442(a)(1)(F)(ii) and §116.115(c), NSR Permit Number 47553, SC Numbers 5.B., 26.A., and 26.C., and THSC, §382.085(b), by failing to ensure that all waste inks, solvents, and cleanup rags/towels were stored in closed containers; 30 TAC §116.115(c), NSR Permit Number 47553, SC Numbers 6, 9, 18, and 24.A., and THSC, §382.085(b), by failing to ensure that oxidizers were in proper operation at all times during the operation of printing presses; 30 TAC §116.115(c), NSR Permit Number 47553, SC Number 23, and THSC, §382.085(b), by failing to ensure that a representative core bed sample was removed from the catalytic oxidizer and submitted to a laboratory for catalyst activity testing; 30 TAC §116.115(c), NSR Permit Number 47553, SC Number 24, and THSC, §382.085(b), by failing to conduct a timely stack test of the catalytic oxidizer; 30 TAC §116.115(c), NSR Permit Number 47553, SC Number 24.C.1., and THSC, §382.085(b), by failing to timely submit proposed stack sampling methods; 30 TAC §116.115(c), NSR Permit Number 47553, SC Number 24.C.2., and THSC, §382.085(b), by failing to schedule a pretest meeting; 30 TAC §116.115(c), NSR Permit Number 47553, SC Number 24.C.4., and THSC, §382.085(b), by failing to prepare and distribute the stack sampling report; and 30 TAC §116.115(c), NSR Permit Number 47553, SC Number 25.D., and THSC, §382.085(b), by failing to maintain a monthly record of individual and total hazardous air pollutants emissions; PENALTY: \$22,245; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Veolia ES Technical Solutions, L.L.C.; DOCKET NUMBER: 2010-0811-AIR-E; IDENTIFIER: RN102599719; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: hazardous waste incinerator; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 1509, SC Number 15, FOP Number 42450, SC Number 12(H), and THSC, §382.085(b), by failing to limit the carbon monoxide concentration emission below the permitted rolling hourly average of 100 parts per million; PENALTY: \$22,100; SEP offset amount of \$8,840 applied to Southeast Texas

Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: Westpark Station, Inc. dba Nancy's Citgo; DOCKET NUMBER: 2010-0969-PST-E; IDENTIFIER: RN102832565; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.246(1) and (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station; PENALTY: \$6,031; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: XTO Energy, Inc.; DOCKET NUMBER: 2009-2084-AIR-E; IDENTIFIER: RN102527769; LOCATION: Yoakum County; TYPE OF FACILITY: tank battery; RULE VIOLATED: 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit the final report within two weeks of the emissions event; and 30 TAC §106.352, NSR Permit By Rule, Registration Number 27050, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$237,247; SEP offset amount of \$118,623 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201005198

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 7, 2010



Notice of Correction - Notice of Groundwater Conservation District Creation Report Completion and Availability

In the August 27, 2010, issue of the *Texas Register* (35 TexReg 7929), the Texas Commission on Environmental Quality (commission) published the *Notice of Groundwater Conservation District Creation Report Completion and Availability*.

Within this notice the docket number published incorrectly as "Docket Number 2010-1940-MIS" and should have published as "Docket Number 2010-1040-MIS." The error is as submitted by the commission.

Any questions or comments may be addressed to Ross Henderson, Staff Attorney, Environmental Law Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6257.

TRD-201005199

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 7, 2010



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 Commission of Environmental Quality (TCEQ or commission) shall calculate and publish annually the commission's costs to administer the Voluntary Cleanup Program (VCP). The Innocent Owner/Operator 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 TCEQ is publishing the hourly billing rate of \$107 for both the VCP and the Innocent Owner/Operator Program for Fiscal Year 2011.

The VCP and the Innocent Owner/Operator Program are implemented by the same TCEQ staff. Therefore, 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 and application fees, divided by the estimated hours to complete program tasks. 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 25% to account for non-site specific hours. The release time includes sick leave, jury duty, holidays, etc., and is set at 19.85%. 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 fringe benefit rate is 25.66%. Indirect costs include allowable overhead expenses and are also calculated at a rate that applies to the whole agency. The indirect cost rate is 32.89%. The billing process for Fiscal Year 2011 will use the hourly billing rate of \$107 for both the VCP and the Innocent Owner/Operator 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 Owner/Operator Program or the VCP review and oversight, invoices will be sent to the applicant on a monthly basis for payment of additional program expenses.

The commission anticipates receiving federal funding during Fiscal Year 2011 for the continued development and enhancement of the VCP and the Innocent Owner/Operator Program. If the federal funding anticipated for Fiscal Year 2011 does not become available, the commission may publish a new rate. Federal funding of the VCP and the Innocent Owner/Operator Program should occur prior to October 1, 2010.

For more information, please contact William J. Shafford, P.E., VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-6651 or email: bshaffor@tceq.state.tx.us.

TRD-201005206

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 7, 2010



Notice of Extension of Public Comment Period for Proposed Revisions to 30 TAC Chapters 106, 116, and the Proposed New Standard Permit for Oil and Gas Production Facilities

In the August 13, 2010, issue of the *Texas Register*, the Texas Commission on Environmental Quality (commission) published the proposed repeal of and new 30 TAC §106.352 (35 TexReg 6937), the proposed repeal of 30 TAC §116.620 (35 TexReg 6997), and a proposed new standard permit for oil and gas production facilities. The preamble to the proposals stated that the commission must receive all written comments by September 17, 2010. The commission has extended the deadline for receipt of written comments to October 1, 2010.

Comments should be mailed to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via

the eComments system. All comments should reference Rule Project Number 2010-018-106-PR. Copies of the proposed rule-making can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information or questions concerning this proposal, please contact Mr. Beecher Cameron, Air Permits Division, at (512) 239-1495.

TRD-201005222

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2010



Notice of Water Quality Applications

The following notice was issued on August 27, 2010 through September 3, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, 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 THE NOTICE.

INFORMATION SECTION

THE CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495116, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day. The facility is located on the northeast corner of the intersection of Old Westheimer Road and Alief-Clodine Road in the City of Houston in Harris County, Texas 77082.

PILOT INDUSTRIES OF TEXAS INC which operates an alkylates, lube oil intermediates, detergents, and surfactants manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0001899000, which authorizes the discharge of treated process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 28,000 gallons per day via Outfall 001. The facility is located at 11623 North Houston Rosslyn Road, southwest of Farm-to-Market Road 249, in the City of Houston, Harris County, Texas 77086.

BRUCE FOODS CORPORATION which operates Bruce Foods Wastewater Treatment Plant (WWTP), a food processing plant, has applied for a renewal of TCEQ Permit No. WQ0002518000, which authorizes the disposal of process wastewater from a food processing plant at a daily average flow not to exceed 206,000 gallons per day during the months of February through November and not to exceed 150,000 gallons per day during the months of December through January via irrigation of 53.5 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 8000 Ashley Road between Dyer Street (Highway 54) and Railroad Drive Extension in the City of El Paso, El Paso County, Texas 79934. The facility and land application site are located in the drainage area of the Rio Grande in Segment No. 2308 of the Rio Grande Basin.

MINSA CORPORATION which operates the Minsa Facility, a masa (corn) flour manufacturing plant, has applied for a renewal of TCEQ Permit No. WQ0003032000, which authorizes the disposal of process wastewater (cooking, steeping, and washing) and boiler blowdown at a volume not to exceed 300,000 gallons per day via irrigation. This permit will not authorize a discharge of pollutants into water in the State. The facility and irrigation areas are located north and south of the intersection of County Road 1068 and U.S. Highway 84, adjacent to the east side of U.S. Highway 84, approximately 1.8 miles southeast of the

intersection of U.S. Highway 84 and U.S. Highway 70, and approximately 1.5 miles southeast of the City of Muleshoe, Bailey County, Texas 79347.

CITY OF SUNRAY has applied for a major amendment to TCEQ Permit No. WQ0010296001 to authorize a change in the disposal method from irrigation on 210 acres of non-public access agricultural land to discharge into waters of the State and to authorize an increase in the volume of treated wastewater from a volume not to exceed a daily average flow of 250,000 gallons per day to a volume not to exceed a daily average flow of 400,000 gallons per day. In the interim phase this permit will not authorize a discharge of pollutants into waters in the state. The facility and interim phase disposal site are located approximately 1 mile northeast of the intersection of Farm-to-Market Road 119 and Farm-to-Market Road 281 in Moore County, Texas 79086.

CITY OF AMARILLO has applied for a renewal of TPDES Permit No. WQ0010392006, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 810,000 gallons per day. The facility is located approximately 1 mile east of Tradewind Airport, on the east side of Osage Street, between 34th Avenue and 46th Avenue in Randall County, Texas 79118.

CITY OF WHITESBORO has applied for a renewal of TPDES Permit No. WQ0010464001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 208 Shawnee Trail, on Mineral Creek, approximately 1,000 feet east of U.S. Highway 377 and approximately 0.8 mile north of the intersection of U.S. Highway 82 and 377 in the City of Whitesboro in Grayson County, Texas 76273.

MARATHON WATER SUPPLY AND SEWER SERVICE CORPORATION has applied for a renewal of TCEQ Permit No. WQ0010974001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation on 40 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 5,000 feet south of U.S. Highway 90 and 1.5 miles west of U.S. Highway 385, and approximately one mile southwest of the City of Marathon in Brewster County, Texas 79842.

THE GRIMES COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0011437001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 2.5 miles west of the intersection of Farm-to-Market Road 2445 and Farm-to-Market Road 1774, 0.2 mile north of Farm-to-Market Road 2445, 11 miles east-northeast of the City of Navasota in Grimes County, Texas 77868.

THE CANUTILLO INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011561002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located at 7311 Bosque Road, on the east side of Bosque Road, approximately 4,100 feet north of the intersection of Farm-to-Market Road 259 and Bosque Road and approximately 2 miles northwest of the intersection of State Highway Spur Road 375 and Interstate Highway 10 in El Paso County, Texas 79835.

CITY OF BALMORHEA has applied for a renewal of TCEQ Permit No. WQ0012194001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 83,000 gallons per day via surface irrigation of 8 acres of non-public access pasture land adjacent to the plant site. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 3,500 feet south of State High-

way 17 (formally U. S. Highway 290), approximately 5,000 feet east of the intersection of State Highway 17 (formally U. S. Highway 290) and Farm-to-Market Road 2903 and east of the City of Balmorhea in Reeves County, Texas 79718.

U.S. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT have applied for a renewal of TPDES Permit No. WQ0012321001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located at 27991 Buena Vista Boulevard, approximately 1,500 feet south of the southeast end of Cameron County Airport Runway, approximately 1.5 miles north and 4 miles east of the intersection of Farm-to-Market Roads 510 and 2480 in Cameron County, Texas 78566.

THE U.S. DEPARTMENT OF THE INTERIOR has applied for a renewal of TPDES Permit No. WQ0013344002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 20301 Park Road 22, approximately 2,154 feet west of the intersection of Sewage Lagoon Road and Park Road 22 in Kleberg County, Texas 78418.

RED LICK INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013392001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The facility is located approximately 1,000 feet west of the intersection of Earnest Road and Farm-to-Market Road 2148, and approximately 1.5 miles east of the intersection of Interstate Highway 30 and Farm-to-Market Road 2253 in Bowie County, Texas 75503.

SAN PATRICIO COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0013644001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located on Main Avenue in the City of Edroy, approximately 3,700 feet south of the intersection of Interstate Highway 37 and State Highway 234 in San Patricio County, Texas 78352.

ROCKY POINT ESTATES LAND TRUST AND STEVEN LEE CASE TRUSTEE has applied for a renewal of TPDES Permit No. WQ0013732001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 4601 Shiloh Road in the Town of Flower Mound in Denton County, Texas 75022-6234.

CITY OF ITALY has applied for a renewal of TPDES Permit No. WQ0014195001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located approximately 0.75 mile south of State Highway 34 and 0.5 mile east of Farm-to-Market Road 667 in Ellis County, Texas 76651.

MOORE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014239001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located at 3535 County Road 2537 (Moore Hollow Road), on a five-acre tract approximately 2,800 linear feet south and 1,500 linear feet east of the Missouri-Pacific Railroad crossing at 3rd Street in the City of Moore in Frio County, Texas 78057.

CITY OF FRITCH has applied for a renewal of TCEQ Permit No. WQ0014591001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.26 million gallons per day via surface irrigation of 133 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility is located approximately

0.22 mile west and 0.16 mile north of the intersection of Highway 136 and Sanford Road in the City of Fritch in Hutchinson County, Texas 79036. The effluent disposal site is located approximately 0.22 mile west and 0.53 mile north of the intersection of Highway 136 and Sanford Road in the City of Fritch in Hutchinson County, Texas 79036.

RICE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014846001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 3.0 miles west of the intersection of Highway 90 and Highway 71, in Altair in Colorado County, Texas 77412.

MANKI LLC has applied for a new permit, proposed Permit No. WQ0014960001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0012839001 which expired February 1, 2007. The facility is located at 11978 U.S. Highway 59 North, in the City of Seven Oaks in Polk County, Texas 77351.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201005231

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 8, 2010

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 Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report due July 15, 2010 for Candidates and Officeholders

Rick Agosto, 410 Balfour Dr., San Antonio, Texas 78239-2521

Eric L. Baumgart, P.O. Box 613, Nome, Texas 77629

Peggy S. Bittick, P.O. Box 1017, Pearland, Texas 77588-1017

Eric M. Brandt, 900 E. South St. #6, Kilgore, Texas 75662

Billy J. Briscoe, P.O. Box 980894, Houston, Texas 77095

Vicente N. Carranza, 3690 Jack Dr., Robstown, Texas 78380

Andy M. Chatham, 9804 Spirehaven Ln., Dallas, Texas 75238

Diane L. Chisholm, 4313 Keys Dr., The Colony, Texas 75056

Barry N. Cooper, 401 Little Texas Ln., Apt. 1415, Austin, Texas 78745-4133

Elena Diaz, 2928 Wickersham Ln., Austin, Texas 78741-7352

Harold V. Dutton, Jr., 4001 Jewett St., Houston, Texas 77026-5544

Michael A. Franks, 20230 Kings Camp Dr., Katy, Texas 77450-4322

June R. Genis, 142 Rainbow Dr. #4275, Livingston, Texas 77399

Phillip D. Greer, 501 Thicket Ln., Kyle, Texas 78640-4658

Ursula A. Hall, P.O. Box 2103, Houston, Texas 77252
Brian W. Holk, 890 Cozy Ln., Tow, Texas 78672
Jessica R. Hornsby, 6118 Cypress Point Dr., Garland, Texas 75043
Marc Katz, 800 W. 5th St., Apt. 1109, Austin, Texas 78703-5446
Donald J. Large, 5499 Braesvalley #466W, Houston, Texas 77096
David A. LeBlanc, 3654 Kingsman Dr., Houston, Texas 77082
Stephen D. McGee, 2621 Lucas Dr., Dallas, Texas 75219
Rick Melendrez, 3030 Altura Ave., El Paso, Texas 79930
Socorro G. Meza, 13707 Cape Bluff, San Antonio, Texas 78216
Brian C. Mihelic, 700 Stokesay Castle Path, Pflugerville, Texas 78660-7461
Monte M. Mitchell, 7220 Craig St., Fort Worth, Texas 76112
Charles W. Randolph, P.O. Box 1660, Boyd, Texas 76023-1660
Ronald E. Reynolds, 6140 Hwy. 6 South #233, Missouri City, Texas 77459
Daniel G. Rios, 323 Nolana Loop, McAllen, Texas 78504
Dale Robertson, P.O. Box 13, Woodlake, Texas 75865-0013
Joey Roland, 4915 Chretien Point Ct., Sugar Land, Texas 77478-5423
John Roland Ross, 500 N. Main St. #V, Bryan, Texas 77803-3322
Les J. Sanderfer III, P.O. Box 87, Channelview, Texas 77530
David Scott, 32222 Edgewater Dr., Magnolia, Texas 77354-2656
Gregory A. Thomas, 4044 Pringle Dr., Dallas, Texas 75212
Robert Alan Thomas, 10306 Crestwater Cir., Magnolia, Texas 77354
Ruben D. Torres, 111 Primrose, Livingston, Texas 77351
Deadline: Semiannual Report due July 15, 2010 for Committees
Randy Atchley, McKinney Fire Fighters Association for Responsible Government, P.O. Box 2754, McKinney, Texas 75069-8175
David C. Beilharz, Livamerica PAC, 7708 Thomas Springs Rd., Austin, Texas 78736
Richard C. Bodin Jr., Port Arthur Firefighters PAC, 197 Osborne, Bridge City, Texas 77611
Noel Candelaria, Ysleta Educators PAC, 10935 Ben Crenshaw, Suite 210, El Paso, Texas 79935
Oscar D. Garcia, Brownsville Leadership Alliance PAC, 302 Kings Hwy., Ste. 112, Brownsville, Texas 78521
Ricardo R. Godinez, South Texas Economic Alliance PAC, 2415 N. 10th St., McAllen, Texas 78501-4005
Leslie A. Gower, Hidalgo County Texas Democratic Women, 712 Walnut, McAllen, Texas 78501
Tammy B. Gray, Texas TrueCare Pharmacy PAC, 500 W. 13th St., Austin, Texas 78701
Sandra R. Kuprion-Thomas, Attack PAC, The Anti-Crime PAC, 3131 McKinney Ave., Ste. 720, Dallas, Texas 75204
Dagmar Jung Mack, Legislation Action Council for LTC, 419 E. Sherman Dr., Denton, Texas 76209-2048
Joe D. Webb, Richmondrail.org, 3701 Kirby Dr., Ste. 916, Houston, Texas 77098

Brian J. Welker, Republican Liberty PAC, 7715 Robin Rd., Dallas, Texas 75209

Mike D. Wheat, Wichita Falls Police Officer Association PAC, 2715 9th, Wichita Falls, Texas 76301-3912

Dean G. Wright, New Revolution Now PAC, 4401 Mesquite Sp. Cv., Austin, Texas 78735

TRD-201005174

David Reisman

Executive Director

Texas Ethics Commission

Filed: September 1, 2010

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Texas Board of Professional Geoscientists

Advisory Opinion Request Number 3

Requestor: TBPG/Board-issued

Re: What constitutes "responsible charge"?

Any interested person may submit written comments concerning this Advisory Opinion Request and Draft Opinion to: Michael Hess, Executive Director, P.O. Box 13225, Austin, Texas 78711, or by e-mail to mhess@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date of the posting in the *Texas Register*. Please reference the Advisory Opinion Request Number 3.

Draft Opinion

A foundation of Professional Geoscientist (P.G.) licensure, and of most other types of professional licensure, is "responsible charge". Texas Occupations Code §1002.002(8), also called the Texas Geoscience Practice Act ("the Act"), defines "responsible charge" as "the independent control and direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment." With licensure, a P.G.'s independent judgment becomes equivalent to professional judgment. The most typical circumstance in the public practice of geoscience is that a licensed P.G. in responsible charge of geoscientific work is the actual individual who directly performs that work. However, the Act also provides the option for a P.G. to remain in responsible charge of geoscientific work by supervising the work of others. The P.G.'s professional judgment involved in supervising the work of others is initially related to determining whether the work is actually geoscientific. Then, a P.G. must decide if the individual(s) to be supervised, who may *not* be licensed, are adequately trained or otherwise qualified to perform the particular geoscientific work. Ultimately, the P.G. who is in responsible charge and will sign and seal the geoscientific work must determine the suitability of a supervised individual to perform some specific geoscientific work and to what extent such an individual must be supervised.

"Professional geoscience services" is defined in the Texas Board of Professional Geoscientists Rules for Geoscience Licensure and the Practice of Geoscience (TITLE 22, PART 39, CHAPTER 851), §851.10(19), as "Services which must be performed by or under the direct supervision of a licensed geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or

soil sciences to that service shall also be conclusively considered a professional geoscience service."

In §1002.002(7), the Act provides additional clarification as to what constitutes geoscientific work. The "public practice of geoscience" is defined as "the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks".

"Direct supervision" is further defined in the Texas Board of Professional Geoscientists Rules for Geoscience Licensure and the Practice of Geoscience, §851.10(7), as "Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons."

What is the difference, if any, between "supervision" as in §1002.002(8), "responsible supervision" as in §1002.002(7), and "direct supervision" as in §851.10(7) and §851.10(19)? In practice, the answer depends upon the professional judgment of the P.G. When a P.G. signs and seals a work product, that P.G. is publicly declaring that he/she has been in responsible charge of the work and is accountable for its compliance with an appropriate standard of practice. In the course of performing the work, if a P.G. decides that another individual, licensed or unlicensed, is sufficiently experienced and trained to perform certain tasks or portions of the work under the P.G.'s supervision, delegation of such tasks to this individual by the P.G. in responsible charge is permissible. The extent to which a P.G. must be physically present and involved for the supervision to be effective is a matter of professional judgment.

A situation where a P.G. would typically be expected to be physically present is during subsurface investigations such as well drilling and/or lithologic logging. The litmus test for this particular scenario can be simple. If the P.G. in responsible charge is not present when and where the work is being performed and a subordinate Geoscientist-in-Training (GIT), technician, or some other type of professional performs the delegated work to an apparent appropriate standard of practice, is there a practical means for the P.G. in responsible charge to identify deficiencies in the subordinate's work? Without drilling another well, in many situations the answer is likely *no*. This suggests that for the P.G. to exercise a reasonable standard of care, that P.G. would probably personally perform the field work or only allow a GIT or other unlicensed person to perform the work under the P.G.'s direct supervision, meaning physical presence.

Use the same scenario but modify the circumstances so that after the well is drilled and the lithologic logs prepared the subordinate preserves and brings all the soil cores or drill cuttings from the field to some other place where the P.G. in responsible charge is located. In this scenario, some P.G.s might be able to lay out all the cores or cuttings and confirm the quality of the subordinate's work by directly examining the same subject material. In this situation, some P.G.s could arguably exercise responsible supervision without having gone to the field personally to directly supervise the subordinate during the work.

Another variation on this basic drilling scenario might be if the drilled location is the most recent in a lengthy series of similar drilled locations, all in close proximity to each other. Depending upon the objectives of the work, it might be that a P.G. could directly supervise a GIT or other subordinate during an initial series of closely similar tasks and develop sufficient confidence in the subordinate's skills to allow the

subordinate to work for periods without the physical presence and direct supervision of the P.G. When and if a P.G. in responsible charge believes an unlicensed subordinate is prepared to perform specific tasks and can be responsibly supervised without actually being present depends upon that P.G.'s professional judgment.

The importance of having a P.G. in responsible charge to insure that geoscientific work under their control meets or exceeds an acceptable standard of practice cannot be overstated. Should a P.G. elect to delegate geoscientific tasks to a subordinate, licensed or unlicensed, and should the work produced by the subordinate not achieve an acceptable standard, it is incumbent upon the P.G. in responsible charge to see that work deficiencies are corrected before signing and sealing the work. Sealed geoscientific work product that is demonstrably sub-standard could call into question the competency of the P.G. who was in responsible charge and even that individual's suitability to retain a Professional Geoscientist license.

SUMMARY

Without creating an exhaustive set of scenarios and hypothetical situations, the intent of supervision, responsible supervision or direct supervision as it relates to responsible charge is that the P.G. must be in a position to not simply proofread work after the fact when it is too late to verify its accuracy. A P.G. in responsible charge is accountable for the final quality of a work product and the accuracy of the underlying data used to produce the work product. A P.G. in responsible charge who supervises others in the performance of specific tasks that contribute to a final work product must be able to monitor work in progress and, if necessary, step in and provide additional guidance or corrections before undetected errors become deficiencies in the final geoscience work product to the detriment of public health, safety or welfare.

TRD-201005210

Charles Horton

Deputy Executive Director

Texas Board of Professional Geoscientists

Filed: September 7, 2010



Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-09-0062-00001 to **IBG Management Consulting** an entity with a principal place of business at 1 Battery Park Plaza, New York, NY 10004. The contractor will provide assistance to HHSC in ensuring the effective performance of the MEHIS vendor. IBG will provide this assistance by and through independent verification and validation technologies techniques and methodologies associated with the MEHIS project in the form of implementation, operational, and strategic planning support.

The total value of the contract with IBG Management Consulting is \$2,634,084.00. The contract was executed on September 1, 2010 and will expire on August 31, 2014, unless extended or terminated sooner by the parties. IBG Management Consulting will produce numerous documents and reports during the term of the contract, with the final reporting due by August 31, 2014.

TRD-201005216

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: September 8, 2010

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Notice of Intention to Renew the Consultant Contract for Information Technology Negotiation Support Services

In accordance with Chapter 2254 of the Government Code, the Health and Human Services Commission (HHSC) announces its Intention to renew the Consultant Contract for Information Technology Negotiation Support Services.

The purpose of this renewal is to continue the services of a single, qualified vendor to provide information, advice, and assistance concerning various proposals in Information Technology (IT) negotiations. This qualified vendor will help HHSC improve pricing and terms in IT-related agreements. Under prior HHSC Procurement #529-10-0021, HHSC awarded a contract to Software Contract Solutions. The existing contract contains renewal options for an additional two years. HHSC intends to renew the agreement for a one-year term with the existing vendor with an option for one additional one-year period, unless a better offer is received subsequent to publication of these service requirements. HHSC publishes this notice to determine the existence of any other vendors with this skill set and knowledge base. If competing proposals are received, HHSC will base its selection on 1.) demonstrated qualifications and experience, including the depth, breadth, and quality of information and expertise the proposer can provide; and 2.) the reasonableness of the proposed price. All other factors being equal, HHSC will give preference to a vendor whose offices, or whose operations for this engagement, are located in Texas.

HHSC will procure IT-related services utilizing the skills and experience the vendor possesses that relate to licensing trends, specific contracts between vendors and public or private entities, maintenance rates and pricing, risks and exposures and changing technologies and the impacts of these factors on the IT industry and IT contracts. The vendor will assist in identifying cost-savings potential, optimal business terms and additional leverage for HHSC in these types of contracts. The services being renewed are more fully described below.

The vendor compensation will be based on an agreed percentage of the value of the savings achieved. The method of calculating that savings is more fully described below. Any proposal received that includes hourly rates in lieu of, or in addition to the aforementioned payment methodology, will be automatically rejected as non-conforming to advertised requirements.

DESCRIPTION OF WORK

In response to queries from HHSC, the awarded vendor will provide information, advice, and assistance concerning offers in IT negotiations. The information, advice, and assistance must demonstrate deep and comprehensive knowledge of licensing trends; maintenance rates and pricing; risk and exposure; and changing technologies; and the impact of the foregoing on the IT industry and IT contracts.

The awarded vendor will research comparable pricing data, business terms and practices, and vendor exposure to determine cost savings potential, optimal business terms, and additional leverage for HHSC. Upon identifying cost savings opportunities, the awarded vendor will work with IT vendors to improve pricing and terms of HHSC agreements. Upon receipt of a revised offer from the awarded vendor, it will be HHSC's sole discretion to move forward with execution of the IT contract.

DESCRIPTION OF COMPENSATION

A. Total Compensation

For the information, advice, and assistance described above, and subject to the terms of the agreement finally executed between HHSC and

the awarded vendor, HHSC will pay the awarded vendor an amount based on an agreed percentage of the value of savings achieved. Savings will be calculated, and HHSC will make payment, as described below. HHSC will make no other payments to the awarded vendor, will make no payments to the awarded vendor unless and until HHSC realizes actual savings, and will not reimburse any expenses incurred by the awarded vendor.

B. Calculation of Savings

The price on an IT offer at the time the awarded vendor receives it from HHSC will be considered the Baseline Price. Any reduction in the pricing of the final executed IT contract that is attributable to the information provided by the awarded vendor will be considered the Final Price. The difference in the Baseline Price and the Final Price will be considered the cost savings for that particular engagement.

HHSC will always retain the right to execute or not execute the IT contract. If HHSC does not execute an IT contract in a case where the awarded vendor has provided information, the awarded vendor will not be entitled to compensation for information or advice provided. HHSC will make payments to the awarded vendor only if and when HHSC realizes the savings, and only for the initial term of the IT contract. For example, if the initial term of the IT contract is for three years, payable annually, HHSC's initial payment to the awarded vendor would be based on the savings attributed to the first year of the IT contract. If HHSC amends the IT contract during its initial term without further reference or resort to the awarded vendor's data, then the awarded vendor's subsequent payments will remain unchanged notwithstanding any increase or decrease in the amount of the IT contract. If HHSC cancels the IT contract with the vendor at any time during the initial term, the awarded vendor will not receive payment for future years.

REQUIREMENTS FOR SUBMITTING A PROPOSAL

Any consultant submitting a proposal in response to this solicitation must provide the following:

1. Consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address;
2. Background information regarding the consultant, including the number of years in business and the number of employees;
3. Information regarding the qualifications, education, information resources, and experience of the team proposed to conduct the requested services;
4. The percentage rate to be charged for achieved savings;
5. At least two client references for which consultant has provided similar consulting services;
6. A statement of consultant's approach to the project (i.e., the services described in this notice), any unique benefits consultant offers HHSC, and any other information consultant desires HHSC to consider in connection with consultant's proposal;
7. Information to assist HHSC in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this notice. The information provided should detail work which has been performed within the past 3 year period. If any work has been done with State of Texas agencies, please include those. The information should include at a minimum: A list and description of the services provided; start and end dates of the contract; result of any individual negotiations conducted under each contract (i.e., for individual procurements under the contract: the total time in days spent negotiating the purchase, the actual savings achieved for the client both in terms of a percentage of savings realized and in terms of dollars);

Client's: name; address; point of contact at client including the current daytime telephone number;

8. The following required forms from HHSC's website at http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attech/attach.shtml

- a. Child Support Certification;
 - b. Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts;
 - c. Federal Lobbying Certification;
 - d. Nondisclosure Statement;
 - e. Certification Letter;
 - f. Respondent Information and Disclosures;
9. Information to assist HHSC in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Failure to submit the required documentation will result in HHSC's disqualification of the proposal.

POINT-OF-CONTACT; DEADLINES

HHSC's Sole Point-Of-Contact for this procurement is:

Steve R. Bailey
Health and Human Services Commission
4405 North Lamar Boulevard
Austin, TX 78756
Telephone: (512) 206-4653
FAX: (512) 206-5475
steve.bailey@hhsc.state.tx.us

All questions regarding this procurement must be sent in writing to the above-referenced contact by 2:00 p.m. Central Time on September 15, 2010. HHSC will post all written questions received with HHSC's responses on the ESD website at <http://esbd.cpa.state.tx.us/> on September 24, 2010, or as they become available. All proposals must be received at the above-referenced address on or before 4:00 p.m. Central Time on October 8, 2010. Proposals received after this time and date will not be considered.

TRD-201005221
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 8, 2010



Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 27 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Public Law 111-3), which was signed into federal law on February 4, 2009, requires states to apply the Medicaid prospective payment system for CHIP services provided by federally-qualified health centers (FQHCs) and rural health clinics (RHCs) on or after October 1, 2009. On February 4, 2010, the Centers for Medicare and Medicaid Services (CMS) directed states to submit CHIP State Plan amendments to establish compliance with this federal requirement.

Accordingly, HHSC proposes to amend the CHIP State Plan to provide that FQHCs and RHCs receive the full encounter rates for services rendered to CHIP members on or after October 1, 2009.

The proposed amendment is estimated to result in an additional annual expenditure of \$6,099,526 for federal fiscal year (FFY) 2010 (October 1, 2009 through September 30, 2010), consisting of \$4,337,373 in federal funds and \$1,762,153 in state general revenue. For FFY 2011, the estimated additional annual expenditure is \$6,589,841, consisting of \$4,770,386 in federal funds and \$1,819,455 in state general revenue. For FFY 2012, the estimated additional annual expenditure is \$6,832,569, consisting of \$4,946,097 in federal funds and \$1,886,472 in state general revenue.

To obtain copies of the proposed amendments, interested parties may contact Valerie Eubert Baller by mail at P.O. Box 85200, MC: H-310, Austin, Texas 78708; by telephone at (512) 491-1164; by facsimile at (512) 491-1953; or by e-mail at Valerie.Eubert-Baller@hhsc.state.tx.us.

TRD-201005194
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 3, 2010



Public Notice

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, October 5, 2010 at 1:00 p.m. to receive public comment on proposed amendments to the administrative rule at Title 1 Texas Administrative Code §355.8052 that governs the payment methodology for Inpatient Medicaid Hospital Reimbursement. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Texas Government Code §2001.029, which provides an opportunity for a public hearing, when requested, before adoption of a rule.

HHSC intends to amend the payment methodology described in this rule due to feedback it received concerning the scheduled implementation of payment rates that would have been effective September 1, 2010. These rates were intended to comply with the 2010-11 General Appropriations Act (Article II, HHSC, Rider 68, S.B. 1, 81st Legislative, Regular Session, 2009), which required HHSC to rebase acute care hospital rates within available funds (at no additional cost to the State). Specifically, the legislation required HHSC to update the payment division standard dollar amounts (PDSAs) and diagnosis related group (DRG) factors with more recent cost data. Rider 68 further instructs HHSC to proportionately reduce the rebased PDSA rates to remain within available funds.

HHSC was scheduled to implement the proportionately reduced rebased PDSA rates for services provided effective September 1, 2010. After careful review of issues raised by some hospitals, however, including the significant loss of revenue to hospitals in certain geographic regions of the state, HHSC determined that implementing the rebased rates could impact the availability and provision of services, and might endanger the safety net of care in those communities. As a result, HHSC is proposing to amend this rule to limit any hospital's loss of estimated revenue to 10 percent of the estimated loss if the proportional rebased rates were implemented. In order to achieve the no-cost provision of Rider 68, the rule also outlines an adjustment of the proportional

rebased SDAs to limit the amount of revenue gained by positively impacted hospitals.

The proposed rule changes described above will not result in a fiscal impact to the state. However, individual hospitals will still experience changes in their reimbursement as their rates are adjusted to more closely align with their recent cost experience.

Interested parties may obtain copies of the proposed rule amendment by contacting Guilda Roman, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1890; by facsimile at (512) 491-1998; or by e-mail at guilda.roman@hhsc.state.tx.us.

TRD-201005214

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: September 7, 2010



Texas Department of Housing and Community Affairs

Announcement of Public Comment Period and Public Hearings Schedule for Comment

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a public comment period for the 2011 State of Texas Consolidated Plan One Year Action Plan (Plan); HOME, Housing Tax Credit, and Housing Trust Fund Affordable Housing Needs Score (AHNS) Methodology; HOME, Housing Tax Credit, and Housing Trust Fund Regional Allocation Formula (RAF) Methodology; 2011 Housing Tax Credit Program Qualified Allocation Plan and Rules; Real Estate Analysis Rules; 2011 Multifamily Housing Revenue Bond Rules; and a new rule concerning Definitions for Housing Program Activities Rule. The 32-day public comment period for the Plan, AHNS Methodology and RAF Methodology begins September 17, 2010 and continues until 5:00 p.m. on October 18, 2010. The 30-day public comment period for the Rules begins September 24, 2010 and continues until 5:00 p.m. on October 23, 2010.

The Plan is required as part of the overall requirements governing the State's consolidated planning process and the public comment period on the Plan is required by the U.S. Department of Housing and Urban Development (HUD). The Plan is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. TDHCA coordinates the preparation of the Plan with the Texas Department of Rural Affairs (TDRA) and the Department of State Health Services (DSHS). The Plan covers the State's administration of the Community Development Block Grant Program by TDRA, the Housing Opportunities for Persons with AIDS Program by DSHS, and the Emergency Shelter Grants Program and the HOME Investment Partnerships Program by TDHCA.

TDHCA also announces the public hearing schedule for the 2011 State of Texas Consolidated Plan One Year Action Plan (Plan); HOME, Housing Tax Credit, and Housing Trust Fund Affordable Housing Needs Score (AHNS) Methodology; HOME, Housing Tax Credit, and Housing Trust Fund Regional Allocation Formula (RAF) Methodology; 2011 Housing Tax Credit Program Qualified Allocation Plan and Rules; 2011 Multifamily Housing and Revenue Bond Rules; Real Estate Analysis Rules; and a new rule concerning Definitions for Housing Program Activities Rule. These hearings were consolidated to provide the public with an opportunity to more effectively provide comment on the Department's policy and planning documents and

a variety of its programs. Public hearings are scheduled between September 29, 2010 and October 15, 2010. Department-wide hearings will be held at the following times and locations:

September 29, 2010 (Wednesday)

11:30 a.m.

DALLAS

J. Erik Jonsson Central Library

Dallas Rooms

1515 Young Street

Dallas, TX 75201

(214) 670-1400

October 1, 2010 (Friday)

12:30 p.m.

HOUSTON

Houston City Hall Annex Chambers

901 Bagby Street

Houston, TX 77002

(915) 657-424

October 4, 2010 (Monday)

11:00 a.m.

EL PASO

Downtown Library

509 N. Oregon Street

El Paso, TX 79901

(915) 543-5401

October 7, 2010 (Thursday)

12:30 p.m.

BROWNSVILLE

Brownsville City Hall

1001 E. Elizabeth Street

Brownsville, TX 78520

(956) 548-6156

October 13, 2010 (Wednesday)

12:00 p.m.

MIDLAND

Midland City Hall

300 N. Loraine Street

Midland, TX 79701

(432) 685-7203

October 15, 2010 (Friday)

9:30 a.m.

AUSTIN

Stephen F. Austin Building

1700 North Congress Avenue, Room 170

Austin, TX 78701

(512) 463-3223

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

Beginning September 17, 2010, the Plan, the AHNS Methodology and the RAF Methodology will be available on the Department's website at www.tdhca.state.tx.us. Beginning September 24, 2010, the Rules will be available on the Department's website at www.tdhca.state.tx.us. A hard copy of the Plan, AHNS Methodology and RAF Methodology can be requested by contacting the Housing Resource Center via mail at TDHCA, Housing Resource Center, P.O. Box 13941, Austin TX 78711-3941, or phone at (512) 475-3800, or email at info@tdhca.state.tx.us.

Public comment on the Rules may also be provided in writing via mail at TDHCA, Rule Comments, P.O. Box 13941, Austin, TX 78711-3941, or fax at (512) 469-9606, or email at tdhcarulecomments@tdhca.state.tx.us. Public comment on the Plan, AHNS Methodology, and RAF Methodology may be provided in writing via mail at Elizabeth Yevich, TDHCA, P.O. Box 13941, Austin, TX 78711-3941, or fax at (512) 475-1672 or email at elizabeth.yevich@tdhca.state.tx.us.

TRD-201005217

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 8, 2010

Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or firms to provide consulting services to H-GAC in support of an industry steering committee. The successful bidder or bidders will be offered a contract beginning on or around October 21, 2010 for up to 12 months. Prospective bidders may obtain a copy of the Request for Proposals online at <http://www.h-gac.com> or <http://wrksolutions.com> or by contacting Carol Kimmick at (713) 627.3200 or by sending email to carol.kimmick@h-gac.com.

Responses are due at H-GAC offices by 12:00 noon Central Daylight time on Thursday, September 23, 2010. H-GAC does not accept late proposals and makes no exceptions. H-GAC is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

TRD-201005243

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: September 8, 2010

Texas Department of Insurance

Company Licensing

Application to change the name of ALLEGIANCE LIFE INSURANCE COMPANY to EDUCATORS LIFE INSURANCE COMPANY OF AMERICA, a foreign life, accident, and/or health company. The home office is in Springfield, Illinois.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201005220

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: September 8, 2010

Third Party Administrator Application

The following third party administrator application has been filed with the Texas Department of Insurance and is under consideration.

Application to change the name of ELDERHEALTH, INC. (DBA ELDER HEALTH, INC.), to BRAVO HEALTH, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe Street, Austin, Texas 78701.

TRD-201005226

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: September 8, 2010

Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) will hold a public hearing in September. The public hearing will be held on Monday, September 27, 2010 at 9:00 a.m. in the Tippy Foster Room at the TDI-DWC Central Office, 7551 Metro Center Drive, Suite 100 in Austin. TDI-DWC will live audio stream the public hearing for persons who are unable to appear in person.

TDI-DWC will take public testimony on the following rules:

Chapter 180 - Monitoring and Enforcement

Subchapter A - General Rules for Enforcement

Subchapter B - Medical Benefit Regulation

These proposed rules were published in the *Texas Register* on August 27, 2010, and may be viewed on the TDI website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/index.html>. The comment period for these rules will close on Monday, September 27, 2010 at 5:00 p.m. TDI-DWC will accept comments at the public hearing that have not already been submitted by written comment.

To listen to the audio stream of these public hearings, access the TDI-DWC Public Outreach Events /Training Calendar on the TDI website at <http://www.tdi.state.tx.us/wc/events/index.html>. Then click on the "Link to Live Webcast" link for the public hearing. The applications Media Player 7 (or new version) or RealPlayer 10 (or newer version) are required to hear the audio stream. Audio streaming will begin approximately five minutes before the public hearing begins.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Dis-

abilities Act. If you require special accommodations, contact Idalia Salazar at (512) 804-4403 at least two business days prior to the public hearing date.

For further information regarding this notice, contact Christopher Bean of TDI-DWC Workers' Compensation Counsel at (512) 804-4704.

TRD-201005242

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: September 8, 2010



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 31, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38625 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City of Hidalgo, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. 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. All inquiries should reference Project Number 38625.

TRD-201005183

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 2, 2010



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 31, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable San Antonio, L.P. d/b/a Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38626 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City of China Grove, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. 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. All inquiries should reference Project Number 38626.

TRD-201005184

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 2, 2010



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 2, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cable One, Inc. for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38631 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City of Borger, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. 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. All inquiries should reference Project Number 38631.

TRD-201005205

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 7, 2010



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 2, 2010, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of City of Dallas for Retail Electric Provider Certification Pursuant to Substantive Rule §25.107, Docket Number 38630 before the Public Utility Commission of Texas.

Applicant's requested service area is defined by the customers, specifically, the City of Dallas, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (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) (800) 735-2989. All inquiries should reference Project Number 38630.

TRD-201005229

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 8, 2010



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on September 3, 2010, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §14.101 and §37.154 (Vernon 2007 & Supplement 2009) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and Electric Transmission Texas, LLC to Transfer Certificate Rights and for Approval of Transfer of Facilities in Kleberg and Nueces Counties, Docket Number 38635.

The Application: AEP Texas Central Company (TCC) and Electric Transmission Texas, LLC (ETT) (collectively, applicants) filed a joint application for approval of their proposal to transfer from TCC to ETT certain existing and under construction transmission facilities located in Kleberg and Nueces Counties, Texas, and the associated certificate of convenience and necessity (CCN) rights for those transmission facilities.

TCC will sell to ETT, the following facilities and projects:

Alazan Substation Facilities;

Alazan to Barney Davis Transmission Line;

The portion of the Alazan to Bishop Transmission Line terminating in the Nelson Sharpe Substation.

The sales price related to the facilities proposed to be transferred will equal the sum of the net book value of existing assets plus construction work in progress (CWIP). The transfers will include all assets acquired and CWIP recorded during the construction of these projects, which are currently underway. The closing will not occur until after the regulatory approvals have been obtained, including the approvals sought in this filing, and other closing conditions are satisfied or waived. Applicants stated that they will file an update of the sales price after the closing.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 38635.

TRD-201005230
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 8, 2010



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 3, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Telefonica USA, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 38636.

Applicant intends to provide resale-only telecommunications services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 24, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38636.

TRD-201005232
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 8, 2010



Notice of Application to Amend a 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) an application on August 25, 2010, to amend a certificate of convenience and necessity for a proposed transmission line in El Paso County, Texas.

Docket Style and Number: Application of El Paso Electric Company to Amend a Certificate of Convenience and Necessity for a Proposed 115-kV Transmission Line Within El Paso County, Docket Number 38561.

The Application: The application of El Paso Electric Company for a proposed transmission line is designated the Pendale 115-kV Transmission Line Project. The proposed project will be constructed on steel monopole structures and will be approximately 0.62 miles in length. The total estimated cost for the project is \$4,865,971.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 11, 2010. 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. All comments should reference Docket Number 38561.

TRD-201005173
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2010



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Central Texas Telephone Cooperative, Inc.'s (Cooperative) application filed with the Public Utility Commission of Texas (commission) on August 25, 2010, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Central Texas Telephone Cooperative, Inc.'s Statement of Intent to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 38598.

The Application: Cooperative filed an application to implement a minor rate change to the Directory Assistance (DA) Service Charge, Section 12; the intraLATA Long Distance Service, Operator Assisted Service Charges and the local and intraLATA Directory Assistance Service charges in the Cooperative's Long Distance Message Telecom-

munications Service (LDMTS) Tariff, Sections 2 and 4. The Applicant also proposed to remove the obsolete Service charges for Operator, Station-to-Station, Collect, Fully Automated, and Billed to Third Number, Fully Automated, that are no longer provided by the Cooperative's Operator Service Provider, AT&T Texas in the LDMTS Tariff.

The Applicant has also filed an affidavit and revised tariff sheets from John Staurulakis, Inc. withdrawing Central Texas Telephone Cooperative, Inc., as an issuing carrier in its LDMTS Tariff. The Applicant also submitted its LDMTS Tariff Sheets to replace in its entirety the current LDMTS Tariff Services and rates on file with the commission, with an approval date of December 1, 2010. In the Applicant's revisions, they are requesting minor text changes to remove and update information in its General Exchange Tariff and LDMTS Tariff.

The proposed effective date for the proposed rate changes is December 1, 2010. The estimated annual revenue increase recognized by Cooperative is \$26,154.14 or less than 0.48% of Cooperative's gross annual intrastate revenues. Cooperative has 6,491 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by October 31, 2010, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by October 31, 2010. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 38598.

TRD-201005204
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 7, 2010



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Corsicana, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Corsicana C. David Campbell Field-Corsicana Municipal Airport. TxDOT CSJ No. 11MPCORSI. Scope: Prepare an Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of the airport.

There is no HUB goal. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Avi-

ation Division, 125 East 11th Street, Austin, Texas 78701-2483, telephone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT web site as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 12, 2010, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Michelle Hannah, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201005187
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 3, 2010



Public Hearing Notice - Statewide Long-Range Transportation Plan

The Texas Department of Transportation (department) will hold a public hearing on Friday, October 1, 2010 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the Texas Statewide Long-Range Transportation Plan (SLRTP). The SLRTP is the 24-year long-range multimodal plan for the state of Texas.

Transportation Code, §201.601, requires the department to develop a statewide transportation plan that contains all modes of transportation.

Title 23, United States Code, §135 requires the state to develop a long-range plan as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 U.S.C. §5301, et

seq.). Sections 135(a) and (e) require the state to develop its long-range plan to provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the state and an integral part of an intermodal transportation system for the United States, taking into consideration the concerns of affected local officials, Indian tribal governments, and Federal land management agencies. Section 135(f) requires the state to develop a SLRTP for all areas of the state in cooperation with the designated metropolitan planning organizations and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties.

A copy of the proposed SLRTP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the SLRTP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5036.

Persons wishing to speak at the hearing may register in advance by notifying Peggy Thurin, Transportation Planning and Programming Division, at (512) 486-5036 not later than Thursday, September 30, 2010, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the SLRTP may be obtained from Peggy Thurin, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704, (512) 486-5036. Interested parties who are unable to attend the hearing may submit written comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, November 1, 2010 at 4:00 p.m.

TRD-201005233

Leonard Reese

Associate General Counsel

Texas Department of Transportation

Filed: September 8, 2010



Public Hearing Notice - Texas Rail Plan

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, October 6, 2010, at 1:30 p.m. at the Texas

Department of Transportation, 200 East Riverside Drive, Auditorium 1A-1, Austin, Texas, to receive public comments on the Texas Rail Plan. The Texas Rail Plan serves as a policy document that establishes a state vision and objectives for freight and passenger rail service in the state. The plan includes details about the current state of passenger and freight rail as well as establishes a short and long-range investment program which will guide improvements and expansion of the state rail transportation system.

A copy of the Texas Rail Plan will be available for review, at the time this notice of hearing is published, at the department's Rail Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at: www.txdot.gov (keywords: rail plan). Persons wishing to review the Texas Rail Plan may do so online or contact the Rail Division at (512) 486-5230.

Persons wishing to speak at the hearing may register at the hearing location beginning at 1:00 p.m. on the day of the hearing. Speakers will be allowed three minutes each, and will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the Texas Rail Plan may be obtained from Jennifer Moczygemba, Rail Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5127. Written comments on the Texas Rail Plan may be submitted to William E. Glavin, Director, Rail Division, 118 East Riverside Drive, Austin, Texas 78704. Comments may also be submitted on-line at www.txdot.gov (keywords: rail plan). The deadline for receipt of comments is 5:00 p.m. on Friday, November 5, 2010.

TRD-201005234

Leonard Reese

Associate General Counsel

Texas Department of Transportation

Filed: September 8, 2010



Stephen F. Austin State University

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of contract award to University's contract with URS Corporation, 10550 Richmond Avenue, Suite 155, Houston, Texas 77042. The contract is not to exceed \$50,052. The original contract availability notice was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4765).

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please contact Diana Boubel, Director of Procurement, at (936) 468-4037.

TRD-201005192
Damon C. Derrick
General Counsel
Stephen F. Austin State University
Filed: September 3, 2010



How to Use the Texas Register

Information Available: The 14 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 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.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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 35 (2010) is cited as follows: 35 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 "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 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 at: <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 website information, call the Texas Register at (512) 463-5561.

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 and Parts (using Arabic 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 (800-356-6548), and West Publishing Company (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 *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)