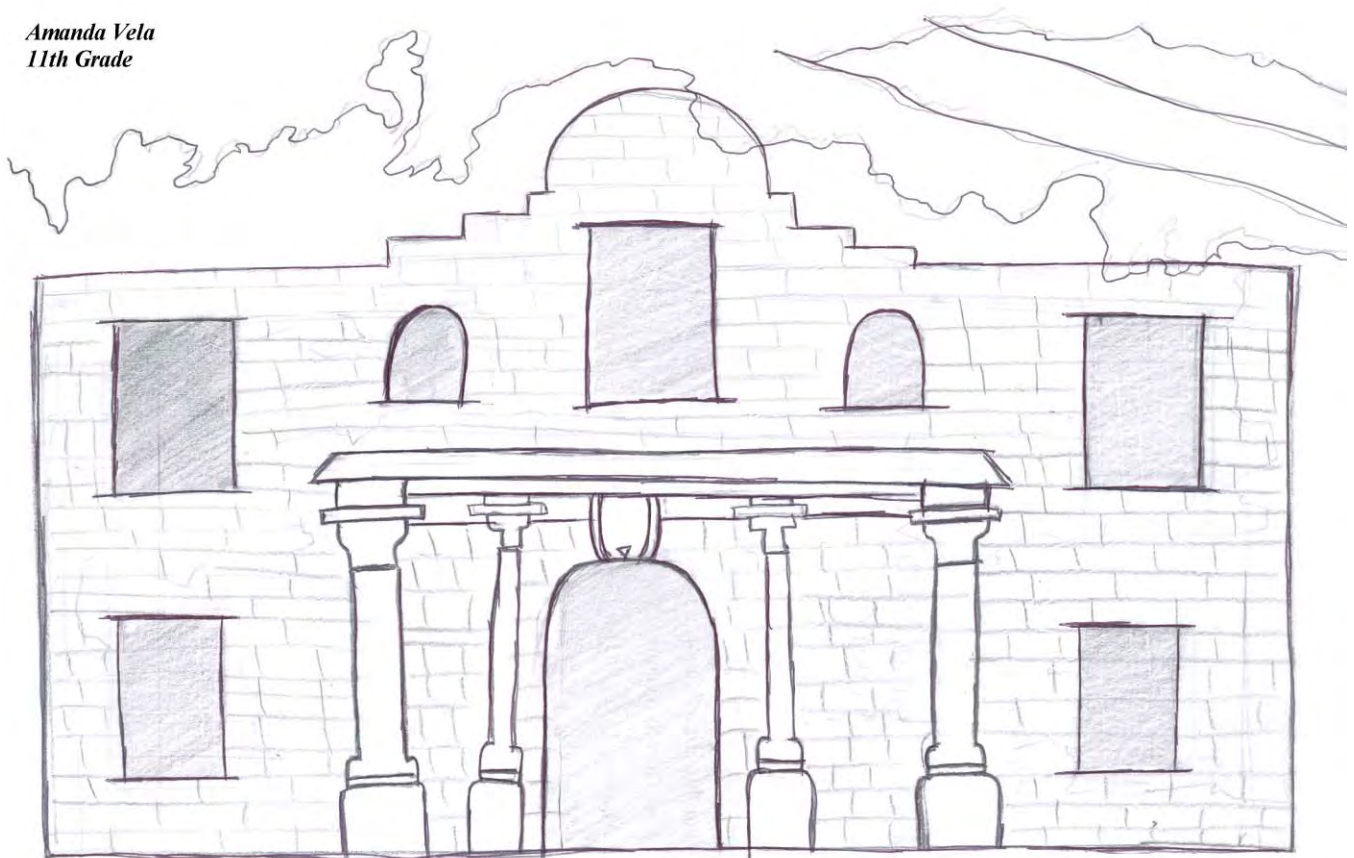

TEXAS REGISTER

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*Amanda Vela
11th Grade*



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

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Requests for Opinions

RQ-0958-GA

Requestor:

The Honorable Senfronia Thompson

Chair, Committee on Local and Consent Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Constitutionality of Rider 55 to the appropriation to the Health and Human Services Commission in the 2010-11 General Appropriations Act (RQ-0958-GA)

Briefs requested by May 13, 2011

RQ-0959-GA

Requestor:

The Honorable Josh McCown

Wharton County District Attorney

329th Judicial District

100 South Fulton Street

Wharton, Texas 77488

Re: Whether the judge of a constitutional county court who never activated his license to practice law is an "attorney licensed by the state" under article 18.01(i), Code of Criminal Procedure (RQ-0959-GA)

Briefs requested by May 18, 2011

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201101499

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: April 19, 2011

◆ ◆ ◆

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

22 TAC §187.83

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to §187.83, concerning Proceedings for Cease and Desist Orders.

Elsewhere in this issue of the *Texas Register*, the board contemporaneously proposes these amendments.

The emergency amendment to §187.83, relating to Proceedings for Cease and Desist Orders, sets out the requirements for conducting a cease and desist hearing related to the unlicensed practice of medicine. The rule was adopted on an emergency basis in accordance with §2001.034(a) that permits an agency to adopt an emergency rule without prior notice of hearing if the agency determines that there is an imminent peril to the public health, safety or welfare. The Board has determined that based on a recent court ruling, it must provide individuals with hearings that are recorded and allow for cross examination before cease and desist orders may be issued. Since cease and desist orders require immediate effect to allow the Board to prohibit a person from practicing medicine without a license which could cause immediate and continuing harm to the public, this rule was adopted on an emergency basis.

The amended section is adopted on an emergency basis under the authority of Texas Occupations Code, §153.001, which authorizes the Board to adopt rules to perform its duties, regulate the practice of medicine in this state, and enforce the Medical Practice Act.

This section is also adopted on an emergency basis pursuant to the procedures for emergency rulemaking set forth in the Texas Government Code, §2001.034 (Vernon 2000 & Supplement 2005).

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

§187.83. *Proceedings for Cease and Desist Orders.*

(a) Statutory authority. Pursuant to the authority of §165.052 and §164.002(a) of the Act, the board may enter a cease and desist order.

(b) Notice. Upon receipt of information that an individual has practiced medicine without a license, the board shall schedule a cease and desist hearing before a panel of board representatives at the earliest practicable time after providing the individual with at least ten days notice.

(c) Cease and Desist Hearing.

(1) Convening a panel.

(A) The president of the board shall appoint a two-member panel upon a verbal or written request by board staff.

(B) The disciplinary panel shall be composed of two members of the board, at least one of whom must be a physician.

(C) In the event of the recusal of a panel member or the inability of a panel member to attend a cease and desist proceeding, an alternate board member may serve on the panel upon appointment by the president of the board.

(D) Notwithstanding the Open Meetings Act, Chapter 551, Texas Government Code, the panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(E) A hearing before a panel shall constitute a hearing before the board and shall be recorded.

(2) Charge of the panel.

(A) The panel shall determine from the evidence or information presented to it whether a person is practicing medicine without a license.

(B) If the panel determines that a person is practicing medicine without a license, the panel shall issue a cease and desist order to be signed by either panel member.

(3) Procedures before the panel.

(A) In accordance with the Act, §165.051, before a cease and desist order may be issued, the board must provide an individual with notice and opportunity for a hearing.

(B) To the extent practicable, the sequence of events will be as follows:

(i) Call to Order;

(ii) Roll Call;

(iii) Calling of the Case;

(iv) Recusal Statement;

(v) Introductions/Appearances on the Record;

(vi) Opening Statements by Board Staff and Respondent;

(vii) Presentation of evidence by Board Staff;

(viii) Presentation of evidence on behalf of Respondent;

(ix) Rebuttal by Board Staff and Respondent;

(x) Closing Arguments;

(I) Argument by Board Staff;

(II) Argument by Respondent;

(III) Final Argument by Board Staff;

(xi) Deliberations;

(xii) Announcement of Decision;

(xiii) Adjournment.

(C) A board attorney shall be designated as Counsel to the Panel and shall be present during the hearing and deliberations by the panel and shall advise the panel on all legal issues that arise during the hearing including objections to evidence and other evidentiary matters. The Counsel to the Panel shall be permitted to ask questions of witnesses, the board staff, the attorney for the licensee and other participants in the hearing.

(4) Evidence.

(A) In accordance with the Administrative Procedure Act (APA), §2001.081, the determination of the disciplinary panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs, necessary to ascertain facts not reasonably susceptible of proof under those rules, and not precluded by statute.

(B) Questioning of witnesses shall be permitted with due consideration being given to the need to obtain accurate information and prevent the harassment or undue embarrassment of witnesses.

(C) In receiving information on which to base its determination, the panel may accept the testimony of witnesses by telephone.

(D) Documentary evidence must be prefiled with the board 24 hours prior to the scheduled hearing. Admission of documentary evidence after the 24 hours shall be admitted only upon a showing of good cause.

(E) Documentary evidence must be submitted in electronic format in all cases where the Respondent has been provided notice that a panel member will be appearing by phone.

(d) SOAH Hearing. If a panel issues a cease and desist order, the affected individual may within 20 days of the effective date of the cease and desist order, request that the matter be appealed to SOAH.

~~[(e) The panel shall be composed of at least two members of the board or District Review Committee. At least one member must be a physician and one member must be a public member. The panel may be the same panel that is scheduled for Informal Show Cause and Settlement Conferences.]~~

~~[(d) At the hearing, the individual shall have the right to respond to the allegations, be represented by counsel, and present evidence or information to the panel.]~~

~~[(e) The panel must base its decision or recommendation on evidence or information that is admissible under §2001.081, Texas Administrative Procedure Act.]~~

~~[(f) If the panel determines that the individual has practiced medicine without a license, the panel shall direct the Executive Director to enter a cease and desist order, effective immediately, in accordance with §165.052 of the Act.]~~

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

Filed with the Office of the Secretary of State on April 18, 2011.

TRD-201101457

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: April 18, 2011

Expiration date: August 18, 2011

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



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 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 25. SCHOOL HEALTH AND RELATED SERVICES

1 TAC §354.1341, §354.1342

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1341, concerning Benefits and Limitations, and §354.1342, concerning Conditions for Participation, related to the Medicaid School Health and Related Services program.

Background and Justification

School Health and Related Services (SHARS) is a joint program of HHSC and the Texas Education Agency. SHARS allows school districts to obtain federal reimbursement for the provision of health-related services to students in special education. The Centers for Medicare and Medicaid Services (CMS) required HHSC to amend the SHARS information included in the Medicaid state plan as a result of federal audits of the school health program and related administrative claiming. As a result of negotiations between HHSC and CMS during the state plan amendment process, participating school districts are now required to participate in ongoing time studies to accurately document time spent providing SHARS services, certify their total computable expenditures on a quarterly basis, and submit an annual cost report to HHSC. The Medicaid state plan amendment for SHARS was approved by CMS effective September 1, 2006. HHSC proposes to amend the SHARS rules to reflect the changes made to the program that became effective on that date.

Section-by-Section Summary

Throughout §354.1341 the reference to school health and related services is replaced with SHARS.

Amended §354.1341(a) substitutes the term Commission for HHSC.

Amended §354.1341(d)(3) replaces the term medical services with physician services to match the state plan wording.

Deleted current §354.1341(d)(8) to remove the reference to assessment to match the state plan wording. The remaining paragraphs are re-numbered.

Adds new §354.1341(d)(8) replaces the term school health services with nursing services to match the state plan wording.

New §354.1341(d)(9) deletes personal care services because it is already included in paragraph (10).

Amended §354.1342 replaces an obsolete reference to the Texas Department of Health (department) with a reference to the Texas Health and Human Services Commission (Commission); replaces the term "department" with "Commission," and replaces the term, "TMAP" with "Medicaid" throughout the rule. Additionally, language is added to clarify that school district cooperatives cannot be SHARS providers.

New §354.1342(9), (10) and (11) add new requirements for school districts participating in SHARS, including the requirement to participate in a time study, certify their total computable expenditures on a quarterly basis, and submit an annual cost report.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the amended rules are in effect there will be no fiscal impact to state government. The proposed rule amendments will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed rule amendments, as they will not be required to alter their business practices as a result of the amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rule amendments. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each of the first five years the proposed rule amendments are in effect, the public will benefit from the adoption of the rule amendments. The anticipated public benefit of enforcing the rule amendments will be that the rules related to Medicaid reimbursement for SHARS providers will match the current Medicaid state plan requirements for SHARS.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by the Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule the spe-

cific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

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 the Government Code, §2007.043.

Public Comment

Written comments on the proposal may be submitted to Don Mann, Manager, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-390 91X, Austin, TX 78708-5200; by fax to (512) 249-3707; or by e-mail to don.mann@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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.

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

§354.1341. *Benefits and Limitations.*

(a) Subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Service Commission (Commission) [~~HHSC~~ or its designee], school health and related services (SHARS) are those health and related services [~~performed on or after January 1991,~~] that are determined to be medically necessary and reasonable to ensure a Medicaid-enrolled [~~eligible~~] student with a disability 20 years of age or younger [~~under age 21~~] receives the benefits accorded to him or her by federal and state legislation guaranteeing a free and appropriate public education.

(b) SHARS [~~School health and related services~~] must be prescribed in the student's approved individual education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at 19 TAC §89.1001 (relating to Scope and Availability) [~~State Board of Education regulations (Texas Administrative Code, Title 19, Part 2, Chapter 89, §§89.221-89.224)~~].

(c) SHARS [~~School health and related services~~] are to be delivered in the least restrictive environment consistent with the nature of the specific service(s) and the physical and mental condition of the student.

(d) SHARS [~~School health and related services~~] may include, but are not necessarily limited to:

(1) audiology, individual and group delivered by licensed/certified therapist or licensed/certified [~~icensed/ certified~~] assistant;

(2) counseling, individual and group delivered by licensed/certified therapist;

(3) physician [~~medical~~] services;

(4) occupational therapy, individual and group delivered by licensed/certified therapist or licensed/certified [~~icensed/ certified~~] assistant;

(5) physical therapy, individual and group delivered by licensed/certified therapist or licensed/certified [~~icensed/ certified~~] assistant;

(6) psychological services;

(7) speech therapy, individual and group delivered by licensed/certified therapist or licensed/certified [~~icensed/ certified~~] assistant;

[(8) assessment;]

(8) [(9)] nursing [~~school health~~] services, including [~~Registered Nurse (RN) services,~~] medication administration and[;] nursing services delegated by a registered nurse (RN) [~~an RN~~] (in compliance with RN delegated nursing tasks criteria as determined by the Texas Board of Nursing [~~Nurse Examiners~~]) to an employee or health aide; [~~and~~]

(9) [(10)] special transportation services[;] ~~including personal care services~~; and

(10) [(11)] personal care services.

§354.1342. *Conditions for Participation.*

To claim for school health and related services (SHARS) provided to Medicaid-enrolled students eligible for services provided under the Individuals with Disabilities Education Act (IDEA), [~~Subject to the specifications, conditions, limitations, and requirements established by the Texas Department of Health (department) or its designee, independent] school districts [~~and school district cooperatives~~] must:~~

(1) ensure that services are provided in a manner and environment consistent with:

(A) the student's physical and mental condition;

(B) the overall goals and objectives of the student's individual education program (IEP); and

(C) other services and schedules prescribed in the student's IEP;

(2) ensure that services are provided by persons licensed, accredited, or [~~and/or~~] certified by the appropriate federal or state agency or recognized professional organization to deliver the specific service(s);

(3) meet Texas Education Agency (TEA) standards for the delivery of SHARS [~~school health and related services~~];

(4) abide by the rules and regulations of TEA related to service delivery, record-keeping, documentation, client confidentiality, and access to client records by other professionals involved in the implementation of the student's IEP;

(5) comply with all applicable federal, state, and local laws and regulations regarding the services provided;

(6) be enrolled and approved for participation in the Texas Medical Assistance Program (Medicaid) [~~(TMAP)~~];

(7) sign a written provider agreement with the Commission [~~department~~] or its designee. By signing the agreement, the provider agrees to comply with the terms of the agreement and all requirements of Medicaid [~~the TMAP~~], including regulations, rules, handbooks, standards, and guidelines published by the Commission [~~department~~] or its designee;

(8) bill for services covered by Medicaid [the TMAP] in the manner and format prescribed by the Commission [department] or its designee;[-]

(9) participate in a Commission-administered time study;

(10) certify each quarter the Total Computable Expenditure (Total Computable Expenditure = amount paid (Federal share) + calculated State/Local share); and

(11) submit an annual cost report, as described in §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)).

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 April 15, 2011.

TRD-201101426

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 29, 2011

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



DIVISION 33. TELEMEDICINE SERVICES

1 TAC §354.1430

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1430, concerning Definitions.

Background and Justification

HHSC has received requests from pediatric specialist and subspecialist physicians to increase patient access to telemedicine services. Currently, all Medicaid telemedicine physician services are available to clients only at patient site locations in rural or medically underserved areas, except for state-supported living centers and state hospitals. The patient site locations that have been limited to those in rural and medically underserved areas are: physician offices, hospitals, rural health clinics (RHC), federally qualified health centers (FQHC), intermediate care facilities for persons with mental retardation (ICF/MR) that are not a state-supported living center, community centers as defined in Health & Safety Code §534.001 and outreach sites associated with a community center, or a local health department established under Health & Safety Code §121.031, or public health district established under Health & Safety Code §121.041.

Under the proposed amendment, telemedicine pediatric specialty and subspecialty services will be available statewide to Medicaid recipients under the age of 21. This means that children across the state will be able to access pediatric specialty and subspecialty services at sites such as those identified above, whether the patient site location is in a rural or underserved area or not. For services to be allowable in these locations, the distant site provider must be a physician who is Board certified or Board eligible in a nationally recognized specialty or subspecialty and who is not a primary care provider.

Section-by-Section Summary

As amended, §354.1430(4) removes an obsolete reference to 22 TAC §174.6 and adds requirements for physician delegation to a telepresenter.

As amended, §354.1430(5)(D) expands the definition of "patient site location," as it relates to pediatric specialty and subspecialty services to clients under 21, to include the locations listed above that are not in a rural or underserved area. Section 354.1430(5)(D) also requires that the physician at the distant site who is providing the specialty or subspecialty service must be Board certified or Board eligible in a nationally recognized specialty or subspecialty and not a primary care provider.

As amended, §354.1430(9) removes a reference to a U.S. Department of Health and Human Services proposed rule published in the *Federal Register* on February 29, 2008, which was not adopted.

Throughout the section, references to "state schools" are changed to "state supported living centers" to reflect current terminology.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that there will be no fiscal impact to state government. The proposed rule amendment will not result in fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed rule amendment, as they will not be required to alter their business practices as a result of the amendment. There are no anticipated economic costs to persons who are required to comply with the proposed rule amendment. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each of the first five years the proposed rule amendment is in effect, the public will benefit from the adoption of the rule amendment. The anticipated public benefit of enforcing the rule amendment will be a greater access to Medicaid services for clients under age 21.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by the Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

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 the Government Code, §2007.043.

Public Comment

Written comments on the proposal may be submitted to Garry Walsh, Operations Oversight, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, Mail Code H-390 91X; by fax to (512)

249-3707; or by e-mail to garry.walsh@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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.

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§354.1430. Definitions.

The following words and terms, when used in this chapter, have the following meanings.

(1) Telemedicine--The practice of health care delivery, by a provider who is located at a site other than the site where the patient is located, for the purposes of evaluation, diagnosis, consultation, or treatment that requires the use of advanced telecommunications technology. Telephone conversations, chart reviews, electronic mail messages, and facsimile transmissions are not considered telemedicine.

(2) Distant site provider--The distant site provider uses telemedicine to provide health care services to the patient. The distant site provider must be a physician who is licensed to practice medicine in Texas under Title 3, Subtitle B, [Title 3] Occupations Code.

(3) Distant site location--The distant site location is where the distant site provider is physically located.

(4) Patient site presenter or telepresenter--The patient site presenter or telepresenter is the individual at the patient site who introduces the patient to the distant site provider for examination, and to whom the distant site provider may delegate tasks and activities [in accordance with 22 TAC §174.6 (relating to Delegation to and Supervision of Patient Site Presenters) The patient site presenter must be:].

(A) The patient site presenter must be:

(i) [~~(A)~~] Licensed or certified in this state to perform health care services and must present and/or be delegated tasks and activities only within the scope of the individual's licensure or certification; and/or

(ii) [~~(B)~~] A qualified mental health professional (QMHP) as defined in 25 TAC §412.303(48) (relating to Definitions).

(B) The physician delegating the tasks and activities to a telepresenter must ensure that:

(i) The task or activity does not require the exercise of independent medical judgment for its performance;

(ii) The telepresenter to whom delegation is made is qualified by licensure, training, or experience to perform the task or activity delegated; and

(iii) The telepresenter to whom delegation is made is adequately supervised.

(5) Patient site location--The patient site location is where the client is physically located. It is limited to one of the following locations:

(A) State hospital;

(B) State supported living center [sehoot];

(C) One of the following locations in a rural or underserved area:

(i) Physician office;

(ii) Hospital;

(iii) Rural health clinic (RHC);

(iv) Federally qualified health center (FQHC);

(v) Intermediate care facility for persons with mental retardation (ICF/MR) that is not a state supported living center [sehoot];

(vi) Community center as defined in Health and Safety Code §534.001 or outreach site associated with a community center; or

(vii) Local health department established under Health and Safety Code §121.031, or public health district established under Health and Safety Code §121.041; or[-]

(D) One of the following locations that is not in a rural or underserved area, and the client is under 21 years old receiving services from a distant site provider who is Board certified or Board eligible in a nationally recognized specialty or subspecialty and who is not a primary care provider:

(i) Physician office;

(ii) Hospital;

(iii) Rural health clinic (RHC);

(iv) Federally qualified health center (FQHC);

(v) Intermediate care facility for persons with mental retardation (ICF/MR) that is not a state supported living center;

(vi) Community center as defined in Health and Safety Code §534.001 or outreach site associated with a community center; or

(vii) Local health department established under Health and Safety Code §121.031, or public health district established under Health and Safety Code §121.041.

(6) State hospital--A state hospital is a hospital with an inpatient component and operated by the Department of State Health Services.

(7) State supported living center [sehoot]--means a state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social and vocational skills, as defined at Health & Safety Code §531.002(17). State supported living centers were formerly known as a "state school" or [Also referred to as a "State MR Facility." A state school or] a "state center with a mental retardation residential component." [as defined in 40 TAC §2.253(44) (relating to Definitions).]

(8) Rural area--A rural area is defined as a county that is not included in a metropolitan statistical area as defined by the U.S. Office of Management and Budget (OMB) according to the most recent United States Census Bureau population estimates.

(9) Underserved area--An underserved area is an area that meets the current definition of a medically underserved area or medically underserved population (MUP) by the U.S. Department of Health and Human Services [~~(DHHS)~~; until DHHS adopts and implements the rule proposed in the Federal Register on February 29, 2008, that would revise and consolidate the criteria and processes for designating MUPs

and health professional shortage areas. At that time, an underserved area will be defined as an area that meets the DHHS Index of Primary Care Underservice criteria].

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 April 18, 2011.

TRD-201101449

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 29, 2011

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



CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 3. PHYSICIAN SERVICES

1 TAC §355.8043

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8043 concerning Supplemental Payments for Physician Services. The amendment adds a new category of hospital physician groups that would be eligible for Medicaid physician supplemental payments.

Background and Justification

The proposed amendment allows HHSC to make Medicaid supplemental payments to physicians who are employed by or under contract with a physician group practice organized by, under the control of, or under contract with a non-profit, tax-exempt hospital where both the hospital and the physician group practice provide medical education under contract with a state-owned medical school. The amendment specifically includes any group practice affiliated with Scott and White Memorial Hospital.

The state funds required to draw down federal matching funds for any group practice affiliated with Scott and White Memorial Hospital will be provided through intergovernmental transfers of public funds by Texas A&M University.

HHSC will not make supplemental payments to any hospital or group practice that is newly eligible under this rule amendment until the Medicaid state plan amendment has been approved by the Centers for Medicare and Medicaid Services.

Section-by-Section Summary

Proposed subsection (c)(4) adds language to enable HHSC to make Medicaid supplemental payments to any physician group practice affiliated with Scott and White Memorial Hospital eligible to receive physician supplemental payments.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect, there will be a fiscal impact to state government of \$5,999,344 all funds for state fiscal year (FY) 2011 and \$8,999,016 all funds each year for FY 2012 through FY 2015. This increase is due to adding physicians employed by or under contract with a physician group practice

organized by, under the control of, or under contract with Scott and White Memorial Hospital.

The state portion of the estimated costs above will be provided through intergovernmental transfers from Texas A&M University.

There are no foreseeable implications relating to costs or revenues of local governments.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as the proposal will affect only Scott and White Memorial Hospital, which is not a "small business" or "micro-business" as defined by Texas Government Code §2006.001. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt has determined that for the first five years the rule is in effect, the public benefit expected as a result of enforcing the proposed amendment is that physician group practices affiliated with Scott and White Memorial Hospital will recover more of their costs of treating Medicaid patients.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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.

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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Jill Seime, Senior Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1863; or by e-mail to: Jill.Seime@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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.

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

§355.8043. *Supplemental Payments for Physician Services.*

(a) Introduction. Enrolled Medicaid providers that are identified in subsection (c) of this section may receive supplemental payments for physician services provided to Medicaid-eligible patients.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Adjudicated claim--A fee-for-service physician claim for a covered Medicaid service that is paid or adjusted by HHSC.

(2) Approved place of service--A hospital-sponsored location, such as an inpatient hospital, outpatient hospital, hospital-based clinic, or hospital-affiliated clinic.

(3) Calculation period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated.

(4) Facility setting--An inpatient or outpatient hospital.

(5) Global payment--The payment amount for a defined subset of services encompassing the combined technical and professional components rendered during an episode of care.

(6) Governmental hospital--A hospital or hospital system affiliated with a hospital district created under Health and Safety Code, Chapter 281.

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

(8) Medicaid Final Equivalent Units--Elements of measure used by HHSC to assign values to an individual physician service in the Medicaid program relative to the same individual physician service in the Medicare program. Medicaid Final Equivalent Units are determined using the methodologies described in subsection (f)(3) of this section and are a factor in calculating supplemental payment amounts.

(9) Medicare anesthesia base units--Elements of measure used by Medicare to assign values to anesthesia services with time-based fees. The base units are a factor used in calculating the Medicaid Final Equivalent Units.

(10) Medicare Fee Conversion Factor (MFCF)--A CMS-approved factor (145% of Medicare rates) used to convert the applicable Medicare fee to a fee that represents what commercial payors would reimburse physicians for eligible professional services.

(11) Nonfacility setting--A location other than an inpatient or outpatient hospital.

(12) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of the governmental entity that owns or is affiliated with the enrolled Medicaid provider identified in subsection (c) of this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds, such as the private operator of a hospital district's facility.

(c) Availability of supplemental payments. Supplemental payments are available under this section only for physician services performed by doctors of medicine and osteopathy licensed in Texas and affiliated with an enrolled Medicaid provider in one of the following ways:

(1) Employed by an eligible physician group practice that is state-owned or state-operated. Physicians under contract with such a physician group practice are not included in supplemental payment calculations. Eligible state-owned or state-operated physician group practices consist of those affiliated with:

- (A) University of Texas--Southwestern;
- (B) University of Texas--San Antonio;
- (C) University of Texas--Tyler;
- (D) University of Texas--Houston;
- (E) University of Texas Medical Branch--Galveston;
- (F) University of Texas--MD Anderson Cancer Center;
- (G) University of North Texas;
- (H) Texas Tech University--Amarillo;
- (I) Texas Tech University--El Paso;
- (J) Texas Tech University--Lubbock;
- (K) Texas Tech University--Odessa; or
- (L) Texas A&M Health Science Center;[-]

(2) Employed by a governmental hospital; [ø]

(3) Employed by or under contract with a physician group practice organized by, under the control of, or under contract with a governmental hospital; or[-]

(4) Employed by or under contract with a physician group practice organized by, under the control of, or under contract with a non-profit, tax-exempt hospital where both the hospital and the physician group practice provide medical education to a state-owned medical school. Eligible group practices include those affiliated with Scott and White Memorial Hospital.

(d) Source of funds for supplemental payments. State funding for supplemental payments authorized under this section will be limited to public funds transferred to HHSC through intergovernmental transfers from the governmental entity that owns or is affiliated with the enrolled Medicaid provider identified in subsection (c) of this section.

(e) Required certification. Before a private physician practice group may receive supplemental payments under this section, the appropriate governmental entity and the private physician practice group must certify certain facts, representations, and assurances regarding program requirements.

(1) The appropriate governmental entity must certify, among other things, that all funds transferred to HHSC via intergovernmental transfer for use as the state share of supplemental payments are public funds.

(2) The appropriate governmental entity and the physician practice group must certify, among other things, that no part of any supplemental payment received under this section will be returned to the governmental entity that made the intergovernmental transfer.

(3) The physician practice group is eligible for supplemental payments for services provided beginning on the first day of the federal fiscal quarter after HHSC receives completed certification forms from the appropriate governmental entity and the private physician practice group, or as otherwise authorized by state and federal law.

(4) The physician practice group and the appropriate governmental entity must resubmit certification forms annually on or before September 30th unless the certification was executed during that federal fiscal year. The physician practice group and the appropriate governmental entity also must resubmit certification forms as otherwise requested by HHSC.

(f) Calculation of supplemental payments. For each enrolled Medicaid provider identified in subsection (c) of this section that is

participating in this program, HHSC will calculate the supplemental payments for physicians' services under this section using the following methodology:

(1) HHSC will identify Medicaid claims adjudicated during the calculation period for services performed by eligible physicians at approved places of service.

(A) The identification of claims will be based on individual Current Procedural Terminology (CPT) codes contained in the Texas Medicaid Management Information System.

(B) Supplemental payments for physician services are available only for benefits covered by Medicare.

(2) HHSC will determine the appropriate Medicare fee schedule based on the following criteria:

(A) If more than 50 percent of the claims identified in the calculation period were performed in a nonfacility setting, HHSC will use the nonfacility Medicare physician fee schedule for that physician group.

(B) If 50 percent or more of the claims identified in the calculation period were performed in a facility setting, HHSC will use the facility Medicare physician fee schedule for that physician group.

(C) If a Medicare fee schedule is not available for a particular service, HHSC may use an alternative applicable Medicare fee schedule for those physician services.

(D) HHSC will use the Medicare fee schedule in effect at the time the supplemental payments are calculated.

(3) Using all eligible procedures identified in paragraph (1) of this subsection, HHSC will determine the Medicaid Final Equivalent Units in one of the following ways, depending on whether the CPT code is related or unrelated to anesthesia.

(A) Related to Anesthesia

(i) For each anesthesia CPT code and unique set of modifiers that is paid using a time-based fee, the Medicaid Final Equivalent Units are derived using the following formula: (number of occurrences of CPT code with modifiers x Medicare anesthesia base units) + the sum of the Medicaid paid units for that CPT code with modifiers;

(ii) For those limited anesthesia codes that are not paid using a time-based fee, the Medicaid Final Equivalent Units equal the sum of the Medicaid paid units for that CPT code with modifiers.

(B) Unrelated to Anesthesia. The Medicaid Final Equivalent Units equal the sum of the Medicaid paid units for that CPT code with modifiers.

(4) HHSC will calculate the Medicare Fee Equivalent Payment as follows:

(A) For anesthesia services with time-based fees, HHSC will multiply the Medicaid Final Equivalent Units, calculated under paragraph (3)(A)(i) of this subsection, by the Medicare anesthesia conversion factor assigned to the "Rest of Texas" locality by the Centers for Medicare and Medicaid (CMS). HHSC will not compensate for regional variations in practice costs.

(B) For all other services, HHSC will multiply the Medicaid Final Equivalent Units by the applicable Medicare fee.

(5) HHSC will reduce the Medicare Fee Equivalent Payment determined under paragraph (4) of this subsection by applying Medicaid pricing modifier reductions and assistant surgeon pricing adjustments in accordance with Texas Medicaid policy.

(6) HHSC will calculate the Payment Ceiling Amount by adding the Medicare Fee Equivalent Payments for all eligible CPT codes and multiplying the total by the Medicare Fee Conversion Factor of 145%.

(7) HHSC will calculate the supplemental payment amount by subtracting the Medicaid payments for all eligible CPT codes from the Payment Ceiling Amount.

(g) When a global payment that includes a technical component is made for physician services, supplemental payment is available only for the professional component and only when a doctor of medicine or doctor of osteopathy rendered those services.

(h) For each calculation period, physicians and physician groups must submit to HHSC requested documentation necessary to calculate supplemental payments. The documentation is due to HHSC by the deadlines established by HHSC. Failure to submit the requested documentation may result in forfeiture of supplemental payments for that calculation period.

(i) As a condition of participation, physicians, physician groups, and affiliated hospitals must submit to HHSC upon request in an accurate and timely fashion all documentation that HHSC deems necessary to support all internal and external reviews and audits of this supplemental payment program.

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

Filed with the Office of the Secretary of State on April 18, 2011.

TRD-201101450

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 29, 2011

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



DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.8443, concerning the reimbursement methodology for school health and related services (SHARS), and proposes new §355.8443, concerning the reimbursement methodology for school health and related services (SHARS).

Background and Justification

SHARS is a joint program of HHSC and the Texas Education Agency that allows school districts to obtain federal Medicaid reimbursement for the provision of health-related services to students in special education. The proposed new rule provides clarity and consistency with the current reimbursement methodology related to the cost report, reconciliation, and settlement process for SHARS.

Section-by-Section Summary

The proposed repeal of §355.8443 deletes the current rule language concerning SHARS reimbursement methodology.

Proposed new §355.8443:

defines the requirements for SHARS participation;

adds definitions to include primary purpose of the cost report and descriptions of federally mandated allocation methodologies;

describes the reimbursement methodology to include district specific interim rates, interim payments, and final reimbursement;

clarifies cost reporting requirements;

describes the cost reconciliation process, which HHSC uses to determine the federal share owed to the provider and adjust reimbursement by payments already made to providers;

describes the cost settlement and notification process;

describes the cost reporting process and references the cost determination process rules that govern cost reporting and adjustments to reported costs; and

describes the administrative contract violation actions that will be taken due to noncompliance.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed repeal and new rule are in effect there will not be a fiscal impact to state government. The proposed repeal and new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no adverse economic effect on small or micro-businesses to comply with the proposed repeal and new rule, as they will not be required to alter their business practices as a result of the repeal and new rule.

There is no anticipated economic cost to persons who are required to comply with the proposed repeal and new rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed repeal and new rule are in effect, the public will benefit from the adoption of this rule by establishing a rate methodology that will allow schools who meet provider requirements to bill Medicaid for their services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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.

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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Cathy Rutherford, Rate Analyst of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to cathy.rutherford@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

1 TAC §355.8443

(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.)

Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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 Human Resources Code, Chapter 32.

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

§355.8443. *Reimbursement Methodology for School Health and Related Services (SHARS).*

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 April 15, 2011.

TRD-201101427

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 29, 2011

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



1 TAC §355.8443

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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 Human Resources Code, Chapter 32.

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

§355.8443. Reimbursement Methodology for School Health and Related Services (SHARS).

(a) Introduction. Direct medical services and transportation are available to children age 20 and under who are enrolled in Medicaid and eligible to receive services under the Individuals with Disabilities Education Act (IDEA). The services must be included in the child's individualized education program (IEP) established under IDEA.

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

(1) Cost report--An annual report documenting the provider's Medicaid-allowable costs for all SHARS delivered during the previous federal fiscal year. The cost report is due on or before April 1 of the year following the reporting period and must be certified in a manner specified by the Texas Health and Human Services Commission (HHSC). The primary purposes of the cost report are to:

(A) Document the provider's total Medicaid-allowable costs for delivering SHARS, including direct costs and indirect costs, based on federally mandated cost allocation methodologies; and

(B) Reconcile interim payments to total Medicaid-allowable costs based on approved cost allocation methodology procedures.

(2) Time study--A statistically valid random sampling method used to identify the percentage of time spent performing actual direct medical services irrespective of payer and administrative cost.

(3) IEP ratio--A comparison of the total number of Medicaid students with IEPs requiring direct medical services to the total number of students with IEPs requiring direct medical services.

(4) One-way trip ratio--A comparison of the total one-way trips for Medicaid students with IEPs requiring specialized transportation services to the total one-way trips for all students with IEPs requiring specialized transportation services.

(c) Reimbursement methodology. Providers are reimbursed for medical and transportation services provided under the SHARS Program on a cost basis.

(1) District-specific interim rates. The district-specific interim rate is developed based on a biennial review of actual cost data submitted by the provider and is subject to change under §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). Interim rates are set by extracting the settled cost report data from each district and determining the average cost to provide each unit of service provided under the SHARS Program.

(A) Unit of service. The unit of service is a 15-minute interval for all covered services, except for:

(i) medication administration (a nursing service), for which the unit of service is a visit;

(ii) assessment services, for which the unit of service is a one-hour interval; and

(iii) personal care services on the bus and specialized transportation services, for which the unit of service is based on a one-way trip.

(B) Adjustment. The average cost for each unit of service is adjusted to 85% of cost to arrive at the interim rate.

(2) Interim payment. Providers are reimbursed for SHARS direct medical services per unit of service at the lesser of:

(A) the provider's billed charges; or

(B) a provider-specific interim rate.

(3) Final reimbursement. The provider's final reimbursement amount is arrived at by a cost reconciliation and cost settlement process. The provider's total costs for both direct medical and transportation services as reported in the cost report are adjusted using the federally mandated allocation methodologies.

(A) Medical services costs.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable costs for direct medical services, resulting in total direct costs. Direct costs for direct medical services include payroll costs and other costs that can be directly charged to direct medical services provided by contractors and school district staff (i.e., salaries, benefits, and contract compensation). Direct medical services costs do not include transportation personnel costs.

(ii) Indirect costs. Indirect costs are determined by applying the school district's specific unrestricted indirect cost rate to its net direct costs. Texas public school districts use predetermined fixed rates for indirect costs. The Texas Education Agency (TEA) has, in cooperation with the United States Department of Education (USDE), developed an indirect cost plan to be used by school districts in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for school districts for the USDE, which is the cognizant agency for school districts.

(iii) Net allowable cost. Direct and indirect costs are added together and adjusted by the direct medical time study percentage and the IEP ratio, resulting in a net Medicaid allowable cost for direct medical services.

(B) Transportation services.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable direct costs for transportation, resulting in total direct costs. Direct costs for covered transportation services include payroll costs and other costs that can be directly charged to covered transportation services. Direct payroll costs include total compensation (i.e., salaries, benefits, and contract compensation) of bus drivers and mechanics. Other direct costs include costs directly related to the delivery of covered transportation services, such as professional and contracted services, contracted transportation costs, gasoline and other fuels, other maintenance and repair costs, vehicle insurance, interest, rentals, and vehicle depreciation

(ii) Indirect costs. Indirect costs are determined by applying the school district's specific unrestricted indirect cost rate to its net direct costs. Texas public school districts use predetermined fixed rates for indirect costs. TEA has, in cooperation with the USDE, developed an indirect cost plan to be used by school districts in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for school districts for the USDE, which is the cognizant agency for school districts.

(iii) Net allowable cost. Net direct costs and indirect costs are added together and adjusted by the one-way trip ratio, resulting in a net Medicaid allowable cost for transportation services.

(d) Cost reporting requirements. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(1) Certification. Each provider certifies through the cost report process its total actual federal and non-federal costs and expenditures.

(2) Reimbursement determinations and allowable costs. 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. All costs relating to Shared Service Arrangements and Co-operatives must be allocated to each respective school district provider.

(e) Cost reconciliation. The Medicaid-allowable costs for direct medical and transportation services are added together and adjusted by the federal Medicaid assistance percentage (FMAP) to arrive at the federal share owed to the provider. This amount is then reconciled with interim payments already made to the provider.

(f) Cost settlement. HHSC uses a cost settlement process as follows:

(1) If a provider's interim payments exceed the provider's federal portion of the total certified Medicaid allowable costs, HHSC will recoup the federal share of the overpayment using one of these two methods:

(A) HHSC offsets all future claims payments from the provider until the amount of the federal share of the overpayment is recovered; or

(B) The provider returns an amount equal to the overpayment.

(2) If the provider's federal portion of the total certified Medicaid allowable costs exceeds the interim Medicaid payments, HHSC will pay the federal share of the difference to the provider in accordance with the final actual certification agreement.

(3) HHSC will issue a notice of settlement within 24 months of the end of the reporting period.

(g) General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by the information in: §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

(h) Administrative contract violations. HHSC may take the following actions against a provider for administrative contract violations:

(1) Time study. For failure to participate in or meet all time study requirements, HHSC will recoup all interim payments made during the cost reporting period.

(2) Billing. For failure to bill for services covered by Medicaid or failure to bill in the manner and format prescribed by HHSC or its designee, the provider is ineligible to submit a cost report.

(3) Cost reports. For failure to submit a cost report by the due date, HHSC will recoup all interim payments made during the cost reporting period.

(4) Other administrative contract violations. For all other administrative contract violations, HHSC will recoup all interim payments made during the cost reporting period.

(5) Appeals. A provider may request a hearing to appeal HHSC's action concerning an administrative contract violation. Formal appeals are conducted in accordance with the provisions of Chapter 357, Subchapter I of this title (relating to Hearings under the Administrative Procedure Act). If there is a conflict between an applicable section of Chapter 357 of this title (relating to Hearings) and the provisions of this chapter, the provisions of this chapter will prevail.

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 April 15, 2011.

TRD-201101428

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 29, 2011

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



TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §31.14, concerning the requirements for private child support enforcement contracts. The department also proposes to repeal §31.71, concerning how obligors and clients are notified of the department's licensing and enforcement authority. The amendments and repeal are proposed to update the rules, the need for which was discovered as a result of the recent review of these rules conducted in accordance with Government Code §2001.039.

Description of proposed amendments and the proposed repeal.

Four changes are proposed to §31.14. The proposed amendment to §31.14(b) adds a requirement that all contracts contain a provision informing the client how long the agency can retain child support before it sends it to the client. The department has long viewed this as an important provision to protect the consumer, but it was not formally required by rule.

The proposed amendment to §31.14(c) updates the rule to reflect that the department currently has a sample contract on its website.

The proposed amendment to §31.14(d)(1) conforms the readability standards for private child support agency contracts to those the department uses for prepaid funeral benefits contracts, located at §25.4 of this title. The department believes that the

readability standards it imposes on its regulated entities should be consistent.

The proposed amendment to §31.14(e) removes outdated transition language and improves the notice required in each contract regarding complaints by informing the consumer to first attempt to resolve the complaint with the private child support enforcement agency, before notifying the department. The proposed new language is intended to benefit registered agencies and customers by encouraging direct communication between the two, and should also reduce unnecessary calls to the department. This change also conforms the wording of the notice provision to that required of money services businesses, which are also regulated by the department. See 7 TAC §33.51(d)(1).

Subsection §31.14(f) is proposed to be deleted because it is a transitional provision that is no longer needed.

The department proposes the repeal of §31.71 because it is a transitional provision that is no longer necessary.

Stephanie Newberg, Deputy Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is: deletion of outdated provisions; notice of the length of time the private child support enforcement agency can retain child support before sending it to the client; consistency of the standards for plain language in contracts; and consistency in the language of complaint notices.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed. Any needed changes to contract provisions in forms currently being used can be written on the form until such time as corrections can be made to the printed forms.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended and repealed sections must be submitted no later than 5:00 p.m. on May 31, 2011. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §31.14

The amendments are proposed under Finance Code §396.051(b), which provides that the commission shall adopt rules as necessary for the administration of Chapter 396, and under Finance Code §396.203 which requires agencies to execute written contracts for private child support enforcement.

Finance Code §396.203 is affected by the proposed amended section.

§31.14. What are the requirements for the contract for services with my agency's clients?

(a) (No change.)

(b) What elements must be in my agency's contract with clients for engaging my agency's child support enforcement services? The contract your agency, or a foreign agency authorized to engage in business under Subchapter F of this chapter, must [be]:

(1) be dated;

(2) be signed by both parties;

(3) be written in clear language; ~~and~~

(4) include a provision stating the maximum length of time between the agency's receipt of any child support owed and the transmittal of child support to the client; and

(5) ~~[(4)]~~ be approved by the department.

(c) Does ~~[Will]~~ the department provide sample clear language provisions? On the department's website, dob.texas.gov, the [The] department provides a [will prepare and provide] sample clear language contract [provisions] that your agency, or a foreign agency authorized to engage in business under Subchapter F of this chapter, may use in preparing its contract for services with its clients.

(d) How will I know if my agency's contract with clients is in "clear language"?

(1) The department will apply automated readability tests commonly available in Microsoft Word or Corel WordPerfect software to your proposed contract. Whenever you submit a proposed contract for the department to consider, you must disclose the readability scores you generated for it. Because mechanical readability formulas do not evaluate the substantive content of the contract, the department will exercise judgment when considering the readability statistics generated by these tests. However, absent explanatory circumstances or additional justification persuasive to the banking commissioner, your contract will ordinarily not be approved if:

(A) over 21% ~~[20%]~~ of its sentences are passive in structure;

(B) (No change.)

(C) the Flesch Reading ease score is less than 47.0 ~~[49.0]~~; and

(D) the Flesch-Kincaid grade level score is higher than 11.0 ~~[10.5]~~.

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

(e) Are there any other contractual requirements ~~[for clients who engage the services of my agency on or after January 1, 2002]~~? A written contract with a client for the enforcement of child support executed ~~[on or after January 1, 2002]~~ by your agency, or a foreign agency authorized to engage in business under Subchapter F of this chapter, must contain the following provision in substantially similar language in a font at least as large as the other provisions of the contract, but no smaller than 10-point with line spacing at least 120% of the point size: If you have a complaint, first contact (Name of Agency). If you still have an unresolved complaint, please contact [Direct your inquiries to] the Texas Department of Banking. Complaints must be in writing. Texas Department of Banking, 2601 North Lamar, Austin, Texas 78705-4294, (877) 276-5554 (toll free telephone), (512) 475-1313 (fax), consumer.complaints@dob.texas.gov (e-mail), www.dob.texas.gov (website).

~~{(f) Are there any other contractual requirements for clients who engaged the services of my agency prior to January 1, 2002? If prior to January 1, 2002, a client engaged the child support enforcement services of your agency, or a foreign agency authorized to engage in business under Subchapter F of this chapter, without a written contract and the agency is continuing to perform services for the client, then on or before the effective date of Chapter 396, the agency must execute a contract with the client, complying with the provisions of this section.}~~

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

Filed with the Office of the Secretary of State on April 15, 2011.

TRD-201101429

A. Kaylene Ray
General Counsel

Texas Department of Banking

Proposed date of adoption: June 17, 2011

For further information, please call: (512) 475-1300



SUBCHAPTER E. HOW DOES THE DEPARTMENT EXERCISE ITS ENFORCEMENT AUTHORITY?

7 TAC §31.71

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

The repeal is proposed under Finance Code §396.051(b), which provides that the commission shall adopt rules as necessary for the administration of Chapter 396.

Finance Code §396.051(a) is affected by the proposed repealed section.

§31.71. *How will obligors and clients be notified of the department's licensing and enforcement authority?*

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 April 15, 2011.

TRD-201101430

A. Kaylene Ray
General Counsel

Texas Department of Banking

Proposed date of adoption: June 17, 2011

For further information, please call: (512) 475-1300



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §§255.1, 255.2, 255.4, 255.6, 255.8, 255.9, 255.11, 255.17, 255.18

The Texas Department of Rural Affairs (TDRA) proposes amendments to §§255.1, 255.2, 255.4, 255.6, 255.8, 255.9, 255.11, 255.17, and new §255.18. On April 11, 2011, the TDRA Board of Directors approved the publication of this rule proposal for comment.

The proposed amendments and new rule to Chapter 255 of the Texas Administrative Code (TAC), Title 10, would conform these sections of the TAC to the approved 2011 Texas Community Development Block Grant (CDBG) Action Plan and the existing RRC Scoring Guidelines. There are no changes in the program being proposed.

Howard G. Baldwin, Jr., Interim Executive Director, has determined that for the first five-year period the proposed amendments and new rule are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, as proposed.

Mr. Baldwin also has determined that for each year of the first five years the proposed amendments and new rule are in effect, the public benefit anticipated as a result of enforcing the sections will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mark Wyatt, Director, Community Development, Texas Department of Rural Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments must be received no later than 30 days from the date of publication of the proposed sections in the *Texas Register*.

The amendments and new rule are proposed under the Texas Government Code §487.052, which provides the Texas Department of Rural Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

No other code, article, or statute is affected by the proposed amendments and new rule.

§255.1. *General Provisions.*

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

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Department or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Block Grant Program (TxCDBG) funds in the format required by the Department or by the TDA for Texas Capital Fund (TCF) applications.

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of 1974, Title I, as

amended (42 United States Code §§5301 et seq.), and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Department, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Department or the TDA has executed a contract.

(7) Department--Texas Department of Rural Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income persons [person]--Families and individuals whose incomes do not exceed 80 percent of the median income of the area involved [A member of a family which earns less than 80% of the area median family income], as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes;

or

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(17) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) community development fund;

(2) Texas Capital fund. The Texas Capital Fund (TCF) is administered by the TDA under an interagency agreement with the Department. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) small towns environment program fund;

(8) renewable energy demonstration pilot program; and[-]

(9) community facilities fund.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TxCDBG fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, [housing fund,] colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefiting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefiting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG fund category.

(C) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the Tx-CDBG fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Department and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (C) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TxCDBG. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. ~~Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.~~

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

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current Tx-CDBG application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses (including smoke testing televising/video taping line work, or any other investigative method to determine the overall scope and location of the project work activities); pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TxCDBG contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the

benefiting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Department and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Department and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

~~[(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the application and a second public hearing shall be held prior to submission of the application.]~~

(B) ~~[(C)]~~ An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(C) ~~[(D)]~~ The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG, the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of

activities assisted with TxCDBG funds, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(D) [~~E~~] The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(E) [~~F~~] Any public hearing held prior to submission of the application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Department and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TxCDBG funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals for the use of TxCDBG funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TxCDBG, except for the Texas Capital Fund, may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Department staff resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Department due to human or computer error.

(C) Other procedural error. The application is not processed by the Department in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the Tx-CDBG of the Department no later than 30 days after the date the announcement of contract awards is published on the Department's website. The Department staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the Executive Director. The Executive Director then considers the appeal within 30 days and makes a decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning an application is rejected, the office notifies the applicant of its decision, including the basis for rejection.

(4) Appeal of Executive Director's Decision to the Board.

(A) If the appealing party is not satisfied with the Executive Director's response to the appeal, it may appeal in writing directly to the Board within seven days after the date of the Executive Director's response. In order to be placed on the next agenda of the Board, the appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals received after the fourteenth calendar day prior to the Board meeting will be scheduled for the next Board meeting. The Executive Director shall prepare an appeal file for the Board's review based on the information provided. If the appealing party receives additional information after the Executive Director has denied the appeal, but prior to the posting of the appeal, for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the applicant after the written appeal. New information will cause the deadlines in this subparagraph to begin again. The Board will review the appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(B) Public comment. The Board hears public comment on the appeal under its usual procedures. Persons making public comment are not parties to the appeal and no rights accrue to them under this section or any other appeal process. Nothing in this section provides a right to appeal any decision made on an application if the appealing party does not have direct grounds to appeal.

(C) Possible actions regarding applications. In instances in which the appeal is sustained by the Board could have resulted in an award to the applicant, the application shall be approved by the Board contingent on the availability of funds. If the appeal is denied, the Department shall notify the applicant of the decision.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; ~~or~~

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff; ~~or~~[-]

(D) TxCDBG management may determine that an applicant has or does not have the capacity to manage and administer the proposed project based on an applicant's prior performance on a Tx-CDBG contract.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; ~~and~~

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles; ~~and/or~~[-]

(C) TxCDBG management may determine that an applicant has or does not have the financial management capacity to operate and maintain any improvements made in conjunction with the proposed project based on a review of audited financial records, current financial status, or current financial management of a TxCDBG contract.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TxCDBG contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in the Department's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Department regarding a request for repayment of funds to TxCDBG; or

(D) By not having at least one outstanding delinquent response to a written request from the Department regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TxCDBG contracts and any other Department contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit

and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Department.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but the TxCDBG may withhold the award or issuance of a contract until it receives a satisfactory audit. ~~[may not receive a contract award if the audit continues to be delinquent on the date the Department approves funding recommendations.]~~ Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Block Grant Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Texas Department of Housing and Community Affairs for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Board for review and consideration.

(7) TxCDBG funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TxCDBG funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TxCDBG funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TxCDBG contracts, unsatisfactory management and administration of previous TxCDBG contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TxCDBG contracts, the Department, or TDA in the case of Texas Capital Fund applications, may determine that an applicant is ineligible to apply for TxCDBG funding even though at the application deadline date it meets the threshold and past performance requirements. The Department, or TDA in the case of Texas Capital Fund applications, will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Department where the Department finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Department for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in any application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the TxCDBG staff shall make a recommendation for action to the Executive Director of the Department. Actions that the Executive Director may take include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TxCDBG funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate TDA official. Actions that the TDA official may take, in consultation with TxCDBG, include, but are not limited to:

(A) Disqualification of the application and holding the locality ineligible to apply for TCF funding for a period of at least one year not to exceed two program years;

(B) holding the applicant or contractor ineligible to apply for TCF funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(C) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Department and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Department.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Department by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys.

(5) The TxCDBG program will not allow participants to use any surveys or survey questionnaires completed more than five (5) years prior to the current fund year to document the beneficiaries of a TxCDBG application (e.g., surveys completed on or after January 1, 2006 may be used for 2011 TxCDBG programs. The only exception to this rule is for biennial funds, at which point survey questionnaires remain eligible for both years awarded. For example, surveys completed on or after January 1, 2006 may be used for 2011/2012 Community Development Fund applications.) The survey must be in accordance with specific requirements established in the most recent application guide for the proposed project. [A survey that was completed on or after Jan-

uary 1, 2004 for a previous TxCDBG application may be accepted by the Department for a new application to the extent specified in the most recent application guide for the proposed project.]

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Department for eligible TxCDBG activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TxCDBG Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Department Executive Director and[, or when applicable, approved by] the Board [or by the TDA] on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by established priority uses within existing fund categories or programs, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the Texas Register, TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Department Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories or programs by the Board. [Should the TxCDBG be required to make payments to HUD to cover any loan payments not made by any recipient of a TxCDBG Section 108 loan guarantee, it would first use any available deobligated funds.]

(m) Waivers. The Department may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Department finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Department shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Department. Issues related to audit requirements will be handled by the appropriate agency.

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

(1) Obligate at least 50% of the total TxCDBG funds awarded under an open TxCDBG contract within 12 months from the start date of the contract or prior to the application deadlines, have completed plans and specifications, and have received all applicable environmental approvals from TxCDBG covering this obligation. This threshold is applicable to TxCDBG contracts with an original 24-month contract period. To meet this threshold, 50% of the TxCDBG funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. Plans and specifications must be completed. The TxCDBG contract activities do not have to be 50% completed, nor do 50% of the TxCDBG contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, the community development supplemental fund, the community development-recovery (A&B portions combined), the colonia construction fund, the colonia planning fund, the non-border colonia fund the

planning and capacity building fund, ~~and~~ the disaster relief/urgent need fund, and small towns environment program (STEP) fund, except that is does not include STEP contracts awarded prior to February 1, 2010. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, ~~[Section 108 loan guarantee pilot program, and]~~ the small towns environment program fund awarded prior to February 1, 2010, and renewable energy demonstration pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund or for the Renewable Energy Demonstration Pilot Program. For community development-recovery awards with A & B contracts, both A & B contracts will be considered as though it were one combined contract.

(2) Submit to the Department the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a draw-down for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 24-month contract period and to TxCDBG contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the community development-recovery (A&B portions combined), the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, ~~and~~ the disaster relief/urgent need fund and small towns environment program (STEP) fund, except that is does not include STEP contracts awarded prior to February 1, 2010. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, ~~[Section 108 loan guarantee pilot program, and]~~ the small towns environment program fund (original 24-month contract extended to 36-months) awarded prior to February 1, 2010, and renewable energy demonstration pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund. For community development-recovery awards with A & B contracts, both A & B contracts will be considered as though it were one combined contract.

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

(4) Submit to the Department the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most

recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a draw-down for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 36 months, and to TxCDBG contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 36 months. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise loan fund, the small business loan fund, and renewable energy demonstration pilot program ~~and the section 108 loan guarantee pilot program~~. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(o) Minority hiring/participation. It is the policy of the Department to encourage minority employment and participation among all applicants under the TxCDBG. All applicants to the TxCDBG are required to submit information documenting the level of minority participation as part of the application for funding.

(p) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TxCDBG contract must meet the requirements for Revolving Loan Funds described in the TxCDBG Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TxCDBG contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Department. The requirement in this section applies to all local Revolving Loan Funds (RLF) established from program income from Texas Capital Fund projects, housing projects and the Small Business Loan Fund. Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

(q) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based, including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's award letter to the applicant, the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Department's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Department.

(r) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Department follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(3) Funds recaptured under the colonia construction component from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(4) Funds recaptured under the colonia planning component from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(5) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. If there are an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding, the CEDAP funds may be transferred as appropriate. If unallocated

within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(6) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(7) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdrawal date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in subsection (l) of this section.

(8) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(9) For both the community development fund, if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in subsection (l) of this section.

(s) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(t) Performance measures. Each applicant for TxCDBG funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TxCDBG project implementation manual that is required by the Department to report on Community Development Block Grant program performance measures promulgated by the Board, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(u) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an ap-

plication for TxCDBG funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(v) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

(w) The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

(x) Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

(y) If an audit becomes due after the award date, the Department may withhold the issuance of a contract until it receives a satisfactory audit. If a satisfactory audit is not received by the Department within four months of the audit due date, the Department may withdraw the award and re-allocate the funds in accordance with subsection (r) of this section (excludes the colonia self-help center awards and Texas Capital Fund awards).

(z) In order to administer a TxCDBG contract, the administrator (contracted administrators on behalf of the client community or the city or county staff of self-administering award recipients) must attend, and retain the completion certificate, from the most recent cycle of Tx-CDBG Project Implementation Manual workshops. (This requirement excludes Texas Capital Fund and Colonia Self-Help Center Set-aside contracts.) [If the Regional Review Committee for a particular region fails to approve, to the satisfaction of the Department, an objective scoring methodology for the 2009 Community Development Fund competition, the Department will award 2008 Program Year funds in that region for the Community Development Fund and Community Development Supplemental Fund based the state's existing scores under section IV (C)(1)(a-e) of the approved 2007 Texas CDBG Action Plan.]

§255.2. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities. An application submitted for the community development fund can receive a grant from the community development fund regional allocation [and/or from the community development supplemental fund regional allocation].

(1) An applicant may not submit a single jurisdiction application or be a participant in a multi-jurisdiction application under this fund and also submit a single jurisdiction application or be a participant in a multi-jurisdiction application submitted under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title, in order to be eligible to apply for community development funds, an applicant must document that at least 51% of the

persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Applicants must demonstrate they are adequately addressing water supply and water conservation issues (in particular contingency plans to address drought-related water supply issues), as described in the application guidance. Applications requesting funds for projects other than water and sewer must include a description of how the applicant's water and sewer needs would be met and the source of funding that would be used to meet these needs.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2011 [2009] and 2012 [2010] program years pursuant to regional competitions held for the 2011 [2009] program year applicants. Applications for funding must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Allocation Plan. The original CD formula is used to allocate 40 percent of the annual state CDBG allocation; and the HUD formula is used to allocate 21.71 percent of the annual state CDBG allocation.

(1) Original CD formula (40%) factors [This fund is allocated among the 24 state planning regions established pursuant to Texas Local Government Code, §391.003, by a formula based on the following factors and weights]:

(A) Non-Entitlement Population--30% [number of persons living in poverty--25%]

(B) Number of Persons in Poverty--25% [percentage of persons living in poverty--25%]

(C) Percentage of Poverty Persons--25% [population--30%]

(D) Number of Unemployed Persons--10% [number of unemployed persons--10%]

(E) Percentage of Unemployed Persons--10% [unemployment rate--10%]

(F) To the extent possible, the information used to calculate the regional allocations through these factors will be based on the eligible nonentitlement applicants within each region. The population and poverty information used is from the current available decennial census data. The unemployment information used is the current available annual average information.

(2) HUD formula (21.71%)--the formula is the same methodology that HUD uses to allocate CDBG funds to the non-entitlement state programs. The HUD factors, percentages, and methodology are specified in 42 U.S.C. 5306(d). The TxCDBG will use available data to calculate the allocations to each region.

(3) [(2)] Each state planning region is provided with a 2011 [2009] program year community development fund target allocation and a 2012 [2010] program year community development fund target allocation for applications in the region that are ranked through the 2011 [2009] program year regional competitions in accordance with a shared scoring system involving the Department and the regional review committees.

(A) The community development fund regional allocations for the first and second years of the biennial process are awarded first in each region based on the community development fund selection criteria that includes each regional review committee and the Department [(10% of maximum possible score for each RRC)] scoring criteria. Where the remainder of the 2011 [2009] program year community development fund target allocation is insufficient to completely

fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through either 2011 [2009] and 2012 [2010] program year funds. The remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the Department under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(B) Due to the two-year funding cycle proposed for program years 2011 [2009] and 2012 [2010], a Community Development Fund pooled marginal competition will not be conducted for program year 2011 [2009]. A pooled marginal competition may be conducted for program year 2012 [2010] using available funds if the State's 2012 [2010] allocation is not decreased significantly from the State's estimated 2012 [2010] Community Development allocation. All applicants whose marginal amount available is under \$75,000 will automatically be considered under this competition. When the marginal amount left in a regional allocation is equal to or above the TxCDBG grant minimum of \$75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Alternatively, such marginal applicants may choose to compete under the pooled marginal fund competition for the possibility of full project funding. This fund consists of all regional marginal amounts of less than \$75,000, any funds remaining from regional allocations where the number of fully funded eligible applicants does not utilize a region's entire allocation and the contribution of marginal amounts larger than \$75,000 from those applicants opting to compete for full funding rather than accept their marginal amount. The scoring factors used in this competition are the percentage of the State score received to the maximum possible State score in the region, followed by the per capita income ranking, if needed, with a lower per capita income level ranking higher, followed by a second tie-breaker, if needed, of the highest poverty rate ranking higher; both based on a city's incorporated area and a county's total unincorporated area. [The scoring factors used in this competition are the TxCDBG Community Development Fund factors scored by TxCDBG staff with the following adjustments:]

~~/(i) Past Selection (10 points)—Ten (10) points are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award;]~~

~~/(ii) Past Performance (25 points)—Up to 25 points;]~~

~~/(iii) Community Distress (55 points)—55 Points Maximum (Percentage of persons living in poverty 25 points; Per Capita Income 20 points; Unemployment Rate 10 points);]~~

(4) ~~[(3)]~~ Each Regional Review Committee is encouraged to allocate a percentage or amount of its Community Development Fund allocation to housing projects and, for RRCs in eligible areas, non-border colonia projects proposed in and for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-aside, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development activity during the biennial process. Housing projects/ac-

tivities must conform to eligibility requirements in 42 U.S.C. Section 5305 and applicable HUD regulations.)

(d) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible unit of general local government may submit one application to the Department for funding under the community development fund regional allocations. Two copies of the application must be submitted to the Department.

(2) Upon receipt of an application, the Department staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each Regional Review Committee is responsible for determining local project priorities and objective factors for all its scoring components based on public input in accordance with the requirements in the applicable TxCDBG Action Plan. The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors. The RRCs are responsible for convening public hearings to discuss and select the objective scoring factors that will be used to score applications at the regional level in accordance with the requirements in the applicable TxCDBG Action Plan. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring factors is the responsibility of each RRC and must be consistent with the requirements in the applicable TxCDBG Action Plan. Each RRC shall develop a Regional Review Committee Guidebook, in the format provided by TxCDBG staff, to notify eligible applicants of the objective scoring factors and other RRC procedures for the region. RRCs are encouraged to establish a priority scoring factor that considers the nature and type of the project. The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC has adopted [RRC's adoption of] its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(4) The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support: Regional Council of Governments (COG), or TxCDBG staff or TxCDBG designee, or A combination of COG and TxCDBG staff or TxCDBG designee.

(5) The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the application deadline. The selection of the entity responsible for calculating the RRC scores must be identified in the RRC Guidebook and must define the role of each entity selected. The Department shall be responsible for reviewing all scores for accuracy and for determining the final ranking of applicants once the RRC and TxCDBG scores are summed. The RRC is responsible for providing to the public the RRC scores, while the TxCDBG is responsible for publishing the final ranking of the applications.

(6) Following a final technical review, the Department staff presents the funding recommendations for the 2011 [2009] and 2012 [2010] community development fund regional allocations. Department staff makes a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.

(7) Upon announcement of the 2011 [2009] and 2012 [2010] program year contract awards, the TxCDBG staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the TxCDBG may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(e) Selection criteria. The following is an outline of the selection criteria used by the Department and the regional review committees for scoring applications under the community development fund.

(1) Regional Review Committee (RRC) Objective Scoring--Each Regional Review Committee is responsible for determining local project priorities and objective factors for all its scoring components based on public input in accordance with the requirements in the applicable TxCDBG Action Plan.

(A) Maximum RRC Points Possible: The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors.

(B) RRC Selection of the Scoring Factors: The RRCs are responsible for convening public hearings to discuss and select the objective scoring factors that will be used to score applications at the regional level in accordance with the requirements in the applicable TxCDBG Action Plan. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring factors is the responsibility of each RRC and must be consistent with the requirements in the applicable TxCDBG Action Plan.

(i) Each RRC shall develop a Regional Review Committee Guidebook, in the format provided by TxCDBG staff, to notify eligible applicants of the objective scoring factors and other RRC procedures for the region. RRCs are encouraged to establish a priority scoring factor that considers the nature and type of the project.

(ii) The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC has adopted [RRC's adoption of] its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(2) State Scoring (TxCDBG Staff Scoring)--Other Considerations--Maximum Points--10% of Maximum Possible Score for Each RRC.

(A) Past Selection--Maximum Points--2% of Maximum Possible RRC Score for each region--are awarded to each 2009/2010 Community Development Fund applicant that did not receive a 2009 [2007] or 2010 [2008] Community Development Fund, Community Development Fund-Recovery, or Rural Sustainability Fund [or Community Development Supplemental Fund] contract award.

(B) Past Performance--Maximum Points--4% of Maximum Possible RRC Score for each region. An applicant can receive points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's most recent TxCDBG contract that has reached the end of the original contract period stipulated in the contract within the past 4 years (for CD/CDS contracts only the [2003/2004 and] 2005/2006 and

2007/2008 cycle awards will be considered). The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. (Adjustments may be made for contracts that are engaged in appropriately pursuing due diligence such as bonding remedies or litigation to ensure adequate performance under the TxCDBG contract.) The evaluation of an applicant's past performance will include the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports.

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(v) The applicant's timely response to audit findings on previous TxCDBG contracts.

(vi) The expenditure timeframes on the applicable TxCDBG contracts.

(C) All project activities [Benefit To Low/Moderate Income (LMI) Persons--Applications that meet the Low and Moderate Income National Objective for each activity (51 percent low/moderate-income benefit for each activity)] within the application[] will receive] would provide basic infrastructure or housing activities--2% of the Maximum Possible RRC Score for each region. (Basic infrastructure--the basic physical shared facilities serving a community's population consisting of water, sewage, roads, and flood drainage. Housing activities--as defined in 24 CFR Part 570.)

(D) Cost per Housing Unit (CPHU) [Household (CPH)]--The total amount of TxCDBG funds requested by the applicant is divided by the total number of housing units [households] benefiting from the application activities to determine the TxCDBG cost per housing unit [household]. (Use pro rata allocation for multiple activities.)--Up to 2% of the Maximum RRC Score for each region.

(i) Cost per housing unit [household] is equal to or less than \$8,750--2%.

(ii) Cost per housing unit [household] is greater than \$8,750 but equal to or less than \$17,500--1.75%.

(iii) Cost per housing unit [household] is greater than \$17,500 but equal to or less than \$26,500--1.25%.

(iv) Cost per housing unit [household] is greater than \$26,500 but equal to or less than \$35,000--0.5%.

(v) Cost per housing unit [household] is greater than \$35,000--0%.

(E) When necessary, a weighted average is used to score to applications that include multiple activities with different beneficiaries. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG

dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.

(F) Statutory - Low and Moderate Income (LMI) Persons National Objective - Scoring factor. To assist in fulfilling the CDBG statutory requirement for the percentage of program year awards that must meet the LMI National Objective, applications that meet the LMI National Objective for each activity (51 percent low/moderate-income benefit for each activity within the application) will receive 2% of the Maximum Possible RRC Score for each region. Further, to ensure the TxCDBG program meets the statutory LMI National Objective requirement, if the ranking in a region would not result in the award of at least 75 percent of the allocated funds for the LMI national objective, then the TxCDBG will make awards based on a revised ranking to achieve at least a 75 percentage level for LMI awards for the region. If there are not sufficient applications in the region to achieve the 75 percent LMI national objective level, the amount of funds in a region equal to the shortfall in meeting this requirement will be re-allocated to a pool for other LMI national objective projects. Awards from the pool of remaining LMI applications would be based on the marginal competition selection criteria. ~~[Maximum State points--the calculated maximum score is rounded to a whole integer, with Past Selection, Past Performance, and LMI being rounded to a whole integer and CPH points being the difference.]~~

(G) The RRC may not adopt scoring factors that directly negate or offset these state factors.

(f) Other TxCDBG State Responsibilities

(1) The TxCDBG staff may establish the maximum number of regional scoring factors that may be used in order to improve review and verification efficiency. Similarly, the TxCDBG staff may determine that certain regional scoring factors may not be used because the data is not readily available or would require excessive effort to verify the information in a timely manner. To ensure consistency, the TxCDBG staff may determine the acceptable data source for a particular regional scoring factor (such as the unemployment rate.)

(2) The state TxCDBG staff will review each RRC Guidebook to ensure that the scoring procedures are in compliance with 24 CFR §91.320(k)(1)(iv). The regulation states in part that "The statement of method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it and be able to prepare responsive applications." Tx-CDBG staff will also review the scoring factors selected to ensure that all scoring factors are objective. Each RRC must obtain written approval from TxCDBG staff before implementing the RRC scoring process. As part of the approval process of the RRC Guidebook, the TxCDBG state staff may edit the scoring factors for consistency with the Action Plan, or provide further details or elaboration on the objective scoring methodology, data sources and other clarifying details without the necessity of a subsequent RRC meeting.

(3) The state TxCDBG staff may establish:

(A) a deadline for the RRC to adopt objective factors for all of its scoring components and submit its adopted Guidebook incorporating the objective scoring methodology to the state TxCDBG staff for approval;

(B) an RRC scoring review appeals process in the Guidebook Instructions and/or the Texas Administrative Code.

(4) In the event that an RRC fails to approve an objective scoring methodology to the satisfaction of the TxCDBG consistent with the requirements in this Action Plan by the established deadline or if the RRC fails to implement the approved methodology, TxCDBG will

establish for the region scoring factors as described in Appendix B for the 2011/2012 application cycle.

(5) Only the state TxCDBG staff may disqualify an application submitted in a region. The regional scores for RRC factors and the ranking of applications are not considered final until they have been reviewed and approved by the state TxCDBG staff.

(6) An oversubscription pool may be conducted that would use the scoring criteria specified in the marginal competition section that directly follows this section.

(g) Forward Commitments to Avoid Application Threshold Issues

(1) As a pilot program under the Community Development Fund, the TxCDBG may designate conditional commitments, contingent upon receiving future CDBG funds from HUD, to make awards to certain eligible applications within a region using future regional Community Development Fund allocations.

(2) A Regional Review Committee may elect to opt out of this pilot program. If the RRC elects to opt out, forward commitments will not be available to any applicant within the region. Note: if the RRC elects to opt out, projects as described below would not be eligible for awards in that region.

(3) These forward commitments would be made under the following terms and conditions:

(A) The purpose of approving a commitment is to allow an applicant to provide a source of funding in conjunction with a larger project where the use of these TxCDBG funds will not occur until several years into the project. It may not be used for other purposes, as determined by TxCDBG staff. (For example, the commitment would provide funding for the water connections associated with a project to build a new water treatment plant. The TxCDBG applicant could provide this commitment in its application to the other funding agency to demonstrate supplemental funding for this phase of the water project.)

(B) The associated project must be ready to proceed within 6 months of receiving the forward commitment, including submission of an application to all other sources of supplemental funding for the complete project. The supplemental funds from other sources that will be used in conjunction with the TxCDBG funds must be committed and awarded to the applicant within 12 months from the date of the TxCDBG commitment.

(C) A maximum of four commitments may be made under this pilot program.

(D) The TxCDBG staff will determine eligible applicants within a region that would qualify and be offered this option. In making this decision, TxCDBG staff will consider, among other things, the anticipated number of months required to before TxCDBG funds would be expended given the magnitude and nature of the project, the regulatory approvals required, the sources of other funding to be provided to the project, and the ranking within the region. If there are more than four eligible applicants that would qualify, a tiebreaker based on the State score as described in Community Development Fund Marginal Competition would be used to determine the four commitments to be made.

(E) For the year the commitment is awarded to the recipient through a contract from TxCDBG, the amount provided for the commitment would be subtracted from the total regional Community Development Fund allocation amount prior to allocation to other eligible applications in the regional Community Development Fund competition.

(F) Not more than two commitments may be outstanding (without fully executed TxCDBG contracts) in any given region at any time.

(G) The TxCDBG commitment would be considered an award to the applicant in the year it was awarded for purposes of scoring.

(H) Termination of commitment: The commitment may be terminated if the applicant does not receive the supplemental funding for the project or fails to comply with other commitment requirements.

(I) Subject to funding availability: All commitments are subject to the TxCDBG program receiving a sufficient regular annual allocation amount from HUD and consequently the Community Development Fund receiving sufficient funds. The TxCDBG may use deobligated funds/program income if available and considered appropriate. The commitment does not obligate TxCDBG or the Department to use any other source of funds to provide the amount committed.

(J) Contingency Plan: The applicant must provide Tx-CDBG with a contingency plan to outline the source of replacement funds to complete the project should the TxCDBG regular annual HUD allocation or deobligated funds/program income diminish to the point that the commitment cannot be funded.

[(f) If the Regional Review Committee for a region fails to adopt an Objective Methodology for the Program Year 2009 and 2010 Community Development Fund the following scoring criteria will apply: The RRC's Project Priorities taken from the TxCDBG approved RRC Scoring Guidelines for the region for the 2007-2008 CD/CDS cycle.]

[(1) Regional Review Committee Project Priorities (100 points) The RRC's Project Priorities taken from the TxCDBG approved RRC Scoring Guidelines for the region for the 2007-2008 CD/CDS cycle. (Adjusted if necessary for an objective methodology as described in the PY 2009 TxCDBG Action Plan.)]

[(2) Community distress (total-55 points). All community distress factor scores are based on the population of the applicant. An applicant that has 125% or more of the average of all applicants in its region of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in its region on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in its region on the per capita income factor will receive the maximum number of points available for that factor.]

[(A) percentage of persons living in poverty-25]

[(B) per capita income-20]

[(C) unemployment rate-10]

[(3) Benefit to low- and moderate-income persons (total-20 points). Applications that meet the Low and Moderate Income National Objective for each activity (51 percent low/moderate-income benefit for each activity within the application) will receive 20 points.]

[(4) Project impact (total-175 points).]

[(A) Information submitted in the application or presented to the Regional Review Committees is used by a committee composed of TxCDBG staff to generate scores on the Project Impact factor. Multi-activity projects which include activities in different scoring ranges receive a combination score within the possible range. Each application is scored by a committee composed of TxCDBG staff. Each

committee member separately evaluates an application and assigns a score within a predetermined scoring range based on the application activities. The separate scores are then totaled and the application is assigned the average score. The scoring ranges used for Project Impact scoring are:]

[(i) water activities, sewer activities, and housing activities (145 to 175 points);]

[(ii) eligible public facilities in a defense economic readjustment zone (145 to 175 points);]

[(iii) street paving, drainage, flood control and handicapped accessibility activities (130 to 160 points);]

[(iv) fire protection, health clinic activities, and facilities providing shelter for persons with special needs (125 to 145 points);]

[(v) community center, senior citizens center, social services center, demolition/clearance, and code enforcement activities (115 to 135 points);]

[(vi) gas facilities, electrical facilities, and solid waste disposal activities (110 to 130 points);]

[(vii) access to basic telecommunications, jail facilities and detention facilities (105 to 125 points);]

[(viii) all other eligible activities (85 to 115 points).]

[(B) Other factors that will be evaluated by Department staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:]

[(i) each application is scored based on how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction;]

[(ii) projects that address basic human needs such as water, sewer, and housing generally are scored higher than projects addressing other eligible activities;]

[(iii) projects that provide a first-time public facility or service generally receive a higher score than projects providing an expansion or replacement of existing public facilities or services;]

[(iv) public water and sewer projects that provide a first-time public facility or service generally receive a higher score than other eligible first-time public facility or service projects;]

[(v) projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are given additional consideration;]

[(vi) for water and sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen;]

[(vii) projects designed to address drought-related water supply problems are generally given additional consideration;]

[(viii) water and sewer projects that provide first-time water or sewer service through a privately-owned for-profit utility or an expansion/improvement of the existing water or sewer service provided through a privately-owned for-profit utility may, on a case-by-case basis, receive less consideration than the consideration given to projects providing these services through a public nonprofit organization;]

[(ix) projects designed to conserve water usage may be given additional consideration;]

{(x)} water and sewer projects from applicants that demonstrate a long term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and Texas Commission on Environmental Quality (TCEQ) system requirements);]

{(xi)} consideration will be given to those water and sewer systems that have agreed to undertake improvements to their systems that TCEQ's recommendation but are not under an enforcement order because of this agreement;]

{(xii)} projects that consider the Department's Community Viability Index in establishing the issues to be addressed;]

{(xiii)} projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy).]

{(5)} Matching Funds (total—60 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored depends on the project type and the beneficiary population served. If the project benefits residents of the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the residents of the entire unincorporated area of the county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the participating applicants according to the 2000 census. Applications for housing rehabilitation and for affordable new permanent housing for low- and moderate-income persons receive the 60 points without including any matching funds. This exception is for housing activities only. Sewer or water service line/connections are not counted as housing rehabilitation. Demolition/clearance and code enforcement, when done in the same target area are counted as part of the housing rehabilitation activity. When demolition/clearance and code enforcement are proposed without housing rehabilitation activities, then the match score is still based on actual matching funds committed by the applicant. Applications which include additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities. Program funds cannot be used to install street/road improvements in areas that are not currently receiving water or sewer service from a public or private service provider unless the applicant provides matching funds equal to at least 50% of the total construction cost budgeted for the street/road improvements. This requirement will not apply when the applicant provides assurance that the street/road improvements proposed in the application will not be impacted by the possible installation of water or sewer lines in the future because sufficient easements and rights-of-way are available for the installation of such water or sewer lines. The terms used in this paragraph are further defined in the current application guide for this fund.]

{(A)} Applicants with populations equal to or less than 1,500 according to the 2000 census;]

{(i)} match equal to or greater than 5.0% of grant request—60 points;]

{(ii)} match at least 4.0% but less than 5.0% of grant request—40 points;]

{(iii)} match at least 3.0% but less than 4.0% of grant request—20 points;]

{(iv)} match at least 2.0% but less than 3.0% of grant request—10 points;]

{(v)} match less than 2.0% of grant request—0 points.]

{(B)} Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census;]

{(i)} match equal to or greater than 10% of grant request—60 points;]

{(ii)} match at least 7.5% but less than 10% of grant request—40 points;]

{(iii)} match at least 5.0% but less than 7.5% of grant request—20 points;]

{(iv)} match at least 2.5% but less than 5.0% of grant request—10 points;]

{(v)} match less than 2.5% of grant request—0 points.]

{(C)} Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census;]

{(i)} match equal to or greater than 15% of grant request—60 points;]

{(ii)} match at least 11.5% but less than 15% of grant request—40 points;]

{(iii)} match at least 7.5% but less than 11.5% of grant request—20 points;]

{(iv)} match at least 3.5% but less than 7.5% of grant request—10 points;]

{(v)} match less than 3.5% of grant request—0 points.]

{(D)} Applicants with populations over 5,000 according to the 2000 census;]

{(i)} match equal to or greater than 20% of grant request—60 points;]

{(ii)} match at least 15% but less than 20% of grant request—40 points;]

{(iii)} match at least 10% but less than 15% of grant request—20 points;]

{(iv)} match at least 5.0% but less than 10% of grant request—10 points;]

{(v)} match less than 5.0% of grant request—0 points.]

{(6)} Other considerations (total—40 points). An applicant receives up to 40 points on the following three factors.]

{(A)} Past Selection (10 points)—10 points are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award.]

~~{(B) Past Performance (total—20 points). An applicant can receive from thirty (30) to zero (0) points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's most recent TxCDBG contract that has reached the end of the original contract period stipulated in the contract within the past 4 years. The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on Tx-CDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include the following:}~~

~~{(i) The applicant's completion of the previous contract activities within the original contract period.}~~

~~{(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports.}~~

~~{(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission.}~~

~~{(iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.}~~

~~{(v) The applicant's timely response to audit findings on previous TxCDBG contracts.}~~

~~{(vi) The expenditure timeframes on the applicable TxCDBG contracts.}~~

~~{(C) Cost per Household (total—10 points). The total amount of TxCDBG funds requested by the applicant is divided by the total number of households benefiting from the application activities to determine the TxCDBG cost per beneficiary. (Use pro rata allocation for multiple activities.) When necessary, a weighted average is used to score to applications that include multiple activities with different beneficiaries. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.}~~

~~{(i) Cost per beneficiary is equal to or less than \$8,750—10 points.}~~

~~{(ii) Cost per beneficiary is greater than \$8,750 but equal to or less than \$17,500—8 points.}~~

~~{(iii) Cost per beneficiary is greater than \$26,500 but equal to or less than \$26,500—5 points.}~~

~~{(iv) Cost per beneficiary is greater than \$26,500 but equal to or less than \$35,000—2 points.}~~

~~{(v) Cost per beneficiary is greater than \$35,000—0 points.}~~

~~§255.4. Planning/Capacity Building Fund.~~

~~(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community~~

development projects or to prepare other needed planning elements (including telecommunications and broadband needs). All planning projects awarded under this fund must include a section in the final planning document that addresses drought-related water supply contingency plans and water conservations plans. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds biennial basis [~~annually~~] if all previous planning/capacity building contracts with the Department have been totally reimbursed by the Department.

(1) A cash match equal to or greater than 20% of the total TxCDBG funds requested is required of all applicants having a population over 5,000, a cash match equal to or greater than 15% of the total TxCDBG funds requested is required of all applicants having a population over 3,000 but equal to or less than 5,000, a cash match equal to or greater than 10% of the total TxCDBG funds requested is required of all applicants having a population over 1,500 but equal to or less than 3,000, and a cash match equal to or greater than 5% of the total TxCDBG funds requested is required of all applicants having a population of less than 1,501. The population of an applicant is based on the 2000 census unless an applicant submits a survey conducted in accordance with §255.1(k) of this title (relating to General Provisions). In lieu of providing the cash match specified in this paragraph, and as further described in the most recent application guide for this fund, an applicant may agree to pay out of its own resources for other eligible planning activities described on the matrix included in such application guide.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title, in order to be eligible to apply for planning/capacity building funding, an applicant under this section must document that at least 51% of the persons in the area who would benefit from the implementation of the proposed planning activity are of low and moderate income.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2011 [2009] and 2012 [2010] program years pursuant to a statewide competition held during the 2011 [2009] program year. Applications for funding from the 2011 [2009] and 2012 [2010] program year allocations must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures. Scoring and the recommended ranking of projects are done by Department staff with an opportunity for comments [~~input~~] from the regional review committees. The application and selection procedures consist of the following steps.

(1) Prior to the application deadline, each eligible jurisdiction may submit one application for funding under the planning/capacity building fund. An applicant may not submit an application under this fund and also under the colonia fund if the proposed activity under each application is the same or substantially similar. One copy of the application should be provided to the applicant's regional planning commission (Council of Government), if applicable, [~~review committee~~] and two copies (one original and one copy) must be submitted to the Department.

(2) Upon receipt of an application, the Department staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. Results of this initial staff review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified by providing missing documentation (but not completing an incomplete application) within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments become part of the application file, provided such comments are received by the Department prior to scoring of the applications.

(4) The Department staff generate scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, are used by the Department staff to generate scores on the planning strategy and products factors.

(5) The Department generates scores on selection criteria relating to community distress, project design, and planning strategy and products. Scores on the factors in these categories are derived from standardized data from the Census Bureau, Texas Workforce Commission, or from information provided by the applicant.

(6) Scores on all factors are totaled to obtain project rankings.

(7) Upon the announcement of the 2011 [2009] and 2012 [2010] program year contract awards, the Department staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(d) Selection criteria. The following is an outline of the selection criteria used by the Department for selection of the projects under the planning/capacity building fund. Four hundred thirty points are available.

(1) Community distress (total--55 points). All community distress factor scores are based on the total population of the applicant.

(A) Percentage of persons living in poverty--up to 25 points

(B) Per capita income--up to 20 points

(C) Unemployment rate--up to 10 points

(2) Benefit to Low/Moderate Income Persons (total--0 Points). Applicants are required to meet the 51% low/moderate income benefit as a threshold requirement, but no score is awarded on this factor.

(3) Project Design--375 Points (Maximum).

(A) Program Priority (up to 50 points)--Applicant chooses its own priorities here with 10 points awarded per priority as provided in clauses (i) - (iii) of this subparagraph.

(i) Base studies (base mapping, housing, land use, population components) are recommended as one selected priority for applicants lacking updated studies unless they have been previously funded by TxCDBG or have been completed using other resources.

(ii) An applicant requesting TxCDBG funds for fewer than five priorities may receive point credit under this factor for planning studies completed within the last 10 years that do not need to be updated. An applicant requesting TxCDBG funds for a planning study priority that was completed within the past 10 years using TxCDBG funds would not receive scoring credit under this factor.

(iii) Applicants should not request funds to complete a water or sewer study if funds have been awarded within the last two years for these activities or funds are being requested under other Tx-CDBG fund categories to build these systems.

(B) Base Match (total--0 Points). The population will be based on available information in the latest national decennial census.

(i) Five percent match required from applicants with population equal to or less than 1,500.

(ii) Ten percent match required from applicants with population over 1,500 but equal to or less than 3,000.

(iii) Fifteen percent match required from applicants with population over 3,000 but equal to or less than 5,000.

(iv) Twenty percent match required from applicants with population over 5,000.

(4) Areawide Proposals (total--50 points). Applicants with jurisdiction-wide proposals because the entire jurisdiction is at least 51 percent low/moderate-income qualify for these points. County applicants with identifiable, unincorporated communities may also qualify for these points provided that incorporation activities are underway. Proof of efforts to incorporate is required. County applicants with identifiable water supply corporations may apply to study water needs only and receive these points.

(5) Planning strategy and products (total 275 points).

(A) Planning Strategy and Products (50, 30 or 20 points possible, if previous plan implementation shown.):

(i) An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 2000 program year and has not received any subsequent planning/capacity building fund contracts--50 points.

(ii) An applicant which has received previous planning/capacity building funding and demonstrates that at least three previous planning recommendations have been implemented, i.e., funds from any source have been spent to implement recommendations included in the plans--30 points.

(iii) An applicant which has participated in the program established under this section and demonstrates implementation of two of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but demonstrates that conditions have changed to warrant new planning for the same activities--20 points.

(iv) Previous recipients of Planning and Capacity Building Funds since program year 2000 scored under clauses (ii) and (iii) of this subparagraph that have not implemented the previously funded activities, and there are no special or extenuating circumstances prohibiting implementation, will not receive points under the "previous planning" category. Implementation must be completely documented in the original submission of the application and its questionnaire. Further documentation will not be requested.

(B) Proposed Planning Effort (up to 225 points) based on an evaluation of the following:

(i) Community Needs Assessment (Must have both items to get 10 points). Needs identified by priority (7 points); Documentation included of citizen input by three or more non-elected citizens involvement (3 points).

(ii) Good hearings' notices, timeliness (up to 25 points). Hearing notices and publication happened as described in the application guide and all documentation submitted in original application.

(iii) Description of Needs Addressed in the Application [Anticipated Actions] (Must have both items):

(I) Applicant has included its proposed planning activities [anticipated actions] to address each listed need (10 points);

(II) If only one hearing to determine needs and no other means of needs assessment, is the #1 need in the locality's Community Development [CD] application's Needs Assessment the same as the #1 need in the locality's PCB application's Needs Assessment? If no, subtract 20 points.

(iv) Community is organized as evidenced by a citizens advisory committee, or documents Texas Historical Commission Main Street designation, or previous successful PCB contract close-out since 2000 (with no more than a two-year contract period for PCB performance since PY 2000), thereby indicating for purposes here that it would ensure a planning process or plan implementation (up to 15 points).

(v) Applicant's resolution specifically names activities on Table 2 for which it is applying (up to 5 points).

(vi) According to the application, applicant is applying for planning only; no construction activities proposed for 2011-2012 [2009-2010] TxCDBG funding (up to 23 points).

(vii) Table 1, Description of Planning Activity (up to 5 points, One (1) point apiece)

(I) Originally submitted TABLE 1 requests eligible activities;

(II) Originally submitted TABLE 1 proposes an inventory, analysis and plan;

(III) Originally submitted TABLE 1 addresses identified needs;

(IV) Originally submitted TABLE 1 activities match Table 2 planning elements;

(V) Originally submitted TABLE 1 describes or indicates an implementable strategy.

(viii) Table 2, Benefit to Low/Mod Income Persons (Must have all items, if applicable, to get 5 points):

(I) Amount requested in original submission is less than or equal to matrix prescribed amount;

(II) If special activity funding is requested, the amount was negotiated, as per the matrix;

(III) All proposed activities in original application relate to described needs and resolution.

(ix) Community Base Questionnaire: Original was complete; entire questionnaire included with the original application (up to 3 points). Subtract one (1) point for each blank or non-response where an answer space is provided and an answer is needed to provide a score anywhere on this form up to a maximum of -3.

(x) Staff Capacity: Applicant has demonstrated staff capacity, by having either a Full-time city manager or city administrator; or Full-time planner or documented planner on retainer (up to 2 points).

(xi) Organization for planning: One of the following exists within the applicant's jurisdiction: Planning & Zoning Commission; Planning Commission; Zoning Commission; Zoning Board of Adjustment; Citizens Advisory Committee; or Other local group involved (up to 1 point).

(xii) Applicant has one organization for planning that met seven (7) or more times per calendar year. May require documentation (up to 5 points).

(xiii) Applicant has at least three of the following codes or ordinances passed (or updated) since January 1, 1990, according to the original application: Zoning, Building, Subdivision, Gas Natural, Electrical, Fire, or Plumbing (up to 3 points).

(xiv) Applicant has zoning and no land use and future land use maps (subtract 3).

(xv) Zoning was passed before land use plan was passed. In this instance, the zoning/zoning district map will not be considered as the land use plan (subtract 3).

(xvi) Applicant has at least two of the following codes or ordinances passed or updated since January 1, 1990, according to the original application: Mobile Home, Minimum Standards Housing, Flood Plain, Dangerous Structures, or Fair Housing (up to 3 points).

(xvii) Applicant has at least three (3) of the following elements not funded through TxCDBG less than 10 years old (completed since October 8, 2000 [September 30, 1998]), according to the application; or, will have in place the following element(s) prior to awards: Land Use, Water System, Housing, Wastewater, Street Plan, Drainage, ED Plan, Solid Waste, CBD Plan, or CIP (2 points maximum; but no points, if reapplying for TxCDBG funding for same elements that were completed within the last ten years using TxCDBG funds).

(xviii) Applicant has both: property tax and sales tax (up to 10 points).

(xix) According to the application, applicant has been successful in collecting an average of 95% or more of its property taxes for the two years of 2008 [2006] and 2009 [2007] (up to 3 points).

(xx) Applicant reports it has a code enforcement officer (1 point).

(xxi) According to applicant, population change from 2000 to present is (up to 10 points):

(I) Greater than 5% but less than or equal to 10% (2 points);

(II) Greater than 10% but less than or equal to 15% (4 points);

(III) Greater than 15% but less than or equal to 20% (6 points);

(IV) Greater than 20% but less than or equal to 25% (8 points);

(V) Greater than 25% (10 points).

(xxii) Applicant reports it has passed a one-half cent sales tax to fund economic development activities (2 points).

(xxiii) Applicant has performed any two activities to attract or retain business and industry (2 points).

(xxiv) Applicant has applied for federal or state funds (other than TxCDBG) in the last three years (2007, 2008, and 2009 [since January 1, 2005]) or is currently applying (2 points).

(xxv) Applicant is specifically requesting funding under this application for a Capital Improvement Program or has

indicated in the application that a capital improvement programming process is routinely accomplished (1 point).

(xxvi) Applicant reports it has bonded debt as of June 30, 2009 [2008] indicating local commitment and an attempt to control problems and implement improvements (4 points).

(xxvii) Applicant reports its per capita bonded debt as less than \$500 as of June 30, 2009 [2008] generally indicating some additional debt capacity; and, perhaps, indicating the proposed activities will result in the development of a viable and implementable strategy and be an efficient use of grant funds (10 points).

(xxviii) Applicant reports its total debt as less than 10 percent of total market value as of June 30, 2009 [2008] (7 points).

(xxix) Applicant reports its annual debt service as less than 20 percent of annual revenues as of June 30, 2009 [2008] (6 points).

(xxx) Applicant is in a COG region which had no recipients of TxCDBG Planning and Capacity Building Funds in the previous application cycle--HOTCOG, PRPC, and SETRPC [BVCOG, CAPCOG, CTCOG, CVCOG, DETCOG, LRGVDC, PRPC, SETRPC] (5 points).

(xxxi) Applicant is requesting fewer than five (5) priority activities and is requesting no more than the dollar amount prescribed in the matrix and no Special Activities requested (6 points).

(xxxii) Applicant is requesting planning funds strictly according to the matrix after competing unsuccessfully last competition or applicant has a population shown on Table 2 of at least 200 but less than or equal to 600 (5 points).

(xxxiii) Commitment, as exhibited by match, based on 2000 Census (up to 5 points). Applicant is contributing the following percentage more than required over the base match amount for its population level:

- (I) less than 5% (0 points);
- (II) 5% but less than 10% more than required (2 points);
- (III) 10% but less than 15% more than required (3 points);
- (IV) 15% but less than 20 more than required (4 points); or
- (V) At least 20% more than required (5 points);

(xxxiv) Application was received in a complete state; that is, a review letter did not have to request any missing application components, information requested in the application's forms or documentation that must be attached as instructed in the application. Mathematical tabulations and beneficiary data derived from census data must be correct upon receipt. Beneficiary information derived from a survey is an exception. Survey data corrected or changed by Department when the applicant is qualifying using only survey data or in combination with census data may be changed in the application without penalty. Applicant will not qualify to compete, if the effect of any change is to drop the low/mod rate below 51 percent (15 points).

(xxxv) Applicant has listed at least three indications of the locality's likelihood to stay directly involved in the planning process and to implement the proposed planning (1 point).

(xxxvi) Special Impact. Whether the list referenced above indicates in the top three reasons that some significant event will

occur or has occurred in the region that may impact ability to provide services, such as, a factory locating in the area that will increase jobs, the announced closure of an employer that will reduce jobs; declared natural disaster, or, for example, the announcement of construction of a major interstate highway in the area, etc. (1 point).

(xxxvii) Applicant has no overdue Audit Certifications Forms or Single Audits or audit resolutions as of October 8, 2010 [September 30, 2008] according to Compliance Unit records (2 points).

(xxxviii) Applicant has never received a TxCDBG grant and the application indicates the applicant has currently a property tax and a sales tax (10 points).

§255.6. Urgent Need Fund.

(a) General provisions. Urgent need assistance is contingent upon the availability of funds for activities that will restore water or sewer infrastructure whose sudden failure has resulted in either death, illness, injury, or pose an imminent threat to life or health within the affected applicant's jurisdiction. The infrastructure failure must not be the result of a lack of maintenance and must be unforeseeable. As an initial step, TxCDBG undertakes an assessment of whether the situation is reasonably considered unforeseeable. An application for urgent need assistance will not be accepted by the TxCDBG until discussions between the potential applicant and representatives of the TxCDBG, the Texas Commission on Environmental Quality (TCEQ), and the Texas Water Development Board (TWDB) have taken place. Through these discussions, a determination shall be made whether the situation meets TxCDBG urgent need threshold criteria; whether shared financing is possible; whether financing for the necessary improvements is, or is not, available from the TWDB; or that the potential applicant does, or does not, qualify for TWDB assistance.

(b) Threshold requirements. In addition to the threshold requirements set forth in §255.1(h) and (n) of this title (relating to General Provisions), each of the following requirements must be satisfied in order to be eligible for funding under this fund:

(1) The situation addressed by the applicant must not be related to a proclaimed state disaster declaration or a federal disaster declaration.

(2) The situation addressed by the applicant must be both unanticipated and beyond the control of the local government (e.g., not for facilities or equipment beyond their normal, useful life span).

(3) The problem being addressed must be of recent origin. For urgent need assistance, this means that the situation first occurred or was first discovered no more than 30 days prior to the date that the potential applicant provides a written request to the TxCDBG for urgent need assistance. The urgent need fund will not fund projects to address a situation that has been known for more than 30 days or should have been known would occur based on the applicants existing system facilities.

(4) Each applicant for these funds must demonstrate that local funds or funds from other state or federal sources are not available to completely address the problem.

(5) The distribution of these funds will be coordinated with other state agencies.

(6) The infrastructure failure cannot have resulted from a lack of maintenance.

(7) Urgent need funds cannot be used to restore infrastructure that has been cited previously for failure to meet minimum state standards.

(8) The infrastructure failure cannot have been caused by operator error.

(9) The infrastructure requested by the applicant cannot include back-up or redundant systems.

(10) TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation.

(11) The urgent need fund will not finance temporary solutions to the problem or circumstance.

(c) Start of construction. Construction on an urgent need fund project must begin within ninety (90) days from the start date of the TxCDBG contract. The TxCDBG reserves the right to deobligate the funds under an urgent need fund contract if the grantee fails to meet this requirement.

(d) Matching funds. Each applicant for urgent need funds must provide matching funds. If the applicant's 2000 census population is equal to or fewer than 1,500 persons, the applicant must provide matching funds equal to 10 percent of the TxCDBG funds requested. If the applicant's 2000 census population is over 1,500 persons, the applicant must provide matching funds equal to 20 percent of the TxCDBG funds requested. For county applications where the beneficiaries of the water or sewer improvements are located in unincorporated areas, the population category for matching funds is based on the number of project beneficiaries.

§255.8. Regional Review Committees.

(a) Composition. There is a regional review committee in each of the 24 state planning regions. Each committee consists of at least 12 members appointed at the pleasure of the governor. ~~Composition of each regional committee reflects geographic diversity within the region, difference in population among eligible localities, and types of government (general law cities, home rule cities, and counties). The chairperson of the committee is also appointed by the governor. Members of the committee serve two-year staggered terms. An individual may not serve as a member of a regional review committee while serving as a member of the State Community Development Review Committee.~~

(b) Role. Under the Community Development Fund each Regional Review Committee is responsible for determining local project priorities and objective factors based on public input in accordance with the requirements in the applicable TxCDBG Action Plan. The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors. Each regional review committee may review and comment on other TxCDBG applications.

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the TxCDBG.

(1) RRC Must Notify Applicants of Public Hearing to Adopt Local Project Priorities and Objective Scoring Factors.

(A) The RRC proceedings are subject to the Texas Open Meetings Act. The notice of the public hearing and agenda to determine local project priorities and objective scoring criteria must be posted electronically in the Secretary of State's internet site under the Texas Register/Open Meetings, <http://www.sos.state.tx.us/texreg/>. The noti-

fication process requires three days (72-hours) advance notice. The public hearing information must include the date, time and place of the RRC public hearing and the full agenda.

(B) In addition, the RRC must notify each eligible locality in the region in writing of the date, time and place of the RRC public hearing at least five days prior to the public hearing. One of the following four methods must be utilized when sending the notice: certified mail; electronic mail; first class (regular) mail, with a return receipt for local signature enclosed; or deliver in person (e.g., at a Council of Governments (COG) meeting);

(C) A notice of the public hearing must be published in a regional newspaper in the region at least three days in advance of the actual meeting. A published newspaper article is acceptable in lieu of a public notice if it meets the content (date, time, location and purpose) and timing requirements.

(D) The RRC must provide for public comments on the public hearing agenda. RRC discussions, deliberations and votes must be taken in public and must comply with the Texas Open Meetings Act.

(2) Quorum Required for Public Hearing. A public hearing of the RRC requires a quorum of seven members (regardless of status of term or elected office) appointed by the governor. Each Regional Review Committee must establish a policy that prohibits voting by committee members who arrive late or do not attend the entire public hearing held to adopt local project priorities and objective scoring factors and other RRC procedures.

(3) Only Appointed RRC Members May Vote on RRC Actions. An appointed member may designate a local official alternate from his/her city or county to participate in the RRCs deliberations for the purpose of meeting a quorum. This alternate person must be authorized in writing from the official being represented prior to his/her participation at any RRC meeting where voting is to occur. Please note, however, that proxies cannot vote on RRC matters. (This means that proxies may not vote on organizational matters, selection of project priorities, objective scoring factors, and any other related scoring procedures.) Proxies are there to satisfy the quorum requirements.

(4) RRC May Provide Information to the Department [ORCA] Concerning Threshold Criteria. RRCs are encouraged to provide information that would assist the Department [ORCA] in determining applicant compliance with eligibility thresholds and other information that may be considered by the Department [ORCA] in the state scoring factors.

(d) RRC Responsible for Adopting Local Project Priorities and Objective Scoring Factors.

(1) Preliminary Meetings to Obtain Public Input and Provide Input to the RRC for Consideration During the Public Hearing to Discuss, Select, and Adopt Scoring Factors. The RRCs may hold preliminary meetings prior to the public hearing to obtain public input regarding priorities and scoring factors. Preliminary meetings held by the RRC are subject to the Texas Open Meetings Act. The RRC must notify each eligible locality in the region of the date, time and place of the preliminary meeting at least five days in advance of the meeting by first class (regular) mail, electronic mail, or telephone call. If a quorum is not established, the RRC preliminary meetings may be still be held, but no formal action may be taken. Sample scoring criteria may be developed with public participation and submitted to the Department [ORCA] for preliminary review and for full discussion and deliberation by the RRC during the public hearing.

(2) Hold Public Hearing to Discuss, Select, and Adopt Scoring Factors. During the public hearing to discuss priorities and

adopt objective scoring criteria, the public must be given an opportunity to comment on the priorities and the scoring criteria being considered by the RRC. The RRC may limit the duration of public comment period and length of time for comments. The final selection of the scoring factors is the responsibility of each RRC and must be consistent with the requirements in the applicable TxCDBG Action Plan. The RRC may not adopt scoring factors that directly negate or offset the TxCDBG state [ORCA] scoring factors.

(3) RRC Indicates How Responses Will Be Scored and Identify Data Sources. The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC has adopted [RRC's adoption of] its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(e) RRC Selects Administrative Support Staff. The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support: Regional Council of Governments (COG), TxCDBG staff or TxCDBG designee, or a combination of COG and TxCDBG staff or TxCDBG designee. The RRC Guidebook must identify the entity responsible for calculating the scores and must define the role of each entity selected. The RRC support staff, as determined above, is responsible for reviewing and verifying RRC information found in the application for scoring purposes, but may not accept additional information from applicants. The RRC support staff may only use the application information forwarded by the Department [ORCA] for scoring purposes.

(f) RRC May Establish Maximum Grant Amounts. RRC may establish maximum grant amounts within the following ranges:

(1) Single Jurisdiction Applications: \$275,000 or an amount equal to 12.5% of its combined 2009 and 2010 allocation, whichever is less, up to [\$250,000 -] \$800,000

(2) Multi-Jurisdiction Applications: \$350,000 - \$800,000

(3) Where the RRC takes no action, the grant maximum will be \$800,000 for single jurisdiction applications and \$800,000 for multi-jurisdiction applications.

(4) TXCDBG may grant an exception to the minimum level if funds are distributed among all eligible applicants. In order to ensure there are sufficient funds in the CDBG award to provide a substantial benefit and to provide for construction efficiencies, RRCs should not prioritize application amounts lower than the maximum above or \$200,000, whichever is lower.

(g) RRC Housing and Non-Border Colonia Set-Asides Encouraged. Each Regional Review Committee is highly encouraged to allocate a percentage or amount of its Community Development Fund (CD) allocation to housing projects and for RRCs in eligible areas, non-border colonia projects, for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development Fund activity during the biennial process.

Housing projects/activities must conform to eligibility requirements in 42 U.S.C Section 5305 and applicable HUD regulations.) The RRC must include any set-aside in its Regional Review Committee Guidebook.

(h) RRC Guidebook Adopted and Approved At Least 90 Days Prior to Application Deadline. The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the CD application deadline set by the Department [ORCA]. The RRC shall disseminate the RRC Guidebook to the applicants upon written approval by the Department [ORCA]. The RRC will be required to submit the public input documentation along with the RRC Guidebook to the Department [ORCA].

(i) RRC Scores Are Due to the Department [ORCA] Within 30 Days to Completion of the Deficiency Period. RRC scores are due to the Department [ORCA] within 30 days after the Department [ORCA] notifies the region in writing that the deficiency period is complete. The RRC may not change the requested amount of TxCDBG funding, change the scope of the project proposed, or negotiate the specifics of any application. Regional scores may be calculated and reported to the Department [ORCA] on less than full point intervals (i.e., using decimal points) in order to reduce the chance of ties between regional applicants. The Department [ORCA] will retain these same intervals when calculating the total scores and final rankings. The RRC shall announce the RRC scores to the public after the Department [ORCA] has reviewed the scores for accuracy and written approval is received.

(j) COGs Preparing Applications/Administering CD Contracts May Not Be Selected As RRC Support Staff. COGs that prepare CD Fund applications and manage contracts will not be allowed to serve as Regional Review Committee (RRC) support staff for that region during the public hearing and scoring of applications. These COGs may not prepare the RRC Guidebook or score the region's applications.

(k) Impacts of Failure to Adopt RRC Objective Scoring Factors. If a Regional Review Committee (RRC) for a region fails to approve an objective scoring methodology to the satisfaction of the Tx-CDBG consistent with the requirements in the applicable Action Plan by the established deadline or if the RRC fails to implement the approved methodology then the state TxCDBG staff will begin with the final RRC scoring factors for the 2009/2010 cycle and adjust them based on the following: [ORCA will award 2008 funds for a region after its RRC has adopted an objective scoring for PY 2009. If the RRC does not adopt an objective scoring methodology and submit it to the state Tx-CDBG for approval by the established deadline above, the state Tx-CDBG staff will establish for the region the scoring factors in Appendix A for the 2009 applications as described above and will award PY 2008 funds for a region after the region's applications have been re-scored using the State scoring method in IV (C)(1)(a-e) of the 2007 Action Plan.]

(1) The state may establish the maximum number of regional scoring factors that may be used in order to improve review and verification efficiency and may insert factors to provide a minimum number of factors;

(2) The state may determine that certain regional scoring factors may not be used because the data is not readily available or would require excessive effort to verify the information in a timely manner; and

(3) To ensure consistency, the state may determine the acceptable data source for a particular regional scoring factor.

(l) Appeals. Appeals will be handled in accordance with the following procedures:

(1) Written Notification to RRC and the Department [ORCA]. An applicant must notify its Regional Review Committee and the Department [ORCA] in writing of the alleged specific violation of the RRC scoring guidebook [procedures] within five working days following the date the RRC scores are made available to the applicants (RRC staff support is advised to record this date).

(2) RRC Notification to Applicants of Appeal(s). Within ten working days following the receipt of an appeal, the RRC will notify all applicants in the region that the RRC will reconvene to hear the appeal. The RRC will give notice to applicants that their scores may be affected by the outcome of the appeal and may present pertinent information at the RRC appeal meeting.

(3) RRC Reconvenes to Hear the Appeal(s). In an open meeting, the RRC shall consult with the appellant jurisdiction and consider the appeal. With a simple majority quorum present (i.e., seven members), the RRC will vote to either deny the appeal and forward the appeal and the original regional scores to the Department [ORCA] or to sustain the appeal and proceed with corrective actions. If the RRC sustains the appeal, the RRC makes corrections and forwards the corrected regional scores to the Department [ORCA]. The RRC administrative staff will send a written description of the results of the appeals meeting to all applicants in the region and to the Department [ORCA]. Please note that applicants negatively affected by an original appeal have the same procedural rights to participate in the scoring appeal meeting, including presenting relevant information to the RRC [counter-appeal].

(4) Applicants May Appeal a Decision of the RRC. Within five working days following the decision of the RRC, an applicant may submit an appeal of the RRC decision to the Department [ORCA]. The appeal must be submitted to the Department [ORCA] in writing stating the alleged specific violation of the RRC scoring guidebook [procedure].

(5) The Department [ORCA] Makes Final Scoring and Ranking Determinations. If the appeal is unresolved by the RRC or [] denied at the regional level, and the [or if an] applicant appeals a decision of the RRC, the Department [ORCA] Executive Director will make a final determination as follows: sustain the appeal and make funding recommendations based on corrected regional scores; or reject the appeal and make funding recommendations considering the original RRC submitted scores. The Department [ORCA] will notify the region of the decision and post the final rankings for the region.

(6) An applicant applying under the Community Development Fund may appeal the scoring decision of the Department Executive Director by filing an appeal with the Board. The Board shall hold a hearing on the appeal and render a decision. After the Board renders its decision, the Department will post the final rankings for the region. [Applicants May Appeal a Decision of the ORCA Executive Director and File a Complaint with the ORCA Board. An applicant may appeal a decision of the ORCA Executive Director by filing a complaint with the ORCA Board. The ORCA Board shall hold a hearing on a complaint filed with the Board and render a decision. After the ORCA Board renders a final decision, ORCA will notify the region of the determination and post the final rankings for the region.]

§255.9. *Colonia Fund.*

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects, all other program eligible activities, eligible planning activities projects, and the establishment of colonia self-help centers to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unin-

corporated community that is within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000; and that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia prior to the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990). For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

(1) An applicant may not submit an application under this fund and also under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Eligibility for the Department's [Office's] colonia economically distressed areas program EDAP fund (colonia EDAP fund) is limited to counties, and nonentitlement cities (that meet other eligibility requirements including the geographic requirements of the Colonia Fund), located in those counties, that are eligible under the Tx-CDBG Colonia Fund and Texas Water Development Board's EDAP. Eligible colonia EDAP fund projects shall be located in unincorporated colonias and in eligible nonentitlement cities that annexed the eligible colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. A colonia EDAP fund application cannot be submitted until the construction of the Texas Water Development Board's Economically Distressed Areas Program financed water or sewer system begins.

(4) In accordance with Subchapter Z, Chapter 43, §43.907 of the Texas Local Government Code, eligible colonia areas meeting specified criteria that are annexed by municipalities on or after September 1, 1999, remain eligible for five years after the effective date of the annexation to receive any form of assistance for which the colonia would be eligible if the annexation had not occurred. A nonentitlement city located in a county that is eligible under the TxCDBG Colonia Fund and Texas Water Development Board's Economically Distressed Areas Program that has annexed a colonia area is an eligible applicant for the Department's colonia EDAP fund. However, an application for TxCDBG colonia construction fund or colonia planning fund assistance for a colonia area annexed by a municipality on or after September 1, 1999, may only be submitted by the county where the annexed colonia area is located.

(b) Eligible activities. The only eligible activities under the colonia fund are:

(1) the payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public water and/or sewer improvement;

(2) payment of the cost of planning community development (including water and sewage facilities) and housing activities; costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate

nonprofit organizations and public agencies acting on behalf of the residents; and costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans;

(3) other activities eligible under the Housing and Community Development Act of 1974, §105, as amended, designed to meet the needs of residents of colonias;

(4) the establishment of colonia self-help centers and activities conducted by colonia self-help centers in accordance with the provisions of Chapter 2306, Subchapter Z, of the Texas Government Code.

(5) For the Department's colonia EDAP fund, eligible activities are limited to those that provide assistance to low and moderate income colonia residents that cannot afford the costs associated with connections and service to water or sewer systems funded through the Texas Water Development Board's Economically Distressed Areas Program. In accordance with Rider 7 of the General Appropriations Act, 81st Legislature, the eligible activities are residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system, any part of which is financed under the Texas Water Development Board's Economically Distressed Areas Program.

(c) Types of applications.

(1) Colonia Planning and Construction Fund.

(A) Colonia Construction Component. The allocation is available on a biennial basis for funding from program years 2011 and 2012 through a 2011 annual competition. Applications received by the 2011 program year application deadline are eligible to receive grant awards from the 2011 and 2012 program year allocations. Funding priority shall be given to TxCDBG applications from localities that have been funded through the Texas Water Development Board Economically Distressed Areas Program (TWDB EDAP) where the TxCDBG project will provide assistance to colonia residents that cannot afford the cost of residential service lines, hookups, and plumbing improvements associated with being connected to the TWDB EDAP-funded water or sewer system. A colonia construction application must include an assessment of the effect of the Model Subdivision Rules established pursuant to §16.343 of the Water Code and enforcement actions throughout the county and provide the colonia identification number for the colonias that would receive the project benefit. An eligible county applicant may submit one (1) application for the following eligible construction activities:

(i) Assessments for Public Improvements--The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low- and moderate-income to recover the capital cost for a public improvement.

(ii) Other Improvements--Other activities eligible under 42 U.S.C. §5305 designed to meet the needs of colonia residents.

(B) Colonia Planning Component. A portion of the funds will be allocated to two separate biennial competitions for applications that include planning activities targeted to selected colonia areas (Colonia Area Planning activities), and for applications that include countywide comprehensive planning activities (Colonia Comprehensive Planning activities). Applications received by the 2011 program year application deadline are eligible to receive a grant award from the 2011 and 2012 program year allocations. A Colonia Planning activities application must receive a minimum score for the Project Design selection factor of at least 70 percent of the maximum

number of points allowable under this factor to be considered for funding.

(i) Colonia Area Planning Activities. In order to qualify for the Colonia Area Planning activities, the county applicant must have a Colonia Comprehensive Plan in place that prioritizes problems and colonias for future action. The targeted colonia must be included in the Colonia Comprehensive Plan. An eligible county may submit an application for eligible planning activities that are targeted to one or more colonia areas. Eligible activities include:

(I) Payment of the cost of planning community development (including water and sewage facilities) and housing activities;

(II) costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and

(III) costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

(IV) for any colonia in close proximity to a city, a plan that if implemented could lead to annexation of the colonia by the city.

(ii) Colonia Comprehensive Planning Activities. To be eligible for these funds, a county must be located within 150 miles of the Texas-Mexico border. The applicant's countywide comprehensive plan will provide a general assessment of the colonias in the county, but will include enough detail for accurate profiles of the county's colonia areas. The prepared comprehensive plan must include the following information and general planning elements:

(I) Verification of the number of dwellings, number of lots, number of occupied lots, and the number of persons residing in each county colonia;

(II) Mapping of the locations of each county colonia;

(III) Demographic and economic information on colonia residents;

(IV) The physical environment in each colonia including land use and conditions, soil types, and flood prone areas;

(V) An inventory of the existing infrastructure (water, sewer, streets, drainage) in each colonia and the infrastructure needs in each colonia including projected infrastructure costs;

(VI) The condition of the existing housing stock in each colonia and projected housing costs;

(VII) A ranking system for colonias that will enable counties to prioritize colonia improvements rationally and systematically plan and implement short-range and long-range strategies to address colonia needs;

(VIII) Goals and Objectives;

(IX) Five-year capital improvement program;

(X) An assessment of the effect of the Model Subdivision Rules established pursuant to §16.343 of the Water Code and enforcement actions throughout the county; and

(XI) For any colonia in close proximity to a city, a plan that if implemented could lead to annexation of the colonia by the city.

(2) Colonia Economically Distressed Areas Program (CEDAP) Legislative Set-aside. The allocation is distributed on an as-needed basis. Eligible applicants may submit an application that will provide assistance to colonia residents that cannot afford the cost of residential service lines, hookups, and plumbing improvements associated with being connected to a TWDB EDAP-funded water and sewer system improvement project. An application cannot be submitted until the construction of the TWDB EDAP-funded water or sewer system begins. In accordance with Rider 7 of the General Appropriations Act, 81st Legislature, eligible program costs are residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system, any part of which is financed under the Texas Water Development Board's Economically Distressed Areas Program. If there are an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding, the CEDAP funds may be transferred as appropriate. An applicant may not have an existing CEDAP contract open in excess of 48 months and still be eligible for a new CEDAP award.

(3) Colonia Self-Help Centers Legislative Set-aside. The colonia self-help centers fund is allocated on an annual basis to counties included in Chapter 2306, Subchapter Z, §2306.582, Texas Government Code, and/or counties designated as economically distressed areas under Chapter 17, Texas Water Code. TDHCA has established self-help centers in Cameron County, El Paso County, Hidalgo County, Starr County, and Webb County. If deemed necessary and appropriate, TDHCA may establish self-help centers in other counties (self-help centers have been established in Maverick County and Val Verde County) as long as the site is located in a county that is designated as an economically distressed area under the Texas Water Development Board Economically Distressed Areas Program, the county is eligible to receive EDAP funds, and the colonias served by the center are located within 150 miles of the Texas-Mexico border.

(d) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction component, colonia area planning activities, and colonia comprehensive planning activities. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program.

(2) Upon receipt of an application, the Department [Office] staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Department [Office] prior to scoring of the applications.

(4) The Department [Office] then scores the colonia construction component, colonia area planning activities, and colonia comprehensive planning activities applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Department [Office] evaluates information in each application and other factors before the completion of a final technical review of each application.

(5) Following a final technical review, the Department staff presents the funding recommendations for the 2011 and 2012 colonia fund and colonia EDAP fund to the executive director of the Department who approves grant applications and associated funding awards of eligible counties and municipalities.

(6) Upon announcement of the 2011 and 2012 contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(e) Selection criteria (colonia fund). The following is an outline of the selection criteria used by the Department for scoring colonia fund applications (colonia construction component, colonia area planning activities, and colonia comprehensive planning activities).

(1) Colonia construction component (430 total points maximum).

(A) Community distress (total--35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(i) Percentage of persons living in poverty--15 points

(ii) Per capita income--10 points

(iii) Percentage of housing units without complete plumbing--5 points

(iv) Unemployment rate--5 points

(B) Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TxCDBG funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG funds requested minus the TxCDBG funds requested for administration to determine the percentage of TxCDBG funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(i) 100% to 90% of funds benefiting low to moderate income persons--30 points

(ii) 89.99% to 80% of funds benefiting low to moderate income persons--25 points

(iii) 79.99% to 70% of funds benefiting low to moderate income persons--20 points

(iv) 69.99% to 60% of funds benefiting low to moderate income persons--15 points

(v) Below 60% of funds benefiting low to moderate income persons--5 points

(C) Project priorities (total--195 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(i) activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program--195 points

(ii) first time public water service activities (including yard service lines)--145 points

(iii) first time public sewer service activities (including yard service lines)--145 points

(iv) installation of approved residential on-site wastewater disposal systems for providing first time service--145 points

(v) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--140 points

(vi) housing activities--140 points

(vii) first time water and/or sewer service through a privately-owned for profit utility--135 points

(viii) expansion or improvement of existing water and/or sewer service--120 points

(ix) street paving and drainage activities--95 points

(x) all other eligible activities--20 points

(D) Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing ac-

tivity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG does not consider sewer or water service lines and connections as housing activities. The TxCDBG also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(i) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(I) match equal to or greater than 5.0% of grant request--20 points;

(II) match at least 2.0% but less than 5.0% of grant request--10 points;

(III) match less than 2.0% of grant request--0 points.

(ii) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(I) match equal to or greater than 10% of grant request--20 points;

(II) match at least 2.5% but less than 10% of grant request--10 points;

(III) match less than 2.5% of grant request--0 points.

(iii) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(I) match equal to or greater than 15% of grant request--20 points;

(II) match at least 3.5% but less than 15% of grant request--10 points;

(III) match less than 3.5% of grant request--0 points.

(iv) Applicants with populations over 5,000 according to the 2000 census:

(I) match equal to or greater than 20% of grant request--20 points;

(II) match at least 5.0% but less than 20% of grant request--10 points;

(III) match less than 5.0% of grant request--0 points.

(E) Project design (total--140 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in subparagraph (F) of this paragraph. Each application is scored by a committee composed of TxCDBG staff using the following information submitted in the application:

(i) the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(ii) the TxCDBG cost per low to moderate income beneficiary;

(iii) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund or through community development block grant entitlement funds;

(iv) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(v) the ability of the applicant to utilize the grant funds in a timely manner;

(vi) the availability of grant funds to the applicant for project financing from other sources;

(vii) whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(viii) whether the applicant's proposed use of Tx-CDBG funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

(ix) whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater;

(x) whether the project has provided for future funding necessary to sustain the project;

(xi) whether the applicant has provided any local matching funds for administrative, engineering, or construction activities;

(xii) the applicant's past performance on previously awarded TxCDBG contracts; and

(xiii) proximity of project site to entitlement cities or metropolitan statistical areas.

(F) Project design scoring guidelines. Project design scores are assigned by Department [Office] staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the

calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(i) Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(I) Activities providing first-time public sewer service to the area--maximum score 140 points.

(II) Activities providing first-time public water service to the area--maximum score 140 points.

(III) Installation of approved residential on-site wastewater disposal systems providing first-time sewer service--maximum score 140 points.

(IV) Installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--maximum score 130 points.

(V) Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(VI) Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(VII) Water or sewer activities expanding or improving existing water or sewer system--maximum score 125 points.

(VIII) Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(IX) Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(X) Reconstruction of streets with existing surface pavement--maximum score 90 points.

(XI) Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(XII) All other eligible activities--maximum score 80 points.

(ii) TxCDBG cost per low to moderate income beneficiary. The total amount of TxCDBG funds requested by the applicant is divided by the total number of low to moderate income persons benefiting from the application activities to determine the TxCDBG cost per beneficiary.

(I) Cost per low to moderate income beneficiary is equal to or less than \$2,000. Deduct zero points from the set maximum project design score.

(II) Cost per low to moderate income beneficiary is greater than \$2,000 but equal to or less than \$4,000. Deduct 1 point from the set maximum project design score.

(III) Cost per low to moderate income beneficiary is greater than \$4,000 but equal to or less than \$6,000. Deduct 2 points from the set maximum project design score.

(IV) Cost per low to moderate income beneficiary is greater than \$6,000 but equal to or less than \$8,000. Deduct 3 points from the set maximum project design score.

(V) Cost per low to moderate income beneficiary is greater than \$8,000 but equal to or less than \$10,000. Deduct 4 points from the set maximum project design score.

(VI) Cost per low to moderate income beneficiary is greater than \$10,000 but equal to or less than \$11,000. Deduct 5 points from the set maximum project design score.

(VII) Cost per low to moderate income beneficiary is greater than \$11,000 but equal to or less than \$13,000. Deduct 10 points from the set maximum project design score.

(VIII) Cost per low to moderate income beneficiary is greater than \$13,000 but equal to or less than \$15,000. Deduct 15 points from the set maximum project design score.

(IX) Cost per low to moderate income beneficiary is greater than \$15,000 but equal to or less than \$17,000. Deduct 20 points from the set maximum project design score.

(X) Cost per low to moderate income beneficiary is greater than \$17,000 but equal to or less than \$19,000. Deduct 30 points from the set maximum project design score.

(XI) Cost per low to moderate income beneficiary is greater than \$19,000. Deduct 40 points from the set maximum project design score.

(iii) The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund or through community development block grant entitlement funds.

(I) The nonentitlement county submitted an application under the TxCDBG community development fund 2009/2010 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(II) The nonentitlement county submitted an application under the TxCDBG community development fund 2007/2008 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(III) The entitlement county did not use 2009 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(IV) The entitlement county did not use 2008 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iv) The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(I) The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(II) The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(v) The ability of the applicant to utilize the grant funds in a timely manner.

(I) The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(II) The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(III) The proposed application target area is not located in an area where a service provider already has the certificate of convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(vi) The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

(vii) The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(I) Assessments and fees budgeted in the application are equal to or less than \$100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(II) Assessments and fees budgeted in the application are greater than \$100 but equal to or less than \$200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(III) Assessments and fees budgeted in the application are greater than \$200 but equal to or less than \$300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(IV) Assessments and fees budgeted in the application are greater than \$300 but equal to or less than \$500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(V) Assessments and fees budgeted in the application are greater than \$500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(viii) Applicant's proposed use of TxCDBG funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(ix) The application is for activities other than water or wastewater and the applicant has not already met its basic water and wastewater needs. Deduct 3 points from the set maximum project design score.

(x) The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score.

(G) Past performance. An applicant receives from zero to ten points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's

performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

- (i) The applicant's completion of the previous contract activities within the original contract period.
- (ii) The applicant's submission of the required close-out documents within the period prescribed for such submission.
- (iii) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.
- (iv) The applicant's timely response to audit findings on previous TxCDBG contracts.
- (v) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(H) Colonia Construction Component Marginal Applicant. The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. If the marginal amount available to this applicant is equal to or more than the Colonia Construction Component grant minimum of \$75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. In the event that the marginal amount remaining in the Colonia Construction Component allocation is less than \$75,000, then the remaining funds will be used to either fund a Colonia Planning Fund application or will be reallocated to other established TxCDBG fund categories.

(2) Colonia area planning component (340 Total Points Maximum). The following is an outline of the selection criteria used by the Department [Office] for scoring applications for eligible planning activities under this fund. Three hundred forty points are available.

(A) Community distress (total--up to 35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

- (i) Percentage of persons living in poverty--15 points
- (ii) Per capita income--10 points
- (iii) Percentage of housing units without complete plumbing--5 points
- (iv) Unemployment Rate--5 points

(B) Benefit to low and moderate income persons (total--30 points). Points are awarded based on the low and moderate income percentage for all of the colonia areas where project activities are located according to the following scale:

- (i) 100% to 90% of funds benefiting low to moderate income persons--30 points
- (ii) 89.99% to 80% of funds benefiting low to moderate income persons--25 points
- (iii) 79.99% to 70% of funds benefiting low to moderate income persons--20 points
- (iv) 69.99% to 60% of funds benefiting low to moderate income persons--15 points
- (v) Below 60% of funds benefiting low to moderate income persons--5 points

(C) Project design (total--255 points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by TxCDBG staff using the following information submitted in the application:

- (i) Evidence of severity of need as described in originally received application (total--up to 10 points)
- (ii) Applicant provides documentation that proposed colonia(s) is/are ranked high that is, within the top five colonias in its "comprehensive plan" as submitted to the TxCDBG (up to 30 points)
- (iii) all target area colonia(s) not platted (up to 20 points)
- (iv) all target area colonia(s) with no water (up to 20 points)
- (v) all target area colonia(s) with no wastewater (up to 20 points)
- (vi) all or some target area colonia(s) are partially platted or platted but not recorded (up to 10 points)
- (vii) target area colonia(s) partial water (up to 10 points)
- (viii) target area colonia(s) partial sewer (up to 10 points)
- (ix) Population (total--10 points). The change in county population from 1990 and current HUD estimate is between:
 - (I) greater than 5% but less than or equal to 10% (2 points)
 - (II) greater than 10% but less than or equal to 15% (4 points)
 - (III) greater than 15% but less than or equal to 20% (6 points)
 - (IV) greater than 20% but less than or equal to 25% (8 points)
 - (V) greater than 25% (10 points)
- (x) Needs are clearly identified in original application by priority through a community needs assessment (total--up to 5 points).

(xi) Evidence provided in the original application of citizen input or known citizen involvement in addressing need (total--up to 15 points).

(xii) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--up to 28 points).

(xiii) Proposed planning efforts as described in the application are clear, concise and reasonable (total--up to 20 points).

(xiv) The description of planning activity in the original application:

(I) Originally submitted TABLE 1 requests eligible activities (3 points);

(II) Originally submitted TABLE 1 proposes an inventory, analysis and plan or an eligible activity not previously funded through the Colonia Fund (3 points);

(III) Originally submitted TABLE 1 addresses identified needs (3 points);

(IV) Originally submitted TABLE 1 activities match Table 2 planning elements (3 points);

(V) Originally submitted TABLE 1 describes or indicates an implementable strategy, for example, a capital improvements plan or other method (3 points).

(xv) All proposed activities will be conducted on a colonia-wide basis (10 points).

(xvi) The extent to which any previous planning efforts for colonia areas have been accomplished. Applicant was a previous recipient of Colonia Planning Funds and through implementation of previously funded activities a colonia has been eliminated from colonia status (water, wastewater and housing needs have been provided for). Evidence such as a resolution of the commissioner's court that county has eliminated a colonia from the original colonia list in the comprehensive study or the OAG list thus indicating that the county is organized to implement the plan or would ensure that the plan is implemented. Points will be awarded if applicant is a previous recipient of a Colonia Comprehensive Planning Fund award and certifies completion of all of a colonia's needs since the colonia's problems were last studied (25 points).

(xvii) TxCDBG cost per low to moderate income beneficiary (total--15 points):

(I) the TxCDBG cost per low to moderate income beneficiary is at least 50 percent below the median cost per beneficiary of all eligible applicants (15 points); or

(II) the TxCDBG cost per low to moderate income beneficiary is at or below the median cost per beneficiary of all eligible applicants (10 points); or

(III) the TxCDBG cost per low to moderate income beneficiary is below 150 percent of the median cost per beneficiary of all eligible applicants (7 points); or

(IV) the TxCDBG cost per low to moderate income beneficiary is 150 percent or greater than the median cost per beneficiary of all eligible applicants (5 points).

(xviii) the availability of grant funds to the applicant for project financing from other sources. The area would be eligible for funding under the Texas Water Development Board's Economically Distressed Areas Program (EDAP) or other programs as described in the original application (total--6 points).

(xix) the applicant's past performance on prior Tx-CDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded Tx-CDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent Tx-CDBG contracts that have reached the end of the original contract period stipulated in the contract. The Tx-CDBG may also assess the applicant's performance on existing Tx-CDBG contracts that have not reached the end of the original contract period. Applicants that have never received a Tx-CDBG grant award will automatically receive these points. The Tx-CDBG will assess the applicant's performance on Tx-CDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(I) The applicant's completion of the previous two most recent contracts contract activities within the original contract period (up to 3 points).

(II) The applicant's submission of the required close-out documents for aforementioned contracts within the period prescribed for such submission (up to 3 points).

(III) The applicant's timely response to monitoring findings on previous Tx-CDBG contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(IV) The applicant's timely response to audit findings on previous Tx-CDBG contracts (up to 3 points).

(D) Matching funds (total--20 points). The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities.

(i) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(I) match equal to or greater than 5.0% of grant request--20 points;

(II) match at least 2.0% but less than 5.0% of grant request--10 points;

(III) match less than 2.0% of grant request--0 points.

(ii) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(I) match equal to or greater than 10% of grant request--20 points;

(II) match at least 2.5% but less than 10% of grant request--10 points;

(III) match less than 2.5% of grant request--0 points.

(iii) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(I) match equal to or greater than 15% of grant request--20 points;

(II) match at least 3.5% but less than 15% of grant request--10 points;

(III) match less than 3.5% of grant request--0 points.

(iv) Applicants with populations over 5,000 according to the 2000 census:

(I) match equal to or greater than 20% of grant request--20 points;

(II) match at least 5.0% but less than 20% of grant request--10 points;

(III) match less than 5.0% of grant request--0 points.

(E) The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. The marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Any unobligated funds remaining in the Colonia Area Planning allocation will be reallocated to either fund additional Colonia Comprehensive Planning applications, Colonia Construction Component applications, or will be reallocated to other established TxCDBG fund categories.

(3) Colonia comprehensive planning [~~construction~~] component (200 Total Points Maximum). The following is an outline of the selection criteria used by the Department [~~Office~~] for scoring applications for eligible planning activities under this fund. Two hundred points are available.

(A) Community distress (total--25 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(i) Percentage of persons living in poverty--10 points

(ii) Per capita income--5 points

(iii) Percentage of housing units without complete plumbing--5 points

(iv) Unemployment Rate--5 points

(B) Project design (total--175 points). A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by the Department [~~Office~~] staff using the following information submitted in the application:

(i) the severity of need for the comprehensive colonia planning effort and how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, housing conditions, and the development of short-term and long-term strategies to resolve the identified needs;

(I) Evidence of severity of need as described in originally received application (total--100 points).

(II) Population (total--10 points). The change in county population from 1990 to current HUD estimate is between:

(-a-) greater than 2% but less than or equal to 4% (2 points).

(-b-) greater than 4% but less than or equal to 6% (4 points).

(-c-) greater than 6% but less than or equal to 8% (6 points).

(-d-) greater than 8% but less than or equal to 10% (8 points).

(-e-) greater than 10% (10 points).

(III) Needs are clearly identified in original application by priority through a community needs assessment (total--2 points);

(IV) Evidence provided in the original application of citizen input or known citizen involvement in addressing need (total--2 points);

(V) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--18 points);

(VI) Proposed planning efforts as described in the application are clear, concise and reasonable (total--2 points).

(VII) Proposed planning efforts as described in the application match the needs in the target area (total--2 points).

(VIII) Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--2 points).

(IX) The description of planning activity in the original application:

(-a-) Describes eligible activities (total--1 point).

(-b-) Describes understanding of plan process (total--1 point).

(-c-) Addresses identified needs (total--1 point).

(-d-) Appears to result in solution to problems (total--1 point).

(-e-) Indicates a strategy that can be implemented (total--1 point).

(X) Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total--3 points).

(ii) the extent to which any previous planning efforts for colonia areas have been implemented (total--5 points). Applicant was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation existed;

(iii) whether the applicant provides any local matching funds for project activities. (total--12 points).

(I) At least 20% of TxCDBG requested amount match--12 points.

(II) At least 15% of TxCDBG requested amount but less than 20% match--9 points.

(III) At least 10% of TxCDBG requested amount but less than 15% match--6 points.

(IV) At least 5% of TxCDBG requested amount but less than 10% match--3 points.

(V) Under 5% of TxCDBG requested amount match--0 points.

(iv) the applicant's past performance on previously awarded TxCDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(I) The applicant's completion of the previous contract, two most recent TxCDBG contracts contract activities within the original contract period (up to 3 points).

(II) The applicant's submission of the required close-out documents for aforementioned contracts within the period prescribed for such submission (up to 3 points).

(III) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(IV) The applicant's timely response to audit findings on previous TxCDBG contracts (up to 3 points).

(f) Program guidelines (colonia self-help centers legislative set-aside). The colonia self-help centers legislative set-aside is administered by the Texas Department of Housing and Community Affairs (TDHCA) under an interagency agreement with the Department [Office]. The following is an outline of the administrative requirements and eligible activities under this fund.

(1) The geographic area served by each colonia self-help center shall be determined by the Department [Office] or by the TDHCA. Five colonias located in each established colonia self-help center service area shall be designated to receive concentrated attention from the center. Each colonia self-help center shall set a goal to improve the living conditions of the residents located in the colonias designated for concentrated attention within a two-year period set under the contract terms. The Department [Office] and the TDHCA have the authority to make changes to the colonias designated for this concentrated attention.

(2) The Department's [Office's] grant contract for each colonia self-help center is awarded and executed with the county where the colonia self-help center is located. Each county executes a subcontract agreement with a non-profit community action agency or a public housing authority.

(3) A colonia advisory committee is established and not fewer than five persons who are residents of colonias are selected from the candidates submitted by local nonprofit organizations and the commissioners court of a county where a self-help center is located. One

committee member shall be appointed to represent each of the counties in which a colonia self-help center is located. Each committee member must be a resident of a colonia located in the county the member represents but may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract through the TxCDBG. The advisory committee shall advise the Department [Office] and the TDHCA regarding:

(A) the needs of colonia residents;

(B) appropriate and effective programs that are proposed or are operated through the centers; and

(C) activities that may be undertaken through the centers to better serve the needs of colonia residents.

(4) The purpose of each colonia self-help center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

(A) providing assistance in obtaining loans or grants to build a home;

(B) teaching construction skills necessary to repair or build a home;

(C) providing model home plans;

(D) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

(E) helping to obtain, construct, assess, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets and utilities;

(F) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(G) providing credit and debt counseling related to home purchase and finance;

(H) applying for grants and loans to provide housing and other needed community improvements;

(I) monthly programs to educate individuals and families on their rights and responsibilities as property owners;

(J) providing other eligible services that the self-help center, with the Department's [Office's] approval, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;

(K) providing assistance in obtaining loans or grants to enable an individual or family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and

(L) providing access to computers, the internet, and computer training.

(5) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(g) Selection criteria (colonia EDAP fund). The following is an outline of the application information evaluated by Department's [a committee composed of the Office's] staff.

(1) The proposed use of the colonia EDAP funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the Texas Water Development Board Economically Distressed Area Program.

(2) The ability of the applicant to utilize the grant funds in a timely manner.

(3) The availability of grant funds to the applicant for project financing from other sources.

(4) The applicant's past performance on previously awarded TxCDBG contracts.

(5) Cost per beneficiary.

(6) Proximity of project site to entitlement cities or metropolitan statistical areas.

§255.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program (STEP). The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

(1) Small towns environment program funds can be used to cover material costs, certain engineering costs, administrative costs, and other necessary project costs that are approved by program staff.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for small towns environment program funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Cities and counties receiving 2011 [~~2007~~] and 2012 [~~2008~~] Community Development Fund/~~Community Development Supplemental Fund~~ grant awards for applications that do not include water, sewer, or housing activities are not eligible to receive a 2011 [~~2008~~] grant award from this fund. However, the Department may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 2011 [~~2007~~] or 2012 [~~2008~~] Community Development Fund/~~Community Development Supplemental Fund~~ grant award to finance water and sewer activities that will be addressed through self-help methods.

(b) Eligible activities. For the small towns environment program fund eligible activities are limited to the following:

(1) The installation of facilities to provide first-time water or sewer service.

(2) The installation of water or sewer system improvements.

(3) Ancillary repairs related to the installation of water and sewer systems or improvements.

(4) The acquisition of real property related to the installation of water and sewer systems or improvements (easements, rights of way, etc.).

(5) Sewer or water taps and water meters.

(6) Water or sewer yard service lines (for low and moderate income persons).

(7) Water or sewer house service connections (for low and moderate income persons).

(8) Plumbing improvements associated with providing water or sewer service to a housing unit.

(9) Water or sewer connection fees (for low and moderate income persons).

(10) Rental of equipment for installation of water or sewer.

(11) Reasonable associated administrative costs.

(12) Reasonable associated engineering services costs.

(c) Ineligible activities. Any activity not described in subsection (b) of this section is ineligible under this fund unless the activity is approved by the TxCDBG. Other ineligible activities are temporary solutions, such as emergency inter-connects that are not used on an on-going basis for supply or treatment and back-ups not required by the regulations of the Texas Commission on Environmental Quality. The TxCDBG will not reimburse for force account work for construction activities on the STEP project.

(d) Funding cycle. Applications are accepted two times a year as long as funds are available. Funds will be divided among the two application periods. After all projects are ranked, only those that can be fully funded will be awarded a grant. There will be no marginally funded grant awards. The TxCDBG will not accept an application for STEP fund assistance until TxCDBG staff and representatives of the potential applicant have evaluated the self-help process and TxCDBG staff determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If it is determined that the community meets all of the STEP criteria then an invitation to apply for funds will be extended to the community and the application may be submitted.

(e) Threshold criteria. The self-help response to water and sewer needs may not be appropriate in every community. In most cases, the decision by a community to utilize self-help to obtain needed water and sewer facilities is based on the community's realization that it cannot afford even a "no frills" water or sewer system based on the initial construction costs and the operations/maintenance costs (including debt service costs) for water or sewer facilities installed through conventional financing and construction methods. The following are threshold requirements for the STEP framework: Without all these elements the project may not be considered under the STEP fund.

(1) The community receiving benefits from the project must have one or more sparkplugs (preferably three). Sparkplugs are local leaders willing to both lead and sustain the effort to complete the project. While local officials may serve as sparkplugs, at least two of the three sparkplugs must be residents and not local officials. One of the sparkplugs should have the skills necessary to maintain

the paperwork needed for the project. One of the sparkplugs should have knowledge or skills necessary to lead the self-help effort, and one sparkplug can have a combination of these skills or just be the motivator and problem solver of the group.

(2) The community receiving benefits from the project should exhibit a readiness to proceed with the project. The community's readiness to proceed is based on a strong local perception of the problem and the willingness to take action to solve the problem. A community's readiness to proceed is shown when the following conditions exist:

- (A) A strong local perception of the problem exists.
- (B) The community has the perception that local implementation is the best and maybe only solution to the problem.
- (C) The residents of the community have confidence that they can adequately complete the project.
- (D) The community has no strong competing priority.
- (E) The local government is supportive of the effort and understands the urgency.
- (F) There exists a public and private willingness to pay additional costs if needed such as fees, hook-ups for churches, and other costs.
- (G) Some effort and attention have already been given to local assessment of the problem.
- (H) There is enthusiastic, capable support for the community from the county or regional field staff of any regulatory agency involved with solutions to the problem.

(3) The community receiving benefits from the project should have the capacity and manpower with the skills needed to complete the project and operate applicable construction equipment. The capacity and skills to complete the project include the following:

- (A) Skilled workers within the community such as an electrician, plumber, engineer water system operator and persons with experience operating heavy equipment, and persons with construction skills and pipe laying experience.
- (B) The community has a list of volunteers that includes the tasks that are assigned to each volunteer.
- (C) The community has equipment that will be needed to complete the project.
- (D) The community has letters stating support from local businesses in form of donation of supplies or manpower.
- (E) The community has letter from the water and/or sewer service provider supporting the project and agreeing to provide service.
- (F) A letter from a Certified Public Accountant documenting that applying locality has financial and management capacity to compete project.

(4) The community receiving benefits from the project must be able to show that by completing the proposed project through self-help volunteer methods the community can achieve at least a 40% savings off the retail price of completing the same project through the bid/contract process. The 40% savings and requirement that the project must be performed predominately by community volunteer workers is determined for each water or sewer activity with its own distinct beneficiaries. The information provided to the TxCDBG to document the reduced project cost through self-help includes the following:

(A) Two engineering break-outs of cost, one that shows the retail construction cost and another that shows the self-help cost and demonstrates the 40% savings.

(B) Documents containing material prices and pledges of equipment.

(C) A list of the volunteers by project completion task.

(D) A determination of appropriate technology for the project and the feasibility of project through a letter from an engineer.

(5) Project work, except for any contract administrative activities or engineering services activities, must be performed predominately by community volunteer workers.

(6) To be eligible for additional STEP awards, an applicant must have demonstrated to TxCDBG management that its existing STEP contracts are currently being implemented on schedule in accordance with the applicable contracts and in accordance with any TxCDBG-approved allowances.

(f) Selection procedures.

(1) During each of the two application rounds, the Department staff initially evaluate eligible cities or counties that have expressed an interest in using the self-help method and potentially applying for funding under the STEP Fund. Department staff assess whether self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready along with having the capacity to begin and complete a self-help project. If Department staff determines that the community meets all of the STEP threshold criteria then the community is invited to apply prior to the application deadline.

(2) The Department will not accept an application under the STEP Fund unless this assessment and invitation process is followed.

(3) Applicants invited to apply under the STEP Fund are scored using the selection criteria to determine the ranking.

(4) Following a final technical review, the TxCDBG staff makes funding recommendations to the Executive Director of the Department.

(5) Upon announcement of contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(g) Selection criteria. The following is an outline of the selection criteria used by the Department for scoring applications under the STEP fund. One hundred twenty (120) points are available. A project must score at least 75 points overall and 15 points under the factor in paragraph (2) of this subsection to be considered for funding.

(1) Project impact (total--up to 60 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project impact scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity will be calculated. The percentage of the total TxCDBG construction dollars for each activity will then be multiplied by the appropriate project impact point level. The sum of these calculations will determine the composite project impact score. Factors that are evaluated by the TxCDBG staff

in the assignment of scores within the predetermined scoring ranges for activities include, but are not limited to, how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction; and projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are generally given additional consideration. The different project impact scoring levels and scoring ranges within each level are:

- (A) first time water and/or sewer service--up to 60--40 points
- (B) water activities addressing drought conditions--up to 60--40 points
- (C) activities addressing severe impact to a water system (imminent loss of well, transmission line, supply impact)--up to 60--40 points
- (D) water and/or sewer activities addressing an imminent threat to health as documented by the Texas Commission of Environmental Quality or Texas Department of State Health Services--60--40 points
- (E) Problems due to severe sewer issues that can be addressed through the STEP process (documented)--up to 60--40 points
- (F) activities addressing documented severe water pressure problems--up to 50--40 points
- (G) replacement of existing water or sewer lines that are not addressing activities described in subparagraphs (A) - (F) of this paragraph--up to 40--30 points
- (H) all other proposed water and sewer projects that are not addressing activities described in subparagraphs (A) - (G) of this paragraph--up to 30--20 points

(2) STEP Characteristics, Merits of the Project, and Local Effort (total--up to 30 points). The TxCDBG staff will assess the proposal for the following STEP characteristics not scored in other factors:

- (A) Degree work will be performed by community volunteer workers, including information provided on the volunteer work to total work;
- (B) Local leaders (sparkplugs) willing to both lead and sustain the effort;
- (C) Readiness to proceed--the local perception of the problem and the willingness to take action to solve it;
- (D) Capacity--the manpower required for the proposal including skills required to solve the problem and operate applicable construction equipment;
- (E) Merits of the projects, including the severity of the need, whether the applicant sought funding from other sources, cost in TxCDBG dollars requested per beneficiary, etc.; and
- (F) Local efforts being made by applicants in utilizing local resources for community development.

(3) Past participation and performance (total--up to 15 points). An applicant receives up to 15 points on the following two factors.

- (A) Ten of the 15 points available are awarded to applicants that do not have a current TxCDBG STEP grant.
- (B) An applicant can receive from zero to five points based on the applicant's past performance on previously awarded Tx-CDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most

recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on Tx-CDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

- (i) The applicant's completion of the previous contract activities within the original contract period.
- (ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports.
- (iii) The applicant's submission of the required close-out documents within the period prescribed for such submission.
- (iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs and the applicant's timely response to audit findings on previous TxCDBG contracts.
- (v) The applicant's timely response to audit findings on previous TxCDBG contracts.

(4) Percentage of savings off the retail price (total--up to 10 points). For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40% savings off the retail price for construction activities. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. An applicant can receive from zero to 10 points based on the following population levels and savings percentages:

- (A) Communities with populations equal to or less than 1,500 according to the 2000 census:
 - (i) 55% or more savings--10 points
 - (ii) 50% - 54.99% savings--9 points
 - (iii) 45% - 49.99% savings--7 points
 - (iv) 41% - 44.99% Savings--5 points
- (B) Communities with populations above 1,500 but equal to or less than 3,000 according to the 2000 census:
 - (i) 55% or more savings--10 points
 - (ii) 50% - 54.99% savings--8 points
 - (iii) 45% - 49.99% savings--6 points
 - (iv) 41% - 44.99% Savings--3 points
- (C) Communities with populations above 3,000 but equal to or less than 5,000 according to the 2000 census:

- (i) 55% or more savings--10 points
- (ii) 50% - 54.99% savings--7 points
- (iii) 45% - 49.99% savings--5 points
- (iv) 41% - 44.99% Savings--2 points

(D) Communities with populations above 5,000 but less than 10,000 according to the 2000 census:

- (i) 55% or more savings--10 points
- (ii) 50% - 54.99% savings--6 points
- (iii) 45% - 49.99% savings--3 points
- (iv) 41% - 44.99% Savings--1 point

(E) Communities with populations that are 10,000 or above 10,000 according to the 2000 census:

- (i) 55% or more savings--10 points
- (ii) 50% - 54.99% savings--5 points
- (iii) 45% - 49.99% savings--2 points
- (iv) 41% - 44.99% Savings--0 points

(5) Benefit to low/moderate income persons (total--up to 5 points). Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the TxCDBG funds benefit low/moderate-income persons will receive 5 points.

§255.17. Renewable Energy Demonstration Pilot Program.

(a) General provisions. The TxCDBG will develop a renewable energy pilot program funded solely through deobligated funds/program income for demonstration projects that employ renewable energy for at least 20% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy). The priority will be for projects that are connected with providing public facilities to meet basic human needs such as water or waste water. It is anticipated that the projects funded would meet the National Objective of benefiting a "target area" where at least 51% of the residents are low and moderate income persons, although the project would be allowed to qualify under other National Objective alternatives. The maximum amount of the project would be \$500,000 and the minimum would be \$50,000.

(b) Selection criteria. The projects will be selected on the following basis. Seventy points are available.

(1) Type of Project: Primarily used in conjunction with providing public facilities to meet basic human needs such as water or waste water and/or benefit to low/moderate-income persons--up to 15 points.

(2) Innovative Technology/Methods--A project that would demonstrate the application of innovative technology and/or methods--up to 10 points.

(3) Duplication in Other Rural Areas--A project that could have widespread application (although it would not need to be applicable in every portion of the state)--up to 10 points.

(4) Long-term Cost/Benefit and Texas Renewable Energy Goals--Projects that demonstrate long term cost/benefit analysis including benefits to the human environment and consistency with Texas renewable energy goals--up to 10 points.

(5) Partnership/Collaboration--Projects that have a demonstrated partnership and collaboration with other entities focusing on

promoting renewable energy including universities, funding agencies, associations, or businesses--up to 10 points.

(6) Leveraging--projects with committed funds from other entities including funding agencies, local governments, or businesses.

(A) Applicant(s) population equal to or less than 2,500 according to the latest decennial Census:

- (i) Match equal to or greater than 15% of grant request--10 points
- (ii) Match at least 8% but less than 15% of grant request--5 points
- (iii) Match at least 3%, but less than 8% of grant request--3 points
- (iv) Match at least 2%, but less than 3% of grant request--1 point
- (v) Match less than 2% of grant request--0 points

(B) Applicant(s) population equal to or less than 5,000 but over 2,500 according to the latest decennial Census:

- (i) Match equal to or greater than 25% of grant request--10 points
- (ii) Match at least 13% but less than 25% of grant request--5 points
- (iii) Match at least 5%, but less than 13% of grant request--3 points
- (iv) Match at least 3%, but less than 5% of grant request--1 point
- (v) Match less than 3% of grant request--0 points

(C) Applicant(s) population equal to or less than 10,000 but over 5,000 according to the latest decennial Census:

- (i) Match equal to or greater than 35% of grant request--10 points
- (ii) Match at least 18% but less than 35% of grant request--5 points
- (iii) Match at least 7%, but less than 18% of grant request--3 points
- (iv) Match at least 4%, but less than 7% of grant request--1 point
- (v) Match less than 4% of grant request--0 points

(D) Applicant(s) population over 10,000 according to the latest decennial Census:

- (i) Match equal to or greater than 50% of grant request--10 points
- (ii) Match at least 25% but less than 50% of grant request--5 points
- (iii) Match at least 10%, but less than 25% of grant request--3 points
- (iv) Match at least 5%, but less than 10% of grant request--1 point
- (v) Match less than 5% of grant request--0 points

(E) The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire

county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county.

(7) Location in Rural Areas--Projects that benefit cities with populations under 10,000 and/or counties under 100,000--5 points.

(8) Tiebreaker--If needed in the ranking of applications based on available funds, a tie between multiple applications shall be broken based on the score of (D) Long-term Cost/Benefit and Texas Renewable Energy Goals, followed by the per capita income ranking for the entire population of the city or county that applied.

§255.18. Community Facilities Fund.

(a) Purpose. The purpose of this community enhancement program is to provide one project to benefit a community in each of the 24 Councils of Governments (COG) regions over the PY 2011/2012 period and beyond if necessary based on available funding. This program is designed to sustain the smallest of the rural communities within Texas. The project must be a community facility project that would have the potential to benefit all citizens with the jurisdiction. It must not involve providing basic infrastructure nor be a recreational project, as determined by TxCDBG staff. The project may include connections to existing infrastructure. (A community center could hold recreational activities or events within the facility.) The community facilities must provide a benefit that will enhance the overall quality of life in the rural community. (While the project to be funded may not be considered a recreational project, the design may provide for an incidental amount of recreational facilities that would be constructed using other sources of funding in another future phase. The initial phase funded under this program may not include construction of any recreational facilities.)

(b) Amount available for each COG region and each award: \$250,000. If a city has as part of its application a resolution in support of the project from the county where it is located, the maximum application amount, and amount available to the region, will be \$300,000. (A county that meets the LMI percentage requirement that is submitting an application on its own behalf may receive up to \$300,000.) The TxCDBG staff will select at random the initial regions that may apply in PY 2011. The remaining regions would be the eligible applicants in PY 2012 and subsequent program years, if necessary based on available funding.

(c) Source of funding. Funding will be provided from deobligated funds, program income, or other external sources.

(d) Eligibility requirements. The applicant must meet the Low and Moderate Income (LMI) national objective for its entire jurisdiction (at least 51 percent LMI). The TxCDBG may establish other national objective criteria. Additional requirements may be specified in the application. The applicant must demonstrate that it has the financial resources to sustain the operation and maintenance of the facility.

(e) Pre-application. The applicant must submit a pre-application for initial eligibility determination. Application will be by invitation to those entities that meet the pre-application eligibility requirements. Additional details and requirements may be established in the pre-application and application.

(f) Selection factors--80 points maximum:

(1) Low and Moderate Income (LMI) percentage of the applicant--Compare each applicant's low and moderate income percentage to all other applicants in the region--up to 20 points maximum. (A

higher LMI percentage would score higher. The applicant's LMI percentage is divided by the base amount for the entire region and then multiplied by the maximum possible score of 20, provided the product may not exceed 20 points. The base amount is the average (mean) of the LMI of all the applicants in the region multiplied by a factor 1.25.)

(2) Location in the most rural areas--maximum of 20 points.

(A) Projects that benefit cities with populations equal to or under 1,500 or counties with populations, after excluding metropolitan cities, that are equal to or under 30,000--20 points.

(B) Projects that benefit cities with populations equal to or under 2,500 (but over 1,500) or counties with populations, after excluding metropolitan cities, that are equal to or under 50,000 (but over 30,000)--18 points.

(C) Projects that benefit cities with populations equal to or less than 5,000 (but over 2,500) or counties with populations, after excluding metropolitan cities, that are equal to or under 75,000 (but over 50,000)--15 points.

(D) Projects that benefit cities with populations equal to or under 10,000 (but over 5,000) or counties with populations, after excluding metropolitan cities, that are equal to or under 100,000 (but over 75,000)--10 points.

(E) Populations will be determined by TxCDBG based on the latest Census or HUD data available.

(3) No other comparable facilities available. If there are no other comparable facilities, as determined by TxCDBG staff, within the applicant's jurisdiction--20 points.

(4) Leveraging--projects with committed funds from other entities including funding agencies, local governments, or businesses--20 points possible.

(A) If applicant(s) population is equal to or less than 2,500 according to the latest decennial Census: For match equal to or greater than 2.5% of grant request--20 points;

(B) If applicant(s) population is equal to or less than 5,000 but over 2,500 according to the latest decennial Census: For match equal to or greater than 5% of grant request--20 points;

(C) If applicant(s) population is equal to or less than 10,000 but over 5,000 according to the latest decennial Census: For match equal to or greater than 10% of grant request--20 points; or

(D) If applicant(s) population over 10,000 according to the latest decennial Census: For match equal to or greater than 15% of grant request--20 points.

(5) Tie-breaker in a region--A tie between multiple applications shall be broken based on the per capita income ranking, with a lower per capita income level ranking higher, followed by a second tie-breaker, if needed, of the highest poverty rate ranking higher, followed by a third tie-breaker, if needed, of the highest annual unemployment rate ranking higher.

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 April 18, 2011.

TRD-201101448

Howard G. Baldwin, Jr.
Interim Executive Director
Texas Department of Rural Affairs
Earliest possible date of adoption: May 29, 2011
For further information, please call: (512) 936-6734



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 April 29, 2011, issue of the Texas Register.)

The Texas State Library and Archives Commission proposes amendments to §7.125, concerning local government retention schedules for the records of County Clerks (CC), District Clerks (DC), Public Safety Agencies (PS), School Districts (SD), and Justice and Municipal Courts (LC) pursuant to the Government Code §441.158(a). The amendments are being proposed to update these retention schedules.

Jan Ferrari, Director, State and Local Records, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications for state or local governments as a result of administering or enforcing the amendments. Ms. Ferrari does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed amendments.

Ms. Ferrari has also determined that for each year of the first five years the amendments are in effect the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendments as proposed.

Written comments on the proposal may be submitted to Nanette Pfiester, Program Planning and Research Specialist, Box 12927, Austin, Texas 78711; by fax to (512) 421-7224; or by email to nanette.pfiester@tsl.state.tx.us.

The amendments are proposed under Government Code §441.158 that grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments and §441.160 that allows the commission to revise the schedules.

The amendments affect Government Code §441.158 and §441.160.

§7.125. *Records Retention Schedules.*

{(a) Local Schedule LC: Records of Justice and Municipal Courts, required to be adopted by rule under Government Code

§441.158(a) is adopted by reference. Copies of the schedule are available from the State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927; (512) 421-7200.}

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

(1) Local Schedule GR: Records Common to All Local Governments, 4th Edition.

Figure: 13 TAC §7.125(a)(1)

[Figure: 13 TAC §7.125(b)(1)]

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(2)

[Figure: 13 TAC §7.125(b)(2)]

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

Figure: 13 TAC §7.125(a)(3)

[Figure: 13 TAC §7.125(b)(3)]

(4) Local Schedule DC: Records of District Clerks, 3rd [2nd] Edition.

Figure: 13 TAC §7.125(a)(4)

[Figure: 13 TAC §7.125(b)(4)]

(5) Local Schedule PS: Records of Public Safety Agencies, 3rd [2nd] Edition.

Figure: 13 TAC §7.125(a)(5)

[Figure: 13 TAC §7.125(b)(5)]

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

Figure: 13 TAC §7.125(a)(6)

[Figure: 13 TAC §7.125(b)(6)]

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

Figure: 13 TAC §7.125(a)(7)

[Figure: 13 TAC §7.125(b)(7)]

(8) Local Schedule TX: Records of Property Taxation, 3rd Edition

Figure: 13 TAC §7.125(a)(8)

[Figure: 13 TAC §7.125(b)(8)]

(9) Local Schedule EL: Records of Elections and Voter Registration, 2nd Edition.

Figure: 13 TAC §7.125(a)(9)

[Figure: 13 TAC §7.125(b)(9)]

(10) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(a)(10)

[Figure: 13 TAC §7.125(b)(10)]

(11) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(11)

[Figure: 13 TAC §7.125(b)(11)]

(12) Local Schedule LC: Records of Justice and Municipal Courts, 2nd Edition.

Figure: 13 TAC §7.125(a)(12)

(b) [(e)] The retention periods in the records retention schedules adopted under subsection (a) [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 the Government Code, §441.159, until amended, are now without effect.

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 April 15, 2011.

TRD-201101445

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Earliest possible date of adoption: May 29, 2011

For further information, please call: (512) 463-5459



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.16

The Texas Medical Board (Board) proposes amendments to §172.16, concerning Provisional Licenses for Medically Underserved Areas.

The amendment provides that a temporary license shall be granted to a provisional license holder upon expiration of the provisional license, if the licensure applicant (1) meets all requirements for full licensure, or (2) has been referred to the Licensure Committee (Committee) for review, but due to a force majeure, the Committee must defer action until the Committee's next scheduled meeting, yet the provisional license is set to expire before that next Committee meeting will occur.

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 implications 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 allow provisional license holders whose provisional licenses have expired to obtain temporary licenses under limited circumstances.

There will be no effect to individuals required to comply with the rule as proposed. 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 amendment is 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 practice of

medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

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

§172.16. *Provisional Licenses for Medically Underserved Areas.*

(a) The board shall issue a provisional license to an applicant for a license who:

(1) is licensed in good standing with another state medical licensing entity;

(2) passed an examination within the number of allowed attempts as provided under §163.6 of this title (relating to Examinations Accepted for Licensure);

(3) submits information to the board to be used for criminal background checks; and

(4) is sponsored by a person licensed under the Medical Practice Act with whom the applicant may practice under unless the board waives this requirement after determination that compliance with this provision constitutes a hardship to the applicant.

(b) An applicant who holds a provisional license may only practice in a location that is:

(1) designated by the federal government as a health professional shortage area; or

(2) designated by the federal or state government as a medically underserved area.

(c) An applicant shall be determined ineligible for a provisional license if the applicant:

(1) has had a medical license suspended or revoked by another state or a Canadian province;

(2) holds a medical license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(3) has an unacceptable criminal history.

(d) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a full Texas medical license or denies the provisional license holder's application for a license; or

(2) the 270th day after the date the provisional license was issued.

(e) An individual may not be granted more than one provisional license.

(f) A provisional license holder may only be granted a temporary license under §172.11 of this title (relating to Temporary Licensure--Regular) if:

(1) the provisional license holder meets all requirements for licensure under Chapter 163 of this title (relating to Licensure); or,

(2) the provisional license holder has been referred to the Licensure Committee (Committee) for review, but due to a force majeure, the Committee must defer action until the Committee's next scheduled meeting, however, the provisional license is set to expire before the next Committee meeting.

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 April 18, 2011.

TRD-201101451

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 29, 2011

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



CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1

The Texas Medical Board (Board) proposes amendments §173.1, concerning Profile Contents.

The amendment provides that a physician must include on their profile whether the physician provides utilization review services for an insurance company and the name of the insurance company.

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 implications 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 inform the public regarding physicians who provide utilization review services so the public has knowledge of the physician rendering such services and how that physician may be contacted.

There will be no effect to individuals required to comply with the rule as proposed. 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 amendment is 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 practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §154.006, Texas Occupations Code.

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

§173.1. Profile Contents.

(a) The Texas Medical Board (the "board") shall develop and make available to the public a comprehensive profile of each licensed physician electronically via the Internet or in paper format upon request.

(b) The profile of each licensed physician shall contain the following information listed in paragraphs (1) - ~~(28)~~ [(27)] of this subsection:

- (1) full name as the physician is licensed;

- (2) place of birth if the physician requests that it be included in the physician's profile;
- (3) year of birth;
- (4) gender;
- (5) ethnic origin if the physician requests that it be included in the physician's profile;
- (6) name of each medical school attended and the dates of:
 - (A) graduation; or
 - (B) Fifth Pathway designation and completion of the Fifth Pathway Program;
- (7) a description of all graduate medical education in the United States or Canada, including:
 - (A) beginning and ending dates;
 - (B) program name;
 - (C) city and state of program;
 - (D) type of training (internship, residency or fellowship); and
 - (E) specialty of program;
- (8) any specialty certification held by the physician and issued by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;
- (9) primary and secondary specialties practiced, as designated by the physician;
- (10) the number of years the physician has actively practiced medicine in:
 - (A) the United States or Canada; and
 - (B) Texas;
- (11) the original date of issuance of the physician's Texas medical license;
- (12) the expiration date of the physician's registration permit;
- (13) the physician's current registration, disciplinary and licensure statuses;
- (14) the name and city of each hospital in Texas in which the physician has privileges;
- (15) the physician's primary practice location (street address, city, state and zip code);
- (16) the physician's mailing address (street or P.O. Box address, city, state, and zip code), if the physician does not have a primary practice location;
- (17) the type of language translating services, including translating services for a person with impairment of hearing, that the physician provides at the physician's primary practice location;
- (18) whether the physician participates in the Medicaid program;
- (19) whether the physician's patient service areas are accessible to disabled persons, as defined by federal law;
- (20) a description of any conviction for an offense constituting a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude;

(21) a description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court of competent jurisdiction;

(22) a description of any public board action against the physician;

(23) a description of any disciplinary action against the physician by a medical licensing board of another state;

(24) a description of the final resolution taken by the board on medical malpractice claims or complaints required to be opened by the board under the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §164.201 unless the investigation was resolved more than five years before the date of the update and no action was taken against the physician's license as a result of the investigation;

(25) a description of any formal complaint issued by the board's staff against the physician and initiated and filed with the State Office of Administrative Hearings under §164.005 of the Act and the status of the complaint;

(26) a description of a maximum of five awards, honors, publications or academic appointments submitted by the physician, each no longer than 120 characters; ~~and~~

(27) a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal; and[-]

(28) whether the physician provides utilization review services for an insurance company and the name of the insurance company.

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 April 18, 2011.

TRD-201101452

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 29, 2011

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



CHAPTER 187. PROCEDURAL RULES SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

22 TAC §187.83

The Texas Medical Board (Board) proposes amendments to §187.83, concerning Proceedings for Cease and Desist Orders.

Elsewhere in this issue of the *Texas Register*, the board contemporaneously adopts these amendments on an emergency basis.

The emergency amendment to §187.83, relating to Proceedings for Cease and Desist Orders, sets out the requirements for conducting a cease and desist hearing related to the unlicensed practice of medicine. The rule was adopted on an emergency

basis in accordance with §2001.034(a) that permits an agency to adopt an emergency rule without prior notice of hearing if the agency determines that there is an imminent peril to the public health, safety or welfare. The Board has determined that based on a recent court ruling, it must provide individuals with hearings that are recorded and allow for cross examination before cease and desist orders may be issued. Since cease and desist orders require immediate effect to allow the Board to prohibit a person from practicing medicine without a license which could cause immediate and continuing harm to the public, this rule was adopted on an emergency basis.

Nancy Leshikar, General Counsel for the Board, has determined that for the first five-year period the section is in effect the fiscal implication to state or local government as a result of enforcing the section as proposed will be approximately \$600 per cease and desist hearing.

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 take timely action against individuals who are practicing medicine in Texas without a license.

There will be no effect to individuals required to comply with the rule as proposed. 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 amendment is 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 practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §165.052, Texas Occupations Code.

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

§187.83. *Proceedings for Cease and Desist Orders.*

(a) Statutory authority. Pursuant to the authority of §165.052 and §164.002(a) of the Act, the board may enter a cease and desist order.

(b) Notice. Upon receipt of information that an individual has practiced medicine without a license, the board shall schedule a cease and desist hearing before a panel of board representatives at the earliest practicable time after providing the individual with at least ten days notice.

(c) Cease and Desist Hearing.

(1) Convening a panel.

(A) The president of the board shall appoint a two-member panel upon a verbal or written request by board staff.

(B) The disciplinary panel shall be composed of two members of the board, at least one of whom must be a physician.

(C) In the event of the recusal of a panel member or the inability of a panel member to attend a cease and desist proceeding, an alternate board member may serve on the panel upon appointment by the president of the board.

(D) Notwithstanding the Open Meetings Act, Chapter 551, Texas Government Code, the panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(E) A hearing before a panel shall constitute a hearing before the board and shall be recorded.

(2) Charge of the panel.

(A) The panel shall determine from the evidence or information presented to it whether a person is practicing medicine without a license.

(B) If the panel determines that a person is practicing medicine without a license, the panel shall issue a cease and desist order to be signed by either panel member.

(3) Procedures before the panel.

(A) In accordance with the Act, §165.051, before a cease and desist order may be issued, the board must provide an individual with notice and opportunity for a hearing.

(B) To the extent practicable, the sequence of events will be as follows:

(i) Call to Order;

(ii) Roll Call;

(iii) Calling of the Case;

(iv) Recusal Statement;

(v) Introductions/Appearances on the Record;

(vi) Opening Statements by Board Staff and Respondent;

(vii) Presentation of evidence by Board Staff;

(viii) Presentation of evidence on behalf of Respondent;

(ix) Rebuttal by Board Staff and Respondent;

(x) Closing Arguments;

(I) Argument by Board Staff;

(II) Argument by Respondent;

(III) Final Argument by Board Staff;

(xi) Deliberations;

(xii) Announcement of Decision;

(xiii) Adjournment.

(C) A board attorney shall be designated as Counsel to the Panel and shall be present during the hearing and deliberations by the panel and shall advise the panel on all legal issues that arise during the hearing including objections to evidence and other evidentiary matters. The Counsel to the Panel shall be permitted to ask questions of witnesses, the board staff, the attorney for the licensee and other participants in the hearing.

(4) Evidence.

(A) In accordance with the Administrative Procedure Act (APA), §2001.081, the determination of the disciplinary panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs,

necessary to ascertain facts not reasonably susceptible of proof under those rules, and not precluded by statute.

(B) Questioning of witnesses shall be permitted with due consideration being given to the need to obtain accurate information and prevent the harassment or undue embarrassment of witnesses.

(C) In receiving information on which to base its determination, the panel may accept the testimony of witnesses by telephone.

(D) Documentary evidence must be prefiled with the board 24 hours prior to the scheduled hearing. Admission of documentary evidence after the 24 hours shall be admitted only upon a showing of good cause.

(E) Documentary evidence must be submitted in electronic format in all cases where the Respondent has been provided notice that a panel member will be appearing by phone.

(d) SOAH Hearing. If a panel issues a cease and desist order, the affected individual may within 20 days of the effective date of the cease and desist order, request that the matter be appealed to SOAH.

~~{(e) The panel shall be composed of at least two members of the board or District Review Committee. At least one member must be a physician and one member must be a public member. The panel may be the same panel that is scheduled for Informal Show Cause and Settlement Conferences.}~~

~~{(d) At the hearing, the individual shall have the right to respond to the allegations, be represented by counsel, and present evidence or information to the panel.}~~

~~{(e) The panel must base its decision or recommendation on evidence or information that is admissible under §2001.081, Texas Administrative Procedure Act.}~~

~~{(f) If the panel determines that the individual has practiced medicine without a license, the panel shall direct the Executive Director to enter a cease and desist order, effective immediately, in accordance with §165.052 of the Act.}~~

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

Filed with the Office of the Secretary of State on April 18, 2011.

TRD-201101453

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 29, 2011

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



CHAPTER 190. DISCIPLINARY GUIDELINES SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) proposes amendments to §190.8, concerning Violation Guidelines.

The amendment provides that if a licensee submits an appropriate fee but an incomplete renewal application that is not complete within one year from the expiration date of the licensee's registration certificate, the licensee shall be found to

have committed unprofessional conduct as defined under the Medical Practice Act.

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 allow physicians the option of agreeing to a monetary sanction in lieu of cancellation of licensure and the need to submit a new application as required for new licensure applicants. The Board's current policy has been to cancel a license if a licensee's renewal registration application has not been considered complete in all respects within one year of expiration. The amendment will allow physicians to remain in practice who have expressed intent to maintain licensure, although have not been diligent in submitting a complete renewal application.

The effect to individuals required to comply with the rule as proposed will be the disciplinary sanction imposed, if applicable. 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 amendment is 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 practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.052, Texas Occupations Code.

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

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) (No change.)

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) - (S) (No change.)

(T) failing to timely submit complete forms for purposes of registration as set out in §166.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(3) - (6) (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 April 18, 2011.
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For further information, please call: (512) 305-7016



CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.2, §195.4

The Texas Medical Board (Board) proposes amendments to §195.2, concerning Certification of Pain Management Clinics, and §195.4, concerning Operation of Pain Management Clinics.

The amendments to §195.2 establishes the procedures for withdrawal and cancellation requests and ineligibility determinations for pain management clinic certificates. The amendment to §195.4 remedies incorrect citations.

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

Ms. Leshikar has also determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing §195.2 will be to set out the procedures for: (1) the review of pain management clinic certificate applications by the executive director and Texas Medical Board when there are issues relating to eligibility to ensure due process is provided to applicants, and (2) withdrawal and cancellation requests where applicants may be ineligible for certification. The public benefit anticipated as a result of enforcing §195.4 will be to provide accurate citations in rule to avoid confusion.

There will be no effect to individuals required to comply with the rules as proposed. 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 practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §167.051, Texas Occupations Code.

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

§195.2. Certification of Pain Management Clinics.

(a) Application for Certification.

(1) Certification requirement. Effective September 1, 2010, a pain management clinic may not operate in Texas without obtaining a certificate from the board [Board]. Each physician who owns or operates a pain management clinic shall submit an application on a form prescribed by the board. Certificates issued pursuant to this subsection are not transferable or assignable. If there is more than one

physician owner of the clinic, only the primary physician owner shall be required to register with the board [Board].

(2) Determination of Eligibility by the Executive Director. The executive director shall review applications for certification and may determine whether an applicant is eligible for certification or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a certificate by the executive director pursuant to §§167.001 - 167.202 of the Act or this chapter, the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(3) Ineligibility Determination.

(A) If the board, upon recommendation by a committee of the board, determines that an applicant is ineligible for certification, the applicant shall be notified of the board's determination and given the option of appealing the determination to State Office of Administrative Hearings (SOAH) or request a rehearing. An applicant has 20 days from the date the applicant receives notice of the committee's determination to appeal to SOAH or request rehearing.

(B) If the applicant timely requests a SOAH hearing, the matter shall be referred to the agency's legal division.

(C) Requests for rehearing must be based on information not previously presented to or considered by the board. It is at the discretion of the committee whether to grant a rehearing. If committee does not grant a rehearing, then the applicant may appeal to SOAH.

(D) If the applicant does not timely request an appeal to SOAH or a rehearing, the board's determination shall be shall become administratively final at the next scheduled board meeting.

(E) A determination of ineligibility by the board shall be in writing and made available to the public.

(4) Withdrawal. Applicants for certificates may withdraw their applications at any time, unless:

(A) the executive director has made a determination of ineligibility;

(B) the executive director has referred an application to a committee of the board for a determination of eligibility and the committee has determined that the applicant is not exempt from the requirements of §195.4 of this title (relating to Operation of Pain Management Clinics) or is ineligible for a certificate; or

(C) the applicant is under investigation by the board for inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(b) Eligibility for Certification.

(1) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(A) have been denied, by any jurisdiction, a license issued by the Drug Enforcement Agency or a state public safety agency under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(B) have held a license issued by the Drug Enforcement Agency or a state public safety agency in any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(C) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing,

dispensing, administering, supplying, or selling a controlled substance.

(2) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(A) an offense that constitutes a felony; or

(B) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Texas Occupations Code §551.003(11).

(c) Expiration of Certificate.

(1) Certificates shall be valid for two years.

(2) Certificate holders shall have a 180-day grace period from the expiration date to renew the certificate, however, the owner or operator of the clinic may not continue to operate the clinic while the permit is expired.

(d) Certificate Renewal.

(1) Certificates must be timely renewed. If a certificate is not renewed before the expiration of the grace period, the certificate will be automatically cancelled and the owner or operator of the clinic must reapply for original certification.

(2) A certificate may not be cancelled for nonrenewal or by request, while a clinic is under investigation with the board.

(e) The board shall coordinate the certification required under this section with the registration required under the Medical Practice Act, Texas Occupations Code, Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

§195.4. Operation of Pain Management Clinics.

(a) Purpose. The purpose of these rules is to identify the roles and responsibilities of physicians who own pain management clinics and to provide the minimum acceptable standards for such clinics.

(b) Exemptions. The rules promulgated under this title do not apply to the following settings:

(1) a medical or dental school or an outpatient clinic associated with a medical or dental school;

(2) a hospital, including any outpatient facility or clinic of a hospital;

(3) a hospice established under 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) or defined by 42 CFR §418.3;

(4) a facility maintained or operated by this state;

(5) a clinic maintained or operated by the United States;

(6) a nonprofit health organization certified by the board under Chapter 177 of this title (relating to Certification of Non-Profit Health Organizations);

(7) a clinic owned or operated by a physician who treats patients within the physician's area of specialty who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or

(8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and personally uses other forms of treatment with the issuance of a prescription for a majority of the patients.

(c) Ownership. A pain management clinic may not operate in Texas unless the clinic is owned and operated by a medical director who is a physician who practices in Texas and has an unrestricted medical license and hold a certificate as described in §195.2 of this title (relating to Certification of Pain Management Clinics) [~~§192.4(b) of this title (relating to Registration)~~].

(d) Operation of Clinic. The medical director of a pain management clinic must operate the clinic in compliance with Drug Prevention and Control Act, 21 U.S.C.A. 801 et. seq. and the Texas Controlled Substances Act, Chapter 481 of the Texas [~~Tex.~~] Health and Safety Code, relating to the prescribing and dispensing of controlled substances.

(e) Personnel Requirements. The medical director of a pain management clinic must, on an annual basis, ensure that all personnel are properly licensed, if applicable, trained to include 10 hours of continuing medical education related to pain management, and qualified for employment consistent with §195.2(b)(1) of this title [~~§192.4(b)(2)(A) of this title~~].

(f) Standards to Ensure Quality of Patient Care. The medical director of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic's total number of operating hours;

(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic;

(3) establish protocols consistent with Chapter 170 of this title (relating to Pain Management); and

(4) establish quality assurance procedures to include at a minimum:

(A) a practice quality plan that requires the medical director to complete at least 10 hours of continuing medical education in the area of pain management;

(B) documentation of the background, training, and certifications for all clinical staff;

(C) a written drug screening policy and compliance plan for patients receiving chronic opioids;

(D) performance of periodic quality measures of medical and procedural outcomes and complications that may include questionnaires or surveys for activities of daily living scores, pain scores, and standardized scales.

(g) Patient Billing Procedures.

(1) The medical director of a pain management clinic must ensure that adequate billing records are maintained for all patients and made available to the board, upon request. Billing records shall include the amount paid, method of payment, and description of services.

(2) Billing records shall be maintained for seven years from the date of last treatment of the patient.

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-201101455

Mari Robinson, J.D.

Executive Director

Texas Medical Board

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

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CHAPTER 199. PUBLIC INFORMATION

22 TAC §199.4

The Texas Medical Board (Board) proposes amendments to §199.4, concerning Charges for Copies of Public Records.

The amendment provides updates to agency department names and updates descriptions of public information commonly requested by the public and the electronic format of the information.

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 remove outdated language in the rule and inform the public on available data formats that are releasable to the public.

There will be no effect to individuals required to comply with the rule as proposed. 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 amendment is 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 practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §154.002, Texas Occupations Code.

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

§199.4. Charges for Copies of Public Records.

(a) Charges. The charge to any person requesting copies of any public record of the Texas Medical Board will be the charges established by the Office of the Attorney General.

(b) Routine items. All charges for routinely requested items shall be based upon the charges established by the Office of the Attorney General. A current price list may be requested from the Pre-Licensure, Registration, and Consumer Services Department [~~Customer Affairs Division~~] of the Board. Upon written request, the board shall provide copies of routinely requested items, which shall include, but not be limited to, the following:

(1) Board Rules;

(2) Medical Practice Act;

(3) Board Action Data; [~~Microfiche with complete physician information~~];

- ~~{(A) individual order;}~~
- ~~{(B) year subscription;}~~
- (4) New Physician List;~~{:~~
 - ~~{(A) list;}~~
 - ~~{(B) year subscription;}~~
- (5) Physician Directory; and
- (6) Complete Electronic Database:
 - (A) Licensed Physician Database;
 - (B) Licensed Physician Assistant Database; and
 - (C) Licensed Acupuncturist Database.
- ~~{(6) Special Request;}~~
 - ~~{(A) customized mailing list and labels;}~~
 - ~~{(B) Computer Electronic Media}~~
 - ~~{(i) computer tape;}~~
 - ~~{(ii) floppy disk;}~~

(c) Certified copies. Upon written request, the Texas Medical Board will certify any public records of the board. The cost for certifying copies of public records provided pursuant to the Texas Public Information Act shall be \$5.00 per record or document. This cost shall be in addition to any other costs charged for providing the requested document or record, including, but not limited to, copying, retrieving, or mailing of the document or record.

(d) Waiver of charges. Copies of public records shall be furnished without charge or at a reduced charge if the executive director determines that waiver or reduction of the fee is in the public interest, and that furnishing the information can be considered as primarily benefiting the general public.

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 April 18, 2011.

TRD-201101456

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 29, 2011

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER G. COMMUNITY CENTERS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§411.301 - 411.303, 411.305, and 411.307 - 411.312, and the repeal

of §§411.304, 411.306, and 411.313 - 411.316, concerning community mental health mental retardation centers.

BACKGROUND AND PURPOSE

The amendments and repeals are necessary to reflect organizational changes that occurred in September 2004 when the Texas Department of Mental Health and Mental Retardation merged with the Department of Aging and Disability Services (DADS) and the department. The rules also accord with House Bill 2303, 81st Legislature, Regular Session, 2009, which amended Health and Safety Code, Chapter 534, to specify that a community center may provide health and human services and supports that are not identified in its local plan as provided by a contract with or a grant received from a local, state, or federal agency.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 411.301 - 411.303, 411.305, and 411.307 - 411.312 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Sections 411.304, 411.306, and 411.313 - 411.316 have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

SECTION BY SECTION SUMMARY

The amendments reference statutory language and do not reiterate it. They also delete language that is unnecessarily detailed or prescriptive. The amendments include updated terminology. Throughout the amendments, the entity formerly referred to as "community mental health and mental retardation center" is now referred to as "community center." Reference to the Texas Department of Mental Health and Mental Retardation, TDMHMR, or "the department," is replaced with references to the Department of Aging and Disability Services, or DADS, and the Department of State Health Services, or DSHS throughout the rules.

The repeals delete sections of the rules dealing with philosophy, updating a community center's current plan, determination of salaries for community center employees, exhibits, references, and distribution.

Section 411.301 states the statutory and rule basis for the operation of a community center.

Section 411.302 states the applicability of the subchapter for community centers.

Section 411.303 provides definitions of terms. The following terms are deleted: "commissioner," "department," and "state-operated community services (SOCS)." The following new terms are defined: "DADS" and "DSHS." The definition of "boards of trustees" in paragraph (1) is simplified. New paragraph (2) includes the term "center" as being the same as "community center." New paragraph (3) defines "current plan" as the initial or modified plan, not an updated plan, because plans are no longer required to be routinely updated. The entity formerly referred to as a "state school" is revised to a "state-supported living center" in paragraph (6). The definition of "local authority" in paragraph (10) has been updated to reference the Health and Human Services Commission.

Section 411.305 describes the process by which a community center is established. Paragraph (c)(1) describes consumer and family member requirements for constituting a mental health ad-

visory committee, a mental retardation advisory committee, and a mental health and mental retardation advisory committee.

Section 411.307 describes the process for modifying a community center plan. Language governing the process for updating community center plans is not included because routine plan updates are no longer required.

Section 411.308 describes the process by which community centers are dissolved and merged.

Section 411.309 describes the requirements for the appointment of a manager or management team for a community center. Both DADS and DSHS are proposing rules that would permit either agency to delegate the function to the other as appropriate to the programs requiring management intervention.

Section 411.310 provides requirements for standards of administration for a community center's board of trustees.

Section 411.312 describes requirements for community center fiscal controls.

FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules have direct application only to those entities that the department directly operates or with which the department contracts to provide community mental health services, none of which meet the definition of a small business under Government Code, §2006.001. To the extent that the rules may have any indirect effect on small businesses with which the department's contractors may contract to provide services, maintaining the standards applicable to the department's contractors under these rules is essential to protecting the health and welfare of the state. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Maples has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the rules is to ensure adequate and appropriate provision of mental health community services throughout the state.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code,

§2001.0225. "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.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and amendments do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Linda Logan, Adult Mental Health Services Section, Department of State Health Services, Mail Code 2018, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5865 or by email to linda.logan@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the agencies' authority to adopt.

25 TAC §§411.301 - 411.303, 411.305, 411.307 - 411.312

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; 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 Health and Safety Code Chapter 1001.

The amendments affect Government Code, §531.0055; and Health and Safety Code, §§533.035(a), 533.047, 534.001, 534.0015, 534.002 - 534.006, 534.0065, 534.009, 534.018, 534.019, 534.021, 534.022, 534.033, 534.035, 534.038 - 534.040, 534.053, 534.058, 534.066, and 1001.075.

§411.301. Purpose.

(a) Health and Safety Code, Title 7, Chapter 534, Subchapter A, and this subchapter govern the establishment and operation of a community center.

(b) The purpose of this subchapter is to describe requirements by which a community center is ~~mental health and mental retardation centers are~~ established and operated by a local agency with a plan approved by DADS and DSHS ~~the Texas Mental Health and Mental Retardation Board~~ in accordance with ~~the Texas~~ Health and Safety Code, §534.001(e).

§411.302. Application.

This subchapter applies to local agencies desiring to establish a new community ~~mental health and mental retardation~~ center or affiliate

with an existing community center and to all existing community [~~mental health and mental retardation~~] centers established under [the Texas] Health and Safety Code, Title 7, Chapter 534.

§411.303. Definitions.

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

(1) Board of trustees--A body of [~~not less than five nor more than nine~~] persons selected and appointed in accordance with [Texas] Health and Safety Code, Title 7, §534.002 or §534.003, and §534.004, §534.005, and §534.0065, that [which] has responsibility for the effective administration of a community center.

~~[(2) Commissioner--The commissioner of the Texas Department of Mental Health and Mental Retardation.]~~

(2) ~~[(3)]~~ Community center or center--A center established under [the Texas] Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(3) ~~[(4)]~~ Current plan--The most recently approved initial[~~updated,~~] or modified plan.

(4) DADS--The Department of Aging and Disability Services.

(5) DSHS--The Department of State Health Services.

~~[(5) Department--The Texas Department of Mental Health and Mental Retardation (TDMHMR).]~~

(6) Facility--A [Any] state hospital, state supported living center [school], or state center.

(7) Initial plan--The plan developed by a board of trustees to establish a new community center.

(8) Local agency--A county, municipality, hospital district, school district, or any organizational combination of two or more of these which may establish and operate a community center.

(9) Local contribution--Funds or in-kind contribution by each local agency to a community center in the amount approved by DADS and DSHS [the department], which includes local match if the center is a local authority.

(10) Local authority--In accordance with Health and Safety Code, §533.035(a), an entity designated as a local mental retardation authority or a local mental health authority by the executive commissioner of the Health and Human Services Commission. [An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.]

(11) Local match--In accordance with [the Texas] Health and Safety Code, §534.066, those funds or in-kind support from a local authority that are required to match some or all of the state funds the local authority receives pursuant to a contract with DADS or DSHS [the department].

(12) Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive services from a local authority.

(13) Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate

persons with a severe and persistent mental illness which may be accompanied by chemical dependency or mental retardation.

(14) Mental retardation services--All services concerned with research, prevention, and detection of mental retardation and all services related to the education, training, habilitation, care, treatment, and supervision of persons with mental retardation, except the education of school-age persons that the public educational system is authorized to provide.

(15) Region--The area within the boundaries of the local agencies participating in the operation of a community center established under [the Texas] Health and Safety Code, Chapter 534, Subchapter A.

~~[(16) State-operated community services (SOCS)--Community residential and nonresidential programs operated by the Texas Department of Mental Health and Mental Retardation.]~~

§411.305. Process to Establish a New Community Center.

(a) Letter of intent. If a local agency decides to establish a new community center, then the local agency submits a letter of intent to DADS and DSHS [the commissioner] outlining the proposed new center's region, governing structure, and other information pertinent to the formation of the proposed new center.

(1) If the local agency submitting the letter of intent is not a county or counties, the letter must be accompanied by a letter of endorsement from the appropriate county judge or judges.

(2) DADS and DSHS [The commissioner designates staff who are knowledgeable of community center operations to] review the letter of intent using the following criteria:

(A) the [~~rationale clearly supports the] benefits of establishing a new center over affiliation with an existing center and the establishment of a new center is consistent with DADS's and DSHS's [the department's] mission for the development of community services in Texas;~~

(B) the population of the region of the proposed new center is at least 200,000 or large enough to support a center;

(C) a comprehensive array of mental health and mental retardation services will be provided;

(D) the extent of the local contribution supports the intent; and

(E) the efficient provision of services [providing services efficiently] is financially viable.

(3) DADS and DSHS determine whether the letter of intent meets the criteria described in paragraph (2) of this section. [The commissioner's response to the local agency's letter of intent is based on the review described in paragraph (2) of this subsection and is sent to the local agency by certified mail, return receipt requested.]

~~[(A) If the commissioner approves the letter of intent, the response includes notification of such approval.]~~

~~[(B) If the commissioner does not approve the letter of intent, the response includes the reasons for disapproval.]~~

(b) Appointment of board of trustees. If the local agency receives notice from DADS and DSHS that the letter of intent meets the criteria described in subsection (a)(2) of this section, the local agency [~~approval of its letter of intent, then it] prescribes the criteria and procedures for the appointment of members of a board of trustees as described in [the Texas] Health and Safety Code, §534.002 or §534.003, and §534.004, §534.005, and §534.0065. The local agency prescribes and makes available for public review the elements listed in [the Texas]~~

Health and Safety Code, §534.004(a). If more than one local agency is involved, the local agencies shall enter into a contract of interlocal agreement that states [stipulates] the number of board members and the group from which the members are chosen, as provided in [the Texas] Health and Safety Code, §534.003(c). [The local agencies may renegotiate or amend the contract of interlocal agreement as necessary to change the:]

[(1) method of choosing the board of trustees members; or]

[(2) membership of the board of trustees to more accurately reflect the ethnic and geographical diversity of the region's population.]

(c) Initial plan.

(1) Submission. The board of trustees develops and submits to DADS and DSHS [the commissioner] an initial [written] plan to provide effective mental health and mental retardation services to the residents of the proposed region. The board of trustees shall appoint a mental health planning advisory council and a mental retardation planning advisory council to assist in developing the initial plan. A mental health planning advisory council must have [- each with] at least 50 percent [%] representation of persons or family members of persons who have received or are receiving mental health services [or their family members, to assist in developing the initial plan]. A mental retardation planning advisory council must have at least 50 percent representation of persons or family members of persons who have received or are receiving mental retardation services. A combined mental health and mental retardation planning advisory council shall have at least 50 percent representation of persons or family members of persons who have received or are receiving mental health or mental retardation services with an equal number of representatives for mental health services and mental retardation services. The board of trustees shall also seek input through a public process (e.g., public hearings, focus groups, town meetings) from the residents [citizens] in the proposed region regarding local needs and priorities. The initial plan must include the following elements:

(A) a comprehensive service description, which includes:

(i) a statement of the mission, vision, values, and principles which establish [provide] the foundation of the proposed community center's local service delivery system;

(ii) a definition of all populations to be served;

(iii) a description of relevant internal and external assessments and evaluations [which may provide direction] for the local strategic planning process;

(iv) a statement of local service needs and priorities [to be addressed through a combination of resource development, expansion, reduction, and termination with the local service delivery system with the rationales for these selections];

[(v) a summary of needs assessment data and processes used in the determination of local service needs and priorities;]

(v) [(vi)] identified gaps in services and supports in the local service delivery system [which may assist in the determination of local service needs and priorities];

(vi) [(vii)] a description of existing local mental health and mental retardation resources and planned resource development activities;

[(viii) a statement regarding innovative services considered and how these affect the local strategic planning process;]

(vii) [(ix)] a statement of management needs and priorities to support an effective and efficient local service delivery system; and

(viii) [(x)] [plan] objectives, strategies, and outcomes;[-]

(B) a community center plan in a format required by DADS and DSHS available at www.dads.state.tx.us; and [a charter in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits).]

(C) a prospectus, which describes:

(i) any proposed transfer of funds, assets, liabilities, personnel, and consumer and administrative records and information [records/information] from a facility or existing community center [state-operated community services (SOCS) or other community centers] and the time frames for transfer;

(ii) other [any identified additional] available funds;

(iii) the arrangements for uninterrupted delivery of services; and

(iv) the impact, and resolution if warranted, of current contractual obligations.

(2) Review and approval.

(A) DADS and DSHS [The commissioner designates staff who are knowledgeable of community center operations to] review the initial plan. [The designated staff may verify the information contained in the initial plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.]

(B) If DADS and DSHS approve the initial plan, DADS and DSHS issue a certificate of recognition as a community center.

[(3) Notification of intended recommendation. The department notifies the board of trustees of the commissioner's intention to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:]

[(A) the board of trustees may request an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the initial plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;]

[(B) the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and]

[(C) the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.]

[(4) Approval or disapproval. The commissioner recommends approval or disapproval of the initial plan to the Texas MHMR Board. The commissioner may recommend approval of portions of the initial plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the initial plan

by staff. A recommendation of approval requires that the assessment confirms that the initial plan properly fulfills the requirements of paragraph (1) of this subsection to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services in accordance with the Texas Health and Safety Code, §534.016.]

[(A) If the Texas MHMR Board approves the initial plan in its entirety, then the department issues a certificate of recognition as a community center.]

[(B) If the Texas MHMR Board approves portions of the initial plan and such approved portions properly fulfill the requirements of paragraph (1) of this subsection, then it instructs the official record to reflect such portions as the approved initial plan in its entirety and the department issues a certificate of recognition as a community center.]

[(C) If the Texas MHMR Board does not approve the initial plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, including time frames.]

[(5) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.]

§411.307. *Modifying a Community Center's Current Plan.*

(a) Submission. The [Within the assigned three-year cycle for updating its current plan as described in §411.306 of this title (relating to Updating a Community Center's Current Plan), the] board of trustees of a community center shall submit a modification of its current plan in accordance with this section as frequently as necessary to reflect [material] changes in the community center's local agencies, functions, or region as described in paragraphs (1) - (3) of this subsection prior to implementing the changes. The modified plan shall be in the format required by DADS and DSHS available at www.dads.state.tx.us [shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits)].

(1) If a local agency wants to affiliate with an existing community center and the existing center agrees, then the board of trustees of the existing center submits to DADS and DSHS [will submit to the commissioner] for approval a modification of the center's current plan to reflect such affiliation, including:

- (A) any proposed expansion of the center's region;
- (B) a copy of the new contract of interlocal agreement;

and

(C) official documentation (e.g., a resolution) confirming an [such] intent to affiliate from each [present] local agency and the proposed [affiliated] local agency.

(2) If a local agency wants to terminate its [organizational combination with another local agency and end its] affiliation with an existing community center, then the appointing authorities of the local agencies must terminate the original contract of interlocal agreement and enter into a new contract of interlocal agreement if more than one local agency remains. The board of trustees of the existing center submits to DADS and DSHS for approval a modification of the center's current plan to reflect the termination of such affiliation [to the commissioner for approval], including:

- (A) any change of the center's region;
- (B) a copy of the new contract of interlocal agreement,

if applicable; and

(C) official documentation (e.g., a resolution) from the local agency confirming its intent to terminate affiliation with the center.

(3) If an existing community center wants to expand, [or] reduce, or substantially amend its functions or region as described in its plan [or otherwise substantially amend its functions,] (e.g., changing the population served, the services provided, or its name;) or creating or operating a non-profit corporation), [then] the board of trustees of the center submits to DADS and DSHS for approval a modification of the center's current plan to reflect such changes [to the commissioner for approval].

(b) Review and approval.

(1) DADS and DSHS [The commissioner designates staff who are knowledgeable of community center operations to] review the modified plan. [The designated staff may verify the information contained in the modified plan. If additional information or changes are required for staff to recommend approval, then staff will notify in writing the board of trustees and specify requirements for resubmission, including time frames.]

(2) If DADS and DSHS approve the modified plan, DADS and DSHS notify the board of trustees in writing of the approval and issue a new certificate if appropriate.

[(e) Approval or disapproval. Staff recommends approval or disapproval of the modified plan to the commissioner. Staff may recommend approval of portions of the modified plan and disapproval of other portions. Staff may also recommend that the modified plan be submitted as an updated plan for approval by the Texas MHMR Board.]

[(1) If the commissioner approves the modified plan, then the department notifies the board of trustees in writing of the approval in a timely manner.]

[(2) If the commissioner approves portions of the modified plan then the commissioner instructs the official record to reflect such portions as the approved modified plan. The department shall notify the board of trustees in writing of the portions included in the approved modified plan in a timely manner.]

[(3) If the commissioner does not approve the modified plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, if any, including time frames. The requirement for resubmission may be submission as an updated plan for approval by the Texas MHMR Board.]

[(d) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.]

§411.308. *Dissolution and [or] Merger of Community Centers.*

(a) Dissolution. If a community center proposes [decides] to cease operations and dissolve, the center's board of trustees and each local agency shall inform DADS and DSHS [the commissioner] in writing of such a decision before dissolution. DADS, DSHS [The department], the board of trustees, and each local agency shall agree to a plan of dissolution that addresses at least the following factors:

- (1) the center's assets and liabilities (including personnel);
- (2) necessary audits to be conducted;
- (3) closure activities, including arrangements for uninterrupted delivery of services;
- (4) the transfer, archival, and security of records and information; and

(5) [the] future plans for the region's service delivery system (e.g., affiliation with an existing center or [-] establishment of a new center[-; reliance upon a state-operated community services (SOCS)]).

(b) Merger. If two or more existing community centers agree to merge into a new community center, then before merging the boards of trustees of the involved centers submit to DADS and DSHS [the commissioner] an initial plan in accordance with §411.305(c) of this title (relating to Process to Establish a New Community Center). The initial plan must represent the services to be provided in the combined expanded region and include a copy of the new contract of interlocal agreement and official documentation (e.g., a resolution) confirming an intent to merge from each local agency involved.

§411.309. *Appointment of Manager or Management Team.*

(a) The DADS commissioner and the DSHS commissioner [The commissioner] may appoint a manager or management team to manage and operate a community center in accordance with [the Texas] Health and Safety Code, §§534.038, 534.039, and 534.040. The DSHS commissioner may delegate responsibility for appointing a manager or management team to the DADS commissioner.

(b) A community center may request a hearing to appeal the commissioners' [commissioner's] decision to appoint a manager or management team in accordance with 1 Texas Administrative Code (TAC), Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) [this subsection]. Requesting a hearing [The filing of a notice of appeal] stays the appointment unless the commissioners [commissioner] based the appointment on a finding under Health and Safety Code, §§534.038(a)(2) or (4), which means [of the Texas Health and Safety Code, (i.e.,)] the commissioners found [commissioner finds] that the community center or an officer or employee of the center misused state or federal money or endangers or may endanger the life, health, or safety of a person served by the center[)].

(1) The community center may appeal the appointment of a manager or management team by filing a notice of appeal requesting an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the finding(s) under §534.038(a) of the Texas Health and Safety Code for which the manager or management team was appointed. After all evidence has been heard, the administrative law judge will close the hearing. Within 30 days from the date the hearing closed, the administrative law judge will submit a written proposal for decision to the commissioner.

(2) The commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence.]

(3) The department will notify the community center of the commissioner's decision to uphold or reverse the original decision to appoint a manager or management team. If the decision is to uphold the original decision, then no other appeal process is available.]

§411.310. *Standards of Administration for Boards of Trustees.*

(a) Each board of trustees is accountable to the department, pursuant to the Texas Health and Safety Code, §534.033, for its programs that:]

(1) use department funds or local match;]

(2) provide core or required services;]

(3) provide services to former consumers of a department facility; or]

[(4) are affected by litigation in which the department is a defendant.]

(a) [(b)] Each board of trustees shall [is responsible for]:

(1) assuring the submission of periodic financial information and performance reports to the department if required by the department;]

(2) instituting effective management procedures which assure the maximum utilization of all funds and facilitates the achievement of the goal of delivering services of high quality in a cost effective manner;]

(3) complying with the Texas Health and Safety Code, §534.022, when financing property and improvements;]

(1) [(4)] retain [retaining] all financial records, supporting documents, statistical records, and any other documents pertinent to its community center budgets, contracts, performance/workload measure, and persons served for a period of five years. If audit discrepancies have not been resolved at the end of five years, the records must be retained until resolution;

[(5) complying with the Open Meetings Act, Texas Government Code, Chapter 55+;]

(2) [(6)] deposit community center funds [requiring depositories of community center funds to secure deposits] through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or [to] secure deposits using collateral in a manner that protects the deposited funds; and]

[(7) submitting a copy of the approved minutes of board of trustees meetings to the department and to each local agency in accordance with the Texas Health and Safety Code, §534.009(d);]

[(8) ensuring community center staff abide by applicable laws, department rules, and standards; and]

(3) [(9)] ensure DADS and DSHS have [assuring the department has] unrestricted access to all facilities, records, data, and other information under control of the community center or its contractors as necessary to enable DADS and DSHS [the department] to audit, monitor, and review all financial and programmatic activities and services associated with the center as provided by Health and Safety Code, §534.033(a). [center's;]

[(A) use of department funds or local match;]

[(B) provision of core or required services;]

[(C) provision of services to former consumers of a department facility;]

[(D) programs that are affected by litigation in which the department is a defendant; or]

[(E) fiscal controls.]

(b) [(e)] Each board of trustees shall receive [is accountable to the department and to each local agency for receiving appropriate] training as required by [the Texas] Health and Safety Code, §534.006, and this subsection.

(1) Before assuming office, new members must receive initial training, including [- but not limited to]:

(A) the importance of local planning and the roles and functions of the board of trustees, planning advisory committees, community center staff, and other service organizations;

[(B) the enabling legislation that created the community center;]

(B) [(C)] the current philosophies and program principles on which service delivery systems are founded, information about the service and support needs of people with mental illnesses, mental retardation, and related conditions, and the range of environments in which those services may be delivered;

(C) [(D)] an overview of mental illnesses, mental retardation, and related conditions;

(D) [(E)] an overview of the current local and state service delivery system, including descriptions of the types of mental health and mental retardation services provided by the community center; and

[(F) the community center's budget for the current program year;]

[(G) the results of the most recent formal audit of the community center;]

[(H) the requirements of the Open Meetings Act, Texas Government Code, Chapter 551, and the Open Records Act, Texas Government Code, Chapter 552;]

[(I) the requirements of laws concerning conflict of interest and other laws relating to public officials;]

[(J) any ethics policies adopted by the community center; and]

(E) [(K)] applicable state and federal laws, rules, standards, and regulations.

(2) Utilizing input from persons who have received or are receiving services, their family members, and advocates, the training programs must provide orientation in the perspectives and issues of persons receiving services.

(3) A community center shall develop an annual training program for its board of trustees.

(A) Training methodologies may include:

(i) presentations by staff at regular board sessions;

(ii) on-site program visits;

(iii) statewide and regional training conferences;

(iv) seminars to enhance team building skills;

(v) regional and cross-training with other community centers and their boards of trustees; and

(vi) formal and informal meetings with tenured trustee members.

(B) In addition to the topics required in Health and Safety Code, §534.006, and paragraphs (1) and (2) of this subsection, training topics may include:

(i) risk management;

(ii) budget analysis;

(iii) consumer rights;

(iv) strategic planning; and

(v) new legislative and contractual requirements of community centers.

[(3) Annual training must be provided for current board of trustees members, which is administered by the professional staff of the community center, including the center's legal counsel.]

[(4) Guidelines for training are developed and updated as necessary by an advisory committee for the department, which includes representatives of advocacy organizations broadly representative of the interests of persons with mental illness or mental retardation and their families, and representatives of boards of trustees. The current guidelines are referenced as Exhibit B in §411.314 of this title (relating to Exhibits).]

[(d) Each board of trustees may accept special funds for long-range projects and plans. These funds must be kept separate from the community center's operating budget and may not be used as local match. An annual accounting of these reserve funds (center trust, endowment, or foundation resources) must be made to the department.]

[(e) Each board of trustees must obtain department approval for any building alterations, renovation, or repair maintenance expenses exceeding \$50,000 for each project per fiscal year per community center if department funds or local match are to be used. In accordance with the review process and to avoid undue delays, a board of trustees must seek advance written approval from the department at least 30 days prior to the release of the project for competitive bids.]

(c) The approval and notification requirements in this subsection are in accordance with Health and Safety Code, §534.021.

(1) [(f)] A [Each] board of trustees must ensure that its community center receives written approval from DADS and DSHS [the department] prior to purchase, lease-purchase, or any other transaction which will result in the community center's ownership of real property, including buildings, if DADS's and DSHS's [any department] funds or local match are involved. In addition, for acquisition of nonresidential property, the community center must notify each local agency at least 30 days [not later than the 31st day] before it enters into a binding obligation to acquire the property.

(2) A community center must provide written notification to DADS and DSHS [the department] and each local agency at least 30 days [not later than the 31st day] before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of DADS's and DSHS's [department] funds or local match. Upon request, the commissioners [commissioner] may waive the 30-day requirement to notify DADS and DSHS [the department] on a case-by-case basis. [Notification of the department is not required for donations of real or personal property under the Texas Health and Safety Code, Title 7, §534.018 or §534.019, that do not require the expenditure of any funds by the community center and that have been approved by the board of trustees.]

(3) [(4)] All notices and requests for approval are submitted on the Real Property Acquisition and Construction Review Form [TXMHMR Property Review Form] and accompanied by supporting information including, but not necessarily limited to:

(A) the reason for purchasing the property or a brief explanation of the purpose it will serve;

(B) a summary of the plan for paying for the property, including a statement regarding whether DADS's or DSHS's [department] funds or local match will be used, and if DADS's or DSHS's funds will be used, how the funds will be used, such as [either] directly or in the retirement of any debt associated with the acquisition;

(C) if unimproved, an assessment of the suitability of the property for construction purposes or, if improved, an assessment of the current condition of the buildings;

(D) an independent appraisal of the real estate the community center intends to purchase conducted by an appraiser certified by the Texas Appraiser Licensing and Certification Board; however,

the board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the past two years; and

(E) a statement that the board of trustees and executive staff are not participating financially in the transaction and will derive no personal benefit from the transaction; and

~~[(F) a statement detailing the need to waive the 30-day requirement if a waiver is being requested.]~~

~~[(2) A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:]~~

~~[(A) the purchase or lease-purchase of that property at that price is necessary:]~~

~~[(B) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and]~~

~~[(C) a majority of the board approves the transaction.]~~

§411.311. Civil Rights.

Each community center shall provide services in compliance with the Civil Rights Act of 1964, as amended, and the Americans With Disabilities Act (ADA) of 1990, and ~~shall~~ require the same of entities with which it contracts.

§411.312. Fiscal Controls.

Pursuant to ~~the Texas~~ Health and Safety Code, §534.035, each community center must comply with the following review and audit procedures to provide reasonable assurance that the community center has adequate and appropriate fiscal controls.

(1) Audit procedures.

(A) Each board of trustees must ensure an annual financial and compliance audit of its accounts is conducted by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. At a minimum, the audit must be conducted in accordance with Government Auditing Standards. ~~[(The board of trustees must submit eight copies of the audit to the department no later than the first day of February. If the board of trustees declines to approve the audit, it will attach to each copy of the audit a statement detailing its reason for disapproving the audit.)]~~

(B) DADS and DSHS ~~[(The department)]~~ may conduct on-site audits of a community center as determined by DADS's and DSHS's ~~[(the department's)]~~ financial risk analysis of the center.

(2) Review procedures.

(A) DADS and DSHS ~~[(The department)]~~ will conduct a desk review of each community center's annual audit to determine audit quality and to identify findings and questioned costs.

(B) DADS and DSHS ~~[(The department)]~~ will perform a financial risk analysis of each community center based on the center's annual audit and/or any financial information that the center is required to submit in accordance with §411.310(b)(1) of this title (relating to Standards of Administration for Boards of Trustees).

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 April 13, 2011.
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Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

25 TAC §§411.304, 411.306, 411.313 - 411.316

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

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; 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 Health and Safety Code Chapter 1001.

The repeals affect Government Code, §531.0055; and Health and Safety Code, §§533.035(a), 533.047, 534.001, 534.0015, 534.002 - 534.006, 534.0065, 534.009, 534.018, 534.019, 534.021, 534.022, 534.033, 534.035, 534.038 - 534.040, 534.053, 534.058, 534.066, and 1001.075.

§411.304. Philosophy.

§411.306. Updating a Community Center's Current Plan.

§411.313. Determination of Salaries of Community Center Employees.

§411.314. Exhibits.

§411.315. References.

§411.316. Distribution.

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

Filed with the Office of the Secretary of State on April 13, 2011.

TRD-201101407
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 29, 2011
For further information, please call: (512) 458-7111 x6972

SUBCHAPTER N. STANDARDS FOR SERVICES TO PERSONS WITH CO-OCCURRING PSYCHIATRIC AND SUBSTANCE USE DISORDERS (COPSD)

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health

Services (department), proposes amendments to §§411.651 - 411.660 and the repeal of §411.661 and §411.662, concerning standards for services to persons with co-occurring psychiatric and substance use disorders (COPSD).

BACKGROUND AND PURPOSE

The amendments and repeals are necessary to reflect organizational changes that occurred in September 2004 when the Texas Department of Mental Health and Mental Retardation (TDMHMR) merged with the department. The amendments and repeals are also necessary to reflect changes in references to other rules.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 411.651 - 411.660 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Sections 411.661 and 411.662 have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

SECTION BY SECTION SUMMARY

Sections 411.651 - 411.660 are proposed for amendment to enable the updating of names of governing agencies and references to other rules that have changed since September 7, 2003. All references to TDMHMR are deleted and replaced with references to DSHS as appropriate. Additionally, the subchapter name will change from "Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD)" to "Standards for Services to Persons with Co-occurring Psychiatric and Substance Use Disorders (COPSD)", and the division designations and division titles 1 - 4 are deleted as unnecessary to clarify the content of this subchapter.

Sections 411.661 and 411.662 are being repealed because the department no longer codifies sections relating exclusively to references and distribution.

Section 411.651 replaces the word "enhance" with "improve" for clarification of the purpose of the rules.

Section 411.652 identifies the entities to which the subchapter applies. Subsection (b) changes references to TDMHMR to DSHS.

Section 411.653 provides definitions of terms used in the subchapter. Paragraph (4), "child," is redefined consistent with the department's policy; i.e., "A person who is 3 through 12 years of age." Paragraphs (8)(B) and (10)(B) are changed to reference MCO, not MMCO, consistent with other department rules. Paragraphs (8)(D) and (10)(D) reference mental health case management rules, not service coordination rules, which were repealed. Paragraph (13), the definition of "local mental health authority," is updated consistent with other department rules. Paragraph (14) is changed to delete reference to Medicaid in the definition of "managed care organization," consistent with other department rules. Paragraph (15) is changed to replace the reference to the TDMHMR strategic plan with reference to the Health and Human Services System Strategic Plan 2011 - 2015 and to clarify that a psychiatric disorder in a child or adolescent is considered an emotional disturbance, not a mental illness. In paragraph (18), which defines "staff," the term "interns" replaces the term "students." Paragraph (21) updates the reference to department rules governing treatment planning consistent with recent

changes to rules governing mental health community services standards (Chapter 412, Subchapter G).

The amendment to §411.654 revises the name of the rule to "Services to Individuals with COPSD."

Section 411.655 delineates who is responsible for compliance with the subchapter. Subsections (b) and (d) are updated to reference MCOs, not MMCOs. Subsection (c) is revised to include rules references to §§411.657 - 411.660.

Section 411.656 is retitled "DSHS Responsibilities" and references to TDMHMR are deleted.

Section 411.657 describes criteria that cannot be used to exclude an individual from services. Subsection (c) is changed to update "MMCOs" to "MCOs."

Section 411.658 describes required competencies of providers. Subsection (a) is revised to broaden criteria for services to include that services must be culturally appropriate. A requirement for basic knowledge of withdrawal symptoms and their potential risk factors to clients has been added to the list of required knowledge competencies. Subsection (b) is changed to add language that clarifies that the demonstration of competence within 90 days of the effective date of the subchapter does not apply to individuals who have previously demonstrated competence with when the subchapter was previously adopted.

Section 411.659 describes quality management requirements. Subsection (a) changes reference of MMCOs to MCOs and the reference to the community mental health standards rule on quality management is updated to reflect the latest version of that subchapter (Chapter 412, Subchapter G).

Section 411.660 describes requirements for screening, assessment, and treatment planning. Subsection (e) is changed to update the reference to treatment planning in the latest version of Chapter 412, Subchapter G, governing community mental health standards.

FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules have direct application only to those entities that the department directly operates or with which the department contracts to provide community mental health services, none of which meet the definition of small business under the Government Code, §2006.001. To the extent that the rules may have any indirect effect on small businesses with which the department's contractors may contract to provide services, maintaining the standards applicable to the department's contractors under these rules is essential to protecting the health and welfare of the state. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Maples has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the rules is to ensure adequate and appropriate provision of mental health community services throughout the state.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "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.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments and repeals do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Linda Logan, Adult Mental Health Services Section, Department of State Health Services, Mail Code 2018, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5865 or by email to linda.logan@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§411.651 - 411.660

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; 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 Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments affect Government Code, §531.0055; and Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§411.651. *Purpose.*

The purpose of this subchapter is to improve ~~enhance~~ existing mental health services provided by the entities defined in §411.653 of this title (relating to Definitions) by establishing standards to ensure the effective and coordinated provision of services to individuals who require specialized support or treatment due to co-occurring psychiatric and substance use disorders (COPSD).

§411.652. *Application.*

(a) (No change.)

(b) The provisions of this subchapter are in addition to requirements contained in other DSHS ~~[TDMHMR]~~ rules. This subchapter does not supercede other DSHS ~~[TDMHMR]~~ rules that may also apply to the provision of services to individuals as defined in §411.653 of this title ~~[(relating to Definitions)]~~.

§411.653. *Definitions.*

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

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

(4) Child--A person who is 3 ~~[0]~~ through 12 years of age.

(5) - (7) (No change.)

(8) Entity or entities--The terms used to refer to the following:

(A) (No change.)

(B) Managed ~~[Medicaid managed]~~ care organizations (MCOs) ~~[(MMCOs)]~~;

(C) (No change.)

(D) Medicaid providers who are required to comply with Chapter 419, Subchapter L of this title, governing Mental Health ~~[Medicaid]~~ Rehabilitative Services, or Chapter 412, Subchapter I of this title, governing Mental Health Case Management Services ~~[of this title, governing Service Coordination]~~.

(9) (No change.)

(10) Individual--

(A) (No change.)

(B) For an MCO ~~[MMCO]~~--An enrolled adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving services from or through the MCO ~~[MMCO]~~ or its provider.

(C) (No change.)

(D) For a provider of rehabilitative services or a provider of mental health case management services ~~[service coordination]~~ reimbursed by Medicaid--An adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving rehabilitative services or mental health case management services ~~[service coordination]~~ reimbursed by Medicaid.

(11) - (12) (No change.)

(13) Local mental health authority (LMHA)--An entity designated as the local mental authority by the DSHS in accordance with the Health and Safety Code, §533.035(a). ~~[A governmental entity to which the Texas MHMR Board delegates its authority and responsibility for any, all, or portions of planning, policy development, coordination, resource development and allocation, and oversight of the delivery of mental health services in a local service area.]~~

(14) Managed ~~[Medicaid managed]~~ care organization (MCO) ~~[(MMCO)]~~--An entity that has a current ~~[Texas]~~ Department of Insurance certificate of authority to operate as a health maintenance

organization (HMO) under Insurance Code, Subchapter C of Chapter 843, [Article 20A of the Texas Insurance Code] or as an approved nonprofit health corporation under Insurance Code, Chapter 884 [Article 21.52F of the Texas Insurance Code and that provides mental health services to Medicaid recipients].

(15) Psychiatric disorder--An emotional disturbance in a child or adolescent or a psychiatric disorder in an [A mental illness in a child, adolescent, or] adult who is a member of the mental health priority population as defined in the Health and Human Services System Strategic Plan 2011 - 2015 [current TDMHMR strategic plan].

(16) - (17) (No change.)

(18) Staff--Full- or part-time employees, contractors, and interns [students] of an entity.

(19) - (20) (No change.)

(21) Treatment plan--A written document developed by the provider, in consultation with the individual (and LAR on the individual's behalf), that is based on assessments of the individual and which addresses the individual's strengths, needs, goals, and preferences regarding service delivery as referenced in §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) [§412.315 (relating to Assessment and Treatment Planning)] of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

§411.654. Services to Individuals with COPSD.

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

§411.655. Responsibility for Compliance.

(a) (No change.)

(b) Entities that are LMHAs, MCOs, or [MMCOs, and] SMHFs must require providers, by contract, to comply with §411.654 of this title (relating to Services to Individuals with COPSD), §411.657 of this title (relating to Access to Services), §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD), and §411.660 of this title (relating to Screening, Assessment, and Treatment Planning).

(c) Entities must monitor staff who provide services to an individual with COPSD and contract providers for compliance with the applicable provisions of §§411.657 - 411.660 of this title [Divisions 2 and 3].

(d) An entity that is an MCO [MMCOs] must comply and must require staff to comply with Chapter 404, Subchapter E of this title, governing Rights of Persons Receiving Mental Health Services.

§411.656. DSHS [TDMHMR Central Office] Responsibilities.

(a) DSHS [TDMHMR Central Office] must make available training resources for the competencies identified in §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD).

(b) DSHS [TDMHMR Central Office] must require LMHAs and SMHFs to develop quality management systems that ensure an appropriate integrated assessment for each individual and the appropriate delivery of services.

§411.657. Access to Services.

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

(c) The LMHAs, MCOs [MMCOs], and SMHFs must ensure that individuals have access to staff who meet specialty competencies described in §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD).

(d) (No change.)

§411.658. Specialty Competencies of Staff Providing Services to Individuals with COPSD.

(a) Entities must ensure that services to individuals are age and culturally appropriate [age-appropriate] and are provided by staff within their scope of practice who have the following minimum knowledge, technical, and interpersonal competencies prior to providing services.[-]

(1) Knowledge competencies:

(A) - (H) (No change.)

(I) basic knowledge of withdrawal symptoms and their potential risk factors to clients;

(J) [~~(H)~~] knowledge of the phases of recovery for individuals;

(K) [~~(J)~~] knowledge of the relationship between COPSD and Axis III disorders; and

(L) [~~(K)~~] basic knowledge of self-help in recovery.

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

(b) Within 90 days of the effective date of this subchapter, entities must ensure that staff who provide services to individuals with COPSD, and who have not previously done so, have demonstrated the competencies described in subsection (a) of this section. These competencies may be evidenced by compliance with current licensure requirements of the governing or supervisory boards for the respective disciplines involved in serving individuals with COPSD or by documentation regarding the attainment of the competencies described in subsection (a) of this section. For unlicensed staff delivering these services, these competencies are evidenced by documentation regarding their attainment as required in subsection (a) of this section.

§411.659. Quality Management.

(a) The LMHAs and MCOs [MMCOs] must develop and implement a plan for quality management of services to individuals with COPSD as required in §412.317 [§412.313] (relating to Quality Management) of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

(b) (No change.)

§411.660. Screening, Assessment, and Treatment Planning.

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

(e) Episode of care summary. Upon discharge or transfer of an individual from one entity to another, the individual's medical record must identify the services provided according to this subchapter and the items referenced in §412.322 (relating to Provider Responsibilities for Treatment Planning and Service Authorization) [§412.315 (relating to Assessment and Treatment Planning)] of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

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 April 13, 2011.

TRD-201101401

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 29, 2011

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

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25 TAC §411.661, §411.662

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

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; 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 Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The repeals affect Government Code, §531.0055; and Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§411.661. *References.*

§411.662. *Distribution.*

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

Filed with the Office of the Secretary of State on April 13, 2011.

TRD-201101404

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 29, 2011

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 110. CONTRACTS

37 TAC §§110.1, 110.5, 110.9, 110.11

The Texas Youth Commission (TYC) proposes the following new rules: §110.1, concerning contract authority and responsibilities, §110.5, concerning contract monitoring, §110.9, concerning protests, and §110.11, concerning negotiation and mediation of contract disputes.

New §110.1 will establish the approval authority and responsibilities for executing contracts required by TYC.

New §110.5 will establish the contract monitoring roles and responsibilities of TYC staff, including the monitoring system used by TYC to ensure compliance with contract and service delivery requirements by service providers.

New §110.9 will establish the process by which an actual or prospective bidder, offeror, or contractor who considers himself/herself to have been aggrieved in connection with TYC's

solicitation, evaluation, or award of a contract may formally protest.

New §110.11 will establish the process for TYC and its contractors to engage in negotiation and/or mediation procedures to resolve certain disputes involving claims of breach of a written contract.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there are no anticipated significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Duarte has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the availability of accurate, current rules concerning TYC'S contracting responsibilities as well as compliance with state law.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

The new rules are proposed under: (1) Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions; (2) Human Resources Code §61.048, which requires the commission to promulgate rules relating to the award of contracts for the construction of buildings and improvements; (3) Texas Government Code §2155.076, which requires each state agency to promulgate by rule protest procedures for resolving vendor protests relating to purchasing issues; (4) Texas Government Code §2260.052, which requires each unit of state government with rulemaking authority to promulgate rules to govern the negotiation and mediation of contract disputes; and (5) Texas Government Code §2261.202, which requires each state agency that makes procurements to promulgate rules that clearly define the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

The proposed rules implement Human Resources Code, §61.034.

§110.1. Contract Authority and Responsibilities.

(a) Purpose. The purpose of this rule is to establish the approval authority and responsibilities for executing contracts required by the Texas Youth Commission (TYC).

(b) Applicability. This rule applies to all contracts entered into by TYC.

(c) Definitions. As used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--the governing board of TYC.

(2) Contract--a written contract between TYC and a contractor for goods or services or for a project as defined by Texas Government Code §2166.001. As used in this chapter, "contract" includes the following: letters of agreement; interagency/interlocal agreements with other government entities; and other documents in which state

funds or services are exchanged for the delivery of other goods or services.

(d) Approval Authority.

(1) Board Approval. The executive director or his/her designee shall present certain contracts to the board for approval, including but not limited to:

- (A) any contract exceeding \$500,000;
- (B) any construction contract exceeding \$300,000;
- (C) any construction contract change order exceeding \$150,000;
- (D) any contract for consultant services, as defined in Texas Government Code §2254.021, exceeding \$15,000;
- (E) any contract for architectural or engineering services;
- (F) any contract for start-up residential operations; and
- (G) any other contract deemed appropriate for board approval as determined by the executive director.

(2) Agency Approval.

(A) The board delegates authority to the executive director or his/her designee to approve all contracts not listed in paragraph (1) of this subsection.

(B) The board delegates authority to the executive director to approve a contract listed in paragraph (1) of this subsection that is executed in response to an emergency as defined in 34 TAC §20.32.

(3) Other Approvals.

(A) In accordance with Texas Government Code §321.020, all contracts involving the expenditure of funds for outside audit services require approval of the State Auditor's Office.

(B) In accordance with Texas Government Code §402.0212, all contracts involving the expenditure of funds for outside legal services require approval of the Attorney General's Office.

(e) Authority to Execute Contracts. The board delegates authority to the executive director to execute all contracts for TYC. This authority may be delegated by the executive director to the deputy executive director or the chief financial officer.

(f) Annual Contract Plan.

(1) The executive director or his/her designee will present to the board for its review an annual plan that outlines the agency's anticipated contracting actions for the next fiscal year.

(2) As deemed necessary by the executive director or his/her designee, updates to the contract plan will be provided to the board for review periodically throughout the fiscal year.

(g) Adoptions by Reference and Statutory Citations relating to Contracting Responsibilities.

(1) Competitive Solicitations.

(A) TYC complies with Texas Government Code Chapters 2155 and 2156 relating to competitive bidding and requests for proposals.

(B) TYC adopts by reference 34 TAC §20.391 relating to requests for offers.

(2) Historically Underutilized Businesses. TYC adopts by reference rules relating to historically underutilized businesses set forth in 34 TAC Chapter 20, Subchapter B.

(3) 1st Choice-Recycled Content Product. TYC adopts by reference 34 TAC §20.135 relating to first choice-recycled content products.

(4) Consultant Services.

(A) TYC complies with Texas Government Code Chapter 2254, Subchapter B, concerning consulting services contracts.

(B) TYC adopts by reference 34 TAC §5.54 relating to consulting services contracts.

(5) Professional Services. TYC complies with Texas Government Code Chapter 2254, Subchapter A, within the scope of the practice of accounting; architecture; land surveying; medicine; optometry; or professional engineering; or provided in connection with the professional employment or practice of a person who is licensed as a certified public accountant; an architect; a land surveyor; a physician, including a surgeon; an optometrist; or a professional engineer.

(6) Construction Services. In awarding contracts for the construction of buildings and improvements, TYC shall award the contracts in accordance with Texas Government Code Chapter 2166 relating to building construction and acquisition.

(7) Rate Setting. TYC complies with Texas Government Code §2261.151(a) concerning payment and reimbursement methods and rates.

(8) Exemptions from Competitive Bidding Process for Youth Services. In accordance with Texas Government Code Chapter 2155, Subchapter C relating to certain exemptions from competitive bidding, TYC may purchase care and treatment services for youth committed to its care, at rates not to exceed any maximum provided by law, based on each provider's qualifications and demonstrated competence.

§110.5. Contract Monitoring.

(a) Purpose. The purpose of this rule is to establish the contract monitoring roles and responsibilities of the Texas Youth Commission (TYC) staff, including the monitoring system used by TYC to ensure compliance with contract and service delivery requirements by service providers.

(b) Applicability. This rule applies to all public or private entities with which TYC has a contract.

(c) General Provisions.

(1) TYC will periodically monitor all public and private entities which contract with TYC.

(2) TYC will establish a monitoring schedule based on a risk assessment methodology. Higher risk contracts shall be monitored more frequently and more comprehensively than lower risk contracts.

(3) For residential program-related client services contracts, TYC will obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

(d) Contract Monitoring Roles and Responsibilities.

(1) The TYC Internal Audit department audits contracted services and oversight monitoring activity in accordance with Human Resources Code §61.0331 and based on the results of the annual risk assessment.

(2) Quality assurance staff will conduct program reviews of all residential facilities and parole programs operated under contract with TYC to ensure operations comply with applicable statutes, policies, procedures, and standards.

(3) Individual program areas will:

(A) provide day-to-day monitoring activities regarding financial and performance requirements;

(B) provide technical assistance to providers; and

(C) initiate corrective action and/or sanctions for non-compliance when appropriate.

§110.9. Protests.

(a) Purpose. The purpose of this rule is to establish the process for which actual or prospective bidders, offerors, or contractors may formally protest.

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

(1) Agency--The Texas Youth Commission.

(2) Interested parties--All vendors who have submitted bids or proposals for the provision of goods or services pursuant to a contract with the Texas Youth Commission.

(c) General Provisions.

(1) Any actual or prospective bidder, offeror, or contractor who considers himself/herself to have been aggrieved in connection with the agency's solicitation, evaluation, or award of a contract may formally protest to the procurement director. Such protests must be made in writing and received in the office of the procurement director within ten working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of this subsection and subsection (d) of this section, and will be resolved through use of the procedures that are described in subsections (e) - (g) of this section. The protesting party must mail or deliver copies of the protest to the agency and other interested parties.

(2) In the event of a timely protest under this rule, the agency will not proceed further with the solicitation or award of the contract unless the deputy executive director, after consultation with appropriate staff, makes a written determination that the contract must be awarded without delay to protect the best interests of the agency.

(d) Protests. A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by the agency that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the agency and all other identifiable interested parties.

(e) Resolving Protests.

(1) The procurement director may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the agency's general counsel or his/her designee. The procurement director may solicit written responses to the protest from other interested parties.

(2) If the protest is not resolved by mutual agreement, the chief financial officer (CFO) will consult with the office of general counsel to issue a written determination that resolves the protest.

(3) If the CFO, after consultation with the office of general counsel, determines that no violation of statutory or regulatory provisions has occurred, then he/she shall inform the protesting party and any other interested parties by letter that sets forth the reasons for the determination.

(4) If the CFO, after consultation with the office of general counsel, determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then he/she shall inform the protesting party and any other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.

(5) If the CFO, after consultation with the office of general counsel, determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then he/she shall inform the protesting party and any other interested parties of that determination by letter that details the reasons for the determination. This letter may include an order that declares the contract void.

(f) Appealing a Protest.

(1) The protesting party may appeal a determination of a protest by the CFO to the general counsel or his/her designee. An appeal of the CFO's determination must be in writing and received by the general counsel not later than ten working days after the date on which the CFO has sent written notice of his/her determination. The scope of the appeal will be limited to review of the CFO's determination. The protesting party must mail or deliver to the agency and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(2) The general counsel or his/her designee may refer the matter to the executive director for consideration or may issue a written decision that resolves the protest.

(g) Referral of a Protest to the Executive Director. The following requirements shall apply to a protest that the general counsel or his/her designee refers to the executive director.

(1) The general counsel or his/her designee will deliver copies of the appeal and any responses by interested parties to the executive director.

(2) The executive director may consider any documents that agency staff or interested parties have submitted.

(3) The executive director will issue a written letter of determination of the appeal to the parties which shall be final.

(A) A protest or appeal that is not filed timely will not be considered unless good cause for delay is shown or the executive director determines that an appeal raises issues that are significant to agency procurement practices or procedures in general.

(B) A written decision that either the executive director or the general counsel or his/her designee has issued shall be the final administrative action of the agency.

(h) Documentation Requirements. The agency will maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the agency's retention schedule.

§110.11. Negotiation and Mediation of Contract Disputes.

(a) Purpose. In accordance with Texas Government Code Chapter 2260, the purpose of this rule is to establish procedures for the Texas Youth Commission (TYC) and its contractors to engage in negotiation and/or mediation procedures to resolve certain disputes involving claims of breach of written contract. These procedures are not intended to replace the process to resolve any disagreement concerning the contract in the ordinary course of contract administration under less formal procedures specified in the parties' contract.

(b) Applicability.

(1) This rule applies to TYC and its contractors, as defined in Texas Government Code §2260.001.

(2) This rule does not apply to:

(A) a claim for personal injury or wrongful death arising from a breach of contract;

(B) an action of TYC for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute;

(C) a contract action proposed or taken by TYC for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Chapter 2001 of the Texas Government Code;

(D) a contract that is solely and entirely funded by federal grant monies other than for a project defined in Texas Government Code §2166.001;

(E) a contract between TYC and the federal government or its agencies, another state, or another nation;

(F) a contract between TYC and another unit of state government;

(G) a contract between TYC and a local governmental body or a political subdivision of another state;

(H) a claim from a contractor's subcontractor, officer, employee, agent, or other persons furnishing goods or services to a contractor;

(I) a contract within the exclusive jurisdiction of state or local regulatory bodies; or

(J) a contract within the exclusive jurisdiction of federal courts or regulatory bodies.

(c) Sovereign Immunity.

(1) This rule does not waive TYC's sovereign immunity to suit or liability.

(2) The procedures contained in this rule are exclusive and required prerequisites to suit under Texas Civil Practice and Remedies Code, Chapter 107, and the Texas Government Code, Chapter 2260.

(d) Contract Claims.

(1) Notice of Claim of Breach of Contract.

(A) A contractor asserting a claim for breach of contract under Texas Government Code Chapter 2260 shall file notice of the claim as provided by this subsection.

(B) The notice of claim shall:

(i) be submitted no later than 180 days after the date of the event that the contractor asserts as the basis of the claim;

(ii) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the individual stated in the contract or to the executive director if no individual is identified; and

(iii) state in detail:

(I) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(II) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(III) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed; and

(iv) provide supporting documentation or other tangible evidence to facilitate TYC's evaluation of the claim; and

(v) be signed by the contractor or the contractor's authorized representative.

(2) Counterclaim by the Commission.

(A) In order to assert a counterclaim, TYC shall file notice of the counterclaim not later than 60 days after the date of the contractor's notice of claim.

(B) The notice of counterclaim shall:

(i) be submitted in writing;

(ii) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the contractor or representative of the contractor; and

(iii) state in detail:

(I) the nature of the counterclaim;

(II) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(III) the legal theory supporting the counterclaim recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed; and

(iv) provide supporting documentation or other tangible evidence to facilitate the contractor's evaluation of TYC's counterclaim; and

(v) be signed by the executive director or his/her designee.

(C) Nothing herein precludes TYC from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

(e) Negotiation.

(1) The parties may conduct negotiations of claims and counterclaims within a reasonable period of time as long as the negotiations start prior to the 120th day following the date TYC receives the contractor's notice of claim.

(2) The parties shall complete the negotiations as provided by this rule as a prerequisite to a contractor's request for contested case hearing no later than 270 days after TYC receives the contractor's no-

time of claim unless the parties agree in writing to extend the time for negotiations.

(3) The parties may conduct negotiations with the assistance of one or more neutral third parties.

(4) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims, or positions.

(5) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

(6) The agreement may resolve an entire claim or counterclaim or any designated and severable portion of a claim.

(7) The agreement must be in writing and signed by representatives of the contractor and TYC who have authority to bind each respective party.

(8) A partial settlement does not waive a party's rights under Texas Government Code Chapter 2260 to proceed on the parts of the claims or counterclaims that are not resolved.

(9) Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees, and expert's fees.

(f) Mediation.

(1) The parties may agree to mediate the dispute at any time before the 120th day after TYC receives the contractor's notice of claim or before the expiration of any written extension agreed to by the parties.

(2) The parties may mediate the dispute even after the case has been referred to the State Office of Administrative Hearings (SOAH) for a contested case. The SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

(3) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. For purposes of this rule, mediation is assigned the meaning set forth in the Texas Civil Practice and Remedies Code §154.023.

(4) To facilitate a meaningful opportunity for settlement, the parties shall, to the extent possible, select representatives who:

- (A) are knowledgeable about the dispute;
- (B) are in a position to reach agreement; or
- (C) can credibly recommend approval of an agreement.

(5) Sources of mediators shall include governmental officers or employees who are qualified as mediators under §154.052, Texas Civil Practice and Remedies Code, private mediators, SOAH, the Center for Public Policy Dispute Resolution at the University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Texas Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies.

(6) The confidentiality of a final settlement agreement to which TYC is a signatory that is reached as a result of the mediation is governed by Texas Government Code, Chapter 552.

(7) Each party shall be responsible for its own costs incurred in connection with the mediation, including costs of document

reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

(g) Settlement Agreement.

(1) A settlement agreement reached as a result of negotiation or mediation that resolves an entire claim or counterclaim or any designated and severable portion of a claim or counterclaim shall be in writing and signed by the representatives of the contractor and TYC who have authority to bind each respective party.

(2) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.

(3) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

(h) Referral to the State Office of Administrative Hearings.

(1) The contractor may request a contested case hearing before the SOAH after the 270th day after TYC receives the contractor's notice of claim, or the expiration of any written extension.

(2) If a claim for breach of contract is not resolved in its entirety through negotiation or mediation in accordance with this rule on or before the 270th day after TYC receives notice of claim, or after the expiration of any written extension agreed to by the parties, the contractor may file a request with TYC for a contested case hearing before SOAH.

(3) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the executive director of TYC or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to by the parties.

(4) TYC shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed 30 days after receipt of the request.

(5) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by TYC if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

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 April 14, 2011.

TRD-201101412

Cheryl N. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 29, 2011

For further information, please call: (512) 424-6475



CHAPTER 111. CONTRACTS

The Texas Youth Commission (TYC) proposes the repeal of the following rules: §111.1, concerning purchasing youth services, §111.7, concerning rate setting for youth service contracts, §111.9, concerning request for proposals, §111.11, concerning start-up funds, §111.13, concerning quality assurance of con-

tract programs, §111.15, concerning variance/waiver requests, §111.17, concerning private sector involvement, §111.31, concerning contracting for services, §111.37, concerning professional and consultant contracts, §111.39, concerning architect and engineer contracts, §111.45, concerning construction contracts, §111.49, concerning construction contract change order approval, §111.51, concerning constructions project operations process and resolution forum, §111.57, concerning training and education contracts, §111.61, concerning student intern contracts, §111.73, concerning problem solving mechanisms, §111.77, concerning negotiation and mediation of contract disputes, §111.81, concerning historically underutilized businesses, and §111.87, concerning first choice-recycled content product.

The repeal of these rules will allow for the publication of new §§110.1, 110.5, 110.9, and 110.11 of this title, as published in the Proposed Rules portion of this issue of the *Texas Register*.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the repeals.

Ms. Duarte has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the availability of accurate, up-to-date rules concerning contracts that will be reorganized and contained within a new chapter of this title.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by the repeal of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

SUBCHAPTER A. CONTRACTS FOR YOUTH SERVICES

37 TAC §§111.1, 111.7, 111.9, 111.11, 111.13, 111.15, 111.17

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

The repeals are proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeals implement the Human Resources Code, §61.034.

§111.1. *Purchasing Youth Services.*

§111.7. *Rate Setting for Youth Service Contracts.*

§111.9. *Request for Proposal.*

§111.11. *Start-Up Funds.*

§111.13. *Quality Assurance of Contract Programs.*

§111.15. *Variance/Waiver Requests.*

§111.17. *Private Sector Involvement.*

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 April 14, 2011.

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6475

SUBCHAPTER B. CONTRACTS FOR OTHER THAN YOUTH SERVICES

37 TAC §§111.31, 111.37, 111.39, 111.45, 111.49, 111.51, 111.57, 111.61

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

The repeals are proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeals implement the Human Resources Code, §61.034.

§111.31. *Contracting for Services.*

§111.37. *Professional and Consultant Contracts.*

§111.39. *Architect and Engineer Contracts.*

§111.45. *Construction Contracts.*

§111.49. *Construction Contract Change Order Approval.*

§111.51. *Construction Project Operations Management Process and Resolution Forum.*

§111.57. *Training and Education Contracts.*

§111.61. *Student Intern Contracts.*

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

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6475

SUBCHAPTER C. MISCELLANEOUS

37 TAC §§111.73, 111.77, 111.81, 111.87

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

The repeals are proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeals implement the Human Resources Code, §61.034.

§111.73. *Problem Solving Mechanism.*

§111.77. *Negotiation and Mediation of Contract Disputes.*

§111.81. *Historically Underutilized Businesses (HUBs).*

§111.87. *1st Choice-Recycled Content Product.*

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 April 14, 2011.

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 1. STATE MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

SUBCHAPTER G. COMMUNITY MHMR CENTERS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§1.301 - 1.303, 1.305, 1.307 - 1.310, and 1.312, concerning purpose, application, definitions, process to establish a new community center, modifying a community center's current plan, dissolution or merger of community centers, appointment of manager or management team, standards of administration for boards of trustees, and fiscal controls; and the repeal of §§1.304, 1.306, and 1.313 - 1.316, concerning philosophy, updating a community centers current plan, determination of salaries of community center employees, exhibits, references, and distribution, in Chapter 1, State Mental Retardation Authority Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to revise rule language to be consistent with House Bill (HB) 2303, 81st Legislature, Regular Session, 2009. HB 2303 states that a community center may provide health and human services and supports that are not identified in its local plan if provided by contract with a local, federal, or state agency. The current Subchapter G, Community MHMR Centers, in Chapter 1 specifies that a community center may operate and perform only as described in its local plan.

The proposed amendments and repeal revise the process for reviewing and approving a community center's plan to reflect changes in agency names and elimination of the Texas Mental Health and Mental Retardation Board, in accordance with the

2004 reorganization of the health and human service agencies. Review and approval of a center's plan requires coordination between DADS and the Department of State Health Services (DSHS). The proposed rule addresses the required coordination.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §1.301 adds a statutory citation and updates agency and center designations.

The proposed amendment to §1.302 clarifies the application of Subchapter G.

The proposed amendment to §1.303 revises definitions used in Subchapter G, adds a statutory citation, updates agency and center designations, and adds definitions for DADS and DSHS.

The proposed repeal of §1.304 removes provisions regarding philosophy.

The proposed amendment to §1.305 revises specifications regarding the process to establish a new community center, updates authority designations, and adds a website address where a template for the community center plan may be found.

The proposed repeal of §1.306 deletes provisions regarding updating a community center's current plan.

The proposed amendment to §1.307 revises specifications for modifying a community center's current plan, updates authority designations and adds a website address where a template for the community center plan may be found.

The proposed amendment to §1.308 revises the title of the section, updates authority designations, and revises the section for clarity.

The proposed amendment to §1.309 revises specifications for appointment of a manager or management team and updates authority designations.

The proposed amendment to §1.310 revises specifications for standards of administration for boards of trustees, updates authority designations, adds a statutory citation, and updates a form reference.

The proposed amendment to §1.312 revises specifications regarding fiscal controls, updates authority designations, and updates a rule reference.

The proposed repeal of §1.313 deletes rules regarding determination of salaries of community center employees, because the requirement is in statute.

The proposed repeal of §1.314 deletes provisions regarding exhibits.

The proposed repeal of §1.315 deletes provisions regarding references.

The proposed repeal of §1.316 deletes provisions regarding distribution of the subchapter.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the rule only applies to a community center. A community center is a unit of local government.

PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is that community center rules will require coordination with DSHS and reflect current agency information.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS 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.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Marcia Shultz at (512) 438-3532 in DADS Access and Intake. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R024, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R024" in the subject line.

40 TAC §§1.301 - 1.303, 1.305, 1.307 - 1.310, 1.312

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§1.301. Purpose.

(a) Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A, and this subchapter govern the establishment and operation of a community center.

(b) The purpose of this subchapter is to describe requirements by which a community center is ~~mental health and mental retardation centers are~~ established and operated by a local agency with a plan approved by DADS and DSHS ~~the Texas Mental Health and Mental Retardation Board~~ in accordance with the Texas Health and Safety Code, §534.001(e).

§1.302. Application.

This subchapter applies to local agencies desiring to establish a new community ~~mental health and mental retardation~~ center or affiliate with an existing community center and to all existing community ~~mental health and mental retardation~~ centers established under the Texas Health and Safety Code, Title 7, Chapter 534.

§1.303. Definitions.

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

(1) Board of trustees--A body of ~~not less than five nor more than nine~~ persons selected and appointed in accordance with Texas Health and Safety Code, Title 7, §534.002 or §534.003, and §534.004, §534.005, and §534.0065, that [which] has responsibility for the effective administration of a community center.

~~(2) Commissioner--The commissioner of the Texas Department of Mental Health and Mental Retardation.]~~

(2) ~~(3)~~ Community center or center--A center established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(3) ~~(4)~~ Current plan--The most recently approved initial ~~updated,~~ or modified plan.

(4) DADS--The Texas Department of Aging and Disability Services.

(5) DSHS--The Texas Department of State Health Services.

~~(5) Department--The Texas Department of Mental Health and Mental Retardation (TDMHMR).]~~

(6) Facility--A ~~Any~~ state hospital, state supported living center ~~school,~~ or state center.

(7) Initial plan--The plan developed by a board of trustees to establish a new community center.

(8) Local agency--A county, municipality, hospital district, school district, or any organizational combination of two or more of these which may establish and operate a community center.

(9) Local contribution--Funds or in-kind contribution by each local agency to a community center in the amount approved by DADS and DSHS [the department], which includes local match if the center is a local authority.

(10) Local authority--In accordance with Texas Health and Safety Code, §533.035(a), an entity designated as a local mental retardation authority or a local mental health authority by the executive commissioner of the Health and Human Services Commission. [An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.]

(11) Local match--In accordance with the Texas Health and Safety Code, §534.066, those funds or in-kind support from a local

authority that are required to match some or all of the state funds the local authority receives pursuant to a contract with DADS or DSHS [the department].

(12) Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive services from a local authority.

(13) Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons with a severe and persistent mental illness which may be accompanied by chemical dependency or mental retardation.

(14) Mental retardation services--All services concerned with research, prevention, and detection of mental retardation and all services related to the education, training, habilitation, care, treatment, and supervision of persons with mental retardation, except the education of school-age persons that the public educational system is authorized to provide.

(15) Region--The area within the boundaries of the local agencies participating in the operation of a community center established under the Texas Health and Safety Code, Chapter 534, Subchapter A.

~~[(16) State-operated community services (SOCS)--Community residential and nonresidential programs operated by the Texas Department of Mental Health and Mental Retardation.]~~

§1.305. Process to Establish a New Community Center.

(a) Letter of intent. If a local agency decides to establish a new community center, then the local agency submits a letter of intent to DADS and DSHS [the commissioner] outlining the proposed new center's region, governing structure, and other information pertinent to the formation of the proposed new center.

(1) If the local agency submitting the letter of intent is not a county or counties, the letter must be accompanied by a letter of endorsement from the appropriate county judge or judges.

(2) DADS and DSHS [The commissioner designates staff who are knowledgeable of community center operations to] review the letter of intent using the following criteria:

(A) the [rationale clearly supports the] benefits of establishing a new center over affiliation with an existing center and the establishment of a new center is consistent with DADS and DSHS [the department's] mission for the development of community services in Texas;

(B) the population of the region of the proposed new center is at least 200,000 or large enough to support a center;

(C) a comprehensive array of mental health and mental retardation services will be provided;

(D) the extent of the local contribution supports the intent; and

(E) the efficient provision of services [providing services efficiently] is financially viable.

(3) DADS and DSHS determine whether the letter of intent meets the criteria described in paragraph (2) of this subsection. [The commissioner's response to the local agency's letter of intent is based on the review described in paragraph (2) of this subsection and is sent to the local agency by certified mail; return receipt requested.]

~~[(A) If the commissioner approves the letter of intent, the response includes notification of such approval.]~~

~~[(B) If the commissioner does not approve the letter of intent, the response includes the reasons for disapproval.]~~

(b) Appointment of board of trustees. If the local agency receives notice from DADS and DSHS that the letter of intent meets the criteria described in subsection (a)(2) of this section, the local agency [approval of its letter of intent, then it] prescribes the criteria and procedures for the appointment of members of a board of trustees as described in the Texas Health and Safety Code, §534.002 or §534.003, and §534.004, §534.005, and §534.0065. The local agency prescribes and makes available for public review the elements listed in the Texas Health and Safety Code, §534.004(a). If more than one local agency is involved, the local agencies must [shall] enter into a contract of interlocal agreement that states [stipulates] the number of board members and the group from which the members are chosen, as provided in the Texas Health and Safety Code, §534.003(c). [The local agencies may renegotiate or amend the contract of interlocal agreement as necessary to change the:]

~~[(1) method of choosing the board of trustees members; or]~~

~~[(2) membership of the board of trustees to more accurately reflect the ethnic and geographical diversity of the region's population.]~~

(c) Initial plan.

(1) Submission. The board of trustees develops and submits to DADS and DSHS [the commissioner] an initial [written] plan to provide effective mental health and mental retardation services to the residents of the proposed region. The board of trustees must appoint a mental health planning advisory council and a mental retardation planning advisory council or a combined mental health and mental retardation planning advisory council to assist in developing the initial plan. A mental health planning advisory council must have at least 50% representation of persons or family members of persons who have received or are receiving mental health services. A mental retardation planning advisory council must have at least 50% representation of persons or family members of persons who have received or are receiving mental retardation services. A combined mental health and mental retardation planning advisory council must have at least 50% representation of persons or family members of persons who have received or are receiving mental health or mental retardation services with an equal number of representatives for mental health services and mental retardation services. [The board of trustees shall appoint a mental health planning advisory council and a mental retardation planning advisory council, each with at least 50% representation of persons who have received or are receiving services or their family members, to assist in developing the initial plan.] The board of trustees must [shall] also seek input through a public process (e.g., public hearings, focus groups, town meetings) from the residents [citizens] in the proposed region regarding local needs and priorities. The initial plan must include the following elements:

(A) a comprehensive service description, which includes:

(i) a statement of the mission, vision, values, and principles which establish [provide] the foundation of the proposed community center's local service delivery system;

(ii) a definition of all populations to be served;

(iii) a description of relevant internal and external assessments and evaluations [which may provide direction] for the local strategic planning process;

(iv) a statement of local service needs and priorities [to be addressed through a combination of resource development, ex-

pansion, reduction, and termination with the local service delivery system with the rationales for these selections];

[(+)] a summary of needs assessment data and processes used in the determination of local service needs and priorities;]

[(v)] [(vi)] identified gaps in services and supports in the local service delivery system [which may assist in the determination of local service needs and priorities];

[(vi)] [(vii)] a description of existing local mental health and mental retardation resources and planned resource development activities;

[(viii)] a statement regarding innovative services considered and how these affect the local strategic planning process;]

[(vii)] [(ix)] a statement of management needs and priorities to support an effective and efficient local service delivery system; and

[(viii)] [(x)] [plan] objectives, strategies, and outcomes.

(B) a community center plan in a format required by DADS and DSHS available at www.dads.state.tx.us; and [a charter in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits);]

(C) a prospectus, which describes:

(i) any proposed transfer of funds, assets, liabilities, personnel, and consumer and administrative records and [A] information from a facility or existing community center [state-operated community services (SOCS) or other community centers] and the time frames for transfer;

(ii) other [any] identified additional available funds;

(iii) the arrangements for uninterrupted delivery of services; and

(iv) the impact, and resolution if warranted, of current contractual obligations.

(2) Review and approval.

(A) DADS and DSHS [The commissioner designates staff who are knowledgeable of community center operations to] review the initial plan. [The designated staff may verify the information contained in the initial plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.]

(B) If DADS and DSHS approve the initial plan, DADS and DSHS issue a certificate of recognition as a community center.

[(3) Notification of intended recommendation: The department notifies the board of trustees of the commissioner's intention to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:]

[(A) the board of trustees may request an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases): The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the initial plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;]

[(B) the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and]

[(C) the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.]

[(4) Approval or disapproval: The commissioner recommends approval or disapproval of the initial plan to the Texas MHMR Board. The commissioner may recommend approval of portions of the initial plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the initial plan by staff. A recommendation of approval requires that the assessment confirms that the initial plan properly fulfills the requirements of paragraph (1) of this subsection to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services in accordance with the Texas Health and Safety Code, §534.016.]

[(A) If the Texas MHMR Board approves the initial plan in its entirety, then the department issues a certificate of recognition as a community center.]

[(B) If the Texas MHMR Board approves portions of the initial plan and such approved portions properly fulfill the requirements of paragraph (1) of this subsection, then it instructs the official record to reflect such portions as the approved initial plan in its entirety and the department issues a certificate of recognition as a community center.]

[(C) If the Texas MHMR Board does not approve the initial plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, including time frames.]

[(5) Community center operations: A community center may perform and operate only for the purposes and functions defined in its current plan.]

§1.307. Modifying a Community Center's Current Plan.

(a) Submission. The [Within the assigned three-year cycle for updating its current plan as described in §411.306 of this title (relating to Updating a Community Center's Current Plan), the] board of trustees of a community center must [shall] submit a modification of its current plan in accordance with this section as frequently as necessary to reflect [material] changes in the community center's local agencies, functions, or region as described in paragraphs (1) - (3) of this subsection prior to implementing the changes. The modified plan must [shall] be in the format required by DADS and DSHS available at www.dads.state.tx.us [shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits)].

(1) If a local agency wants to affiliate with an existing community center and the existing center agrees, then the board of trustees of the existing center submits to DADS and DSHS [will submit to the commissioner] for approval a modification of the center's current plan to reflect such affiliation, including:

(A) any proposed expansion of the center's region;

(B) a copy of the new contract of interlocal agreement; and

(C) official documentation (for example, a [e.g.,] resolution) confirming an [such] intent to affiliate from each [present] local agency and the proposed [affiliated] local agency.

(2) If a local agency wants to terminate its ~~organizational combination with another local agency and end its~~ affiliation with an existing community center, then the appointing authorities of the local agencies must terminate the original contract of interlocal agreement and enter into a new contract of interlocal agreement if more than one local agency remains. The board of trustees of the existing center submits to DADS and DSHS for approval a modification of the center's current plan to reflect the termination of such affiliation ~~to the commissioner for approval~~, including:

(A) any change of the center's region;

(B) a copy of the new contract of interlocal agreement, if applicable; and

(C) official documentation (for example, a ~~e.g.~~ resolution) from the local agency confirming its intent to terminate affiliation with the center.

(3) If an existing community center wants to expand, ~~or~~ reduce, or substantially amend its functions or region as described in its plan ~~or otherwise substantially amend its functions~~, (for example ~~e.g.~~, changing the population served, the services provided, or its name;) or creating or operating a non-profit corporation), ~~then~~ the board of trustees of the center submits to DADS and DSHS for approval a modification of the center's current plan to reflect such changes ~~to the commissioner for approval~~.

(b) Review and approval.

(1) DADS and DSHS ~~The commissioner designates staff who are knowledgeable of community center operations to~~ review the modified plan. ~~The designated staff may verify the information contained in the modified plan. If additional information or changes are required for staff to recommend approval, then staff will notify in writing the board of trustees and specify requirements for resubmission, including time frames.~~

(2) If DADS and DSHS approve the modified plan, DADS and DSHS notify the board of trustees in writing of the approval and issue a new certificate if appropriate.

~~(c) Approval or disapproval. Staff recommends approval or disapproval of the modified plan to the commissioner. Staff may recommend approval of portions of the modified plan and disapproval of other portions. Staff may also recommend that the modified plan be submitted as an updated plan for approval by the Texas MHMR Board.~~

~~(1) If the commissioner approves the modified plan, then the department notifies the board of trustees in writing of the approval in a timely manner.~~

~~(2) If the commissioner approves portions of the modified plan then the commissioner instructs the official record to reflect such portions as the approved modified plan. The department shall notify the board of trustees in writing of the portions included in the approved modified plan in a timely manner.~~

~~(3) If the commissioner does not approve the modified plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, if any, including time frames. The requirement for resubmission may be submission as an updated plan for approval by the Texas MHMR Board.~~

~~(d) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.~~

§1.308. Dissolution and ~~or~~ Merger of Community Centers.

(a) Dissolution. If a community center proposes ~~decides~~ to cease operations and dissolve, the center's board of trustees and each local agency must ~~shall~~ inform DADS and DSHS ~~the commissioner~~ in writing of such a decision before dissolution. DADS, DSHS ~~The department~~, the board of trustees, and each local agency shall agree to a plan of dissolution that addresses at least the following factors:

(1) the center's assets and liabilities (including personnel);

(2) necessary audits to be conducted;

(3) closure activities, including arrangements for uninterrupted delivery of services;

(4) the transfer, archival, and security of records and information; and

(5) ~~the~~ future plans for the region's service delivery system (for example ~~e.g.~~, affiliation with an existing center or ~~or~~ establishment of a new center, reliance upon a state-operated community services (SOCS)).

(b) Merger. If two or more existing community centers agree to merge into a new community center, then before merging the boards of trustees of the involved centers submit to DADS and DSHS ~~the commissioner~~ an initial plan in accordance with §1.305(c) ~~§411.305(e)~~ of this subchapter ~~title~~ (relating to Process to Establish a New Community Center). The initial plan must represent the services to be provided in the combined expanded region and include a copy of the new contract of interlocal agreement and official documentation (for example, a ~~e.g.~~ resolution) confirming an intent to merge from each local agency involved.

§1.309. Appointment of Manager or Management Team.

(a) The DADS commissioner and the DSHS commissioner ~~The commissioner~~ may appoint a manager or management team to manage and operate a community center in accordance with the Texas Health and Safety Code, §§534.038, 534.039, and 534.040. The DADS commissioner may delegate responsibility for appointing a manager or management team to the DSHS commissioner.

(b) A community center may request a hearing to appeal the commissioners' ~~commissioner's~~ decision to appoint a manager or management team in accordance with 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) ~~this subsection~~. Requesting a hearing ~~The filing of a notice of appeal~~ stays the appointment unless the commissioners ~~commissioner~~ based the appointment on a finding under §534.038(a)(2) or (4) of the Texas Health and Safety Code, which means ~~if e.g.~~ the commissioners found ~~commissioner finds~~ that the community center or an officer or employee of the center misused state or federal money or endangers or may endanger the life, health, or safety of a person served by the center~~).~~

(1) The community center may appeal the appointment of a manager or management team by filing a notice of appeal requesting an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the finding(s) under §534.038(a) of the Texas Health and Safety Code for which the manager or management team was appointed. After all evidence has been heard, the administrative law judge will close the hearing. Within 30 days from the date the hearing closed, the administrative law judge will submit a written proposal for decision to the commissioner.]

(2) The commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the com-

missioner finds that the recommendation is not supported by substantial evidence.]

[(3) The department will notify the community center of the commissioner's decision to uphold or reverse the original decision to appoint a manager or management team. If the decision is to uphold the original decision, then no other appeal process is available.]

§1.310. Standards of Administration for Boards of Trustees.

[(a) Each board of trustees is accountable to the department, pursuant to the Texas Health and Safety Code, §534.033, for its programs that:]

[(1) use department funds or local match;]

[(2) provide core or required services;]

[(3) provide services to former consumers of a department facility; or]

[(4) are affected by litigation in which the department is a defendant.]

(a) [(b)] Each board of trustees must [is responsible for]:

[(1) assuring the submission of periodic financial information and performance reports to the department if required by the department;]

[(2) instituting effective management procedures which assure the maximum utilization of all funds and facilitates the achievement of the goal of delivering services of high quality in a cost effective manner;]

[(3) complying with the Texas Health and Safety Code, §534.022, when financing property and improvements;]

(1) [(4)] retain [retaining] all financial records, supporting documents, statistical records, and any other documents pertinent to its community center budgets, contracts, performance/workload measure, and persons served for a period of five years. If audit discrepancies have not been resolved at the end of five years, the records must be retained until resolution;

[(5) complying with the Open Meetings Act, Texas Government Code, Chapter 551;]

(2) [(6)] deposit community center funds [requiring depositories of community center funds to secure deposits] through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or to secure deposits using collateral in a manner that protects the deposited funds; and

[(7) submitting a copy of the approved minutes of board of trustees meetings to the department and to each local agency in accordance with the Texas Health and Safety Code, §534.009(d);]

[(8) ensuring community center staff abide by applicable laws, department rules, and standards; and]

(3) [(9)] ensure that DADS and DSHS have [assuring the department has] unrestricted access to all facilities, records, data, and other information under control of the community center or its contractors as necessary to enable DADS and DSHS [the department] to audit, monitor, and review all financial and programmatic activities and services associated with the center as provided by Texas Health and Safety Code, §534.033(a). [center's;]

[(A) use of department funds or local match;]

[(B) provision of core or required services;]

[(C) provision of services to former consumers of a department facility;]

[(D) programs that are affected by litigation in which the department is a defendant; or]

[(E) fiscal controls;]

(b) [(c)] Each board of trustees must receive [is accountable to the department and to each local agency for receiving appropriate] training as required by the Texas Health and Safety Code, §534.006, and this subsection.

(1) Before assuming office, new members must receive initial training, including[, but not limited to]:

(A) the importance of local planning and the roles and functions of the board of trustees, planning advisory committees, community center staff, and other service organizations;

[(B) the enabling legislation that created the community center;]

(B) [(C)] the current philosophies and program principles on which service delivery systems are founded, information about the service and support needs of people with mental illnesses, mental retardation, and related conditions, and the range of environments in which those services may be delivered;

(C) [(D)] an overview of mental illnesses, mental retardation, and related conditions;

(D) [(E)] an overview of the current local and state service delivery system, including descriptions of the types of mental health and mental retardation services provided by the community center; and

[(F) the community center's budget for the current program year;]

[(G) the results of the most recent formal audit of the community center;]

[(H) the requirements of the Open Meetings Act, Texas Government Code, Chapter 551, and the Open Records Act, Texas Government Code, Chapter 552;]

[(I) the requirements of laws concerning conflict of interest and other laws relating to public officials;]

[(J) any ethics policies adopted by the community center; and]

(E) [(K)] applicable state and federal laws, rules, standards, and regulations.

(2) Utilizing input from persons who have received or are receiving services, their family members, and advocates, the training programs must provide orientation in the perspectives and issues of persons receiving services.

(3) A community center must develop an annual training program for its board of trustees.

(A) Training methodologies may include:

(i) presentations by staff at regular board sessions;

(ii) on-site program visits;

(iii) statewide and regional training conferences;

(iv) seminars to enhance team building skills;

(v) regional and cross-training with other community centers and their boards of trustees; and

(vi) formal and informal meetings with tenured trustee members.

(B) In addition to the topics required in Texas Health and Safety Code, §534.006 and paragraphs (1) and (2) of this subsection, training topics may include:

- (i) risk management;
- (ii) budget analysis;
- (iii) consumer rights;
- (iv) strategic planning; and
- (v) new legislative and contractual requirements of community centers.

(3) Annual training must be provided for current board of trustees members, which is administered by the professional staff of the community center, including the center's legal counsel.]

(4) Guidelines for training are developed and updated as necessary by an advisory committee for the department, which includes representatives of advocacy organizations broadly representative of the interests of persons with mental illness or mental retardation and their families, and representatives of boards of trustees. The current guidelines are referenced as Exhibit B in §411.314 of this title (relating to Exhibits).]

(d) Each board of trustees may accept special funds for long-range projects and plans. These funds must be kept separate from the community center's operating budget and may not be used as local match. An annual accounting of these reserve funds (center trust, endowment, or foundation resources) must be made to the department.]

(e) Each board of trustees must obtain department approval for any building alterations, renovation, or repair maintenance expenses exceeding \$50,000 for each project per fiscal year per community center if department funds or local match are to be used. In accordance with the review process and to avoid undue delays, a board of trustees must seek advance written approval from the department at least 30 days prior to the release of the project for competitive bids.]

(c) The approval and notification requirements in this subsection are in accordance with Texas Health and Safety Code, §534.021.

(1) [(f)] A [Each] board of trustees must ensure that its community center receives written approval from DADS and DSHS [the department] prior to purchase, lease-purchase, or any other transaction which will result in the community center's ownership of real property, including buildings, if DADS and DSHS [any department] funds or local match are involved. In addition, for acquisition of nonresidential property, the community center must notify each local agency at least 30 days [not later than the 31st day] before it enters into a binding obligation to acquire the property.

(2) A community center must provide written notification to DADS and DSHS [the department] and each local agency at least 30 days [not later than the 31st day] before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of DADS and DSHS [department] funds or local match. Upon request, the commissioners [commissioner] may waive the 30-day requirement to notify DADS and DSHS [the department] on a case-by-case basis. [Notification of the department is not required for donations of real or personal property under the Texas Health and Safety Code, Title 7, §534.018 or §534.019; that do not require the expenditure of any funds by the community center and that have been approved by the board of trustees.]

(3) [(4)] All notices and requests for approval are submitted on the Real Property Acquisition and Construction Review Form [TXMHMR Property Review Form] and accompanied by supporting information including, but not necessarily limited to:

(A) the reason for purchasing the property or a brief explanation of the purpose it will serve;

(B) a summary of the plan for paying for the property, including a statement regarding whether DADS or DSHS [department] funds or local match will be used, and if DADS or DSHS funds will be used, how the funds will be used, such as [either] directly or in the retirement of any debt associated with the acquisition;

(C) if unimproved, an assessment of the suitability of the property for construction purposes or, if improved, an assessment of the current condition of the buildings;

(D) an independent appraisal of the real estate the community center intends to purchase conducted by an appraiser certified by the Texas Appraiser Licensing and Certification Board; however, the board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the past two years; and

(E) a statement that the board of trustees and executive staff are not participating financially in the transaction and will derive no personal benefit from the transaction.]; and]

[(F) a statement detailing the need to waive the 30-day requirement if a waiver is being requested.]

[(2) A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:]

[(A) the purchase or lease-purchase of that property at that price is necessary:]

[(B) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and]

[(C) a majority of the board approves the transaction].

§1.312. Fiscal Controls.

Pursuant to the Texas Health and Safety Code, §534.035, each community center must comply with the following review and audit procedures to provide reasonable assurance that the community center has adequate and appropriate fiscal controls.

(1) Audit procedures.

(A) Each board of trustees must ensure an annual financial and compliance audit of its accounts is conducted by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. At a minimum, the audit must be conducted in accordance with Government Auditing Standards. [The board of trustees must submit eight copies of the audit to the department no later than the first day of February. If the board of trustees declines to approve the audit, it will attach to each copy of the audit a statement detailing its reason for disapproving the audit.]

(B) DADS and DSHS [The department] may conduct on-site audits of a community center as determined by DADS and DSHS [the department's] financial risk analysis of the center.

(2) Review procedures.

(A) DADS and DSHS [The department will] conduct a desk review of each community center's annual audit to determine audit quality and to identify findings and questioned costs.

(B) DADS and DSHS [The department will] perform a financial risk analysis of each community center based on the center's annual audit and/or any financial information that the center is required

to submit in accordance with § 1.310(b)(1) [~~§411.310(b)(1)~~] of this subchapter [~~title~~] (relating to Standards of Administration for Boards of Trustees).

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 April 13, 2011.

TRD-201101408

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 29, 2011

For further information, please call: (512) 438-3734



40 TAC §§1.304, 1.306, 1.313 - 1.316

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS. The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§1.304. *Philosophy.*

§1.306. *Updating a Community Center's Current Plan.*

§1.313. *Determination of Salaries of Community Center Employees.*

§1.314. *Exhibits.*

§1.315. *References.*

§1.316. *Distribution.*

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

Filed with the Office of the Secretary of State on April 13, 2011.

TRD-201101409

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 29, 2011

For further information, please call: (512) 438-3734



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.28, §217.40

The Texas Department of Motor Vehicles (department) proposes amendments to §217.28, Specialty License Plates, Symbols, Tabs, and Other Devices, and §217.40, Marketing of Specialty License Plates through a Private Vendor, all concerning motor vehicle registration.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments are necessary to better utilize department resources in the gathering of public comment concerning new specialty plates.

Amendments to §217.28(i)(2)(B) remove the requirement for an applicant to provide a current document from the Internal Revenue Service (IRS) attesting to the non-profit status of the applicant. The IRS provides documentation only at the time the non-profit organization is founded. Amendments to subsection (i)(6) allow the department more flexibility as to posting the department-created specialty plates for public comment on its website. Changing the time period of the posting to at least 25 days in advance of a Texas Department of Motor Vehicles board meeting and the requirement that comments be received at least ten days before the board meeting gives the staff more time to collate the comments and accommodates holiday schedules.

Amendments to §217.40(d)(2), regarding plates sold by the private vendor, are identical to the amendments regarding posting time periods in §217.28 for department-created plates. The amendments continue to limit the website posting period to ten days for private vendor plates in accordance with Transportation Code, §504.851(g-1).

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Randy Elliston, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Elliston has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments is to have more flexibility in scheduling the posting of the specialty plate designs for public comment on the TxDMV website and collating those comments for presentation at the board meeting.

There are no anticipated economic costs for persons required to comply with the amendments. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §217.28 and §217.40 may be submitted to Randy Elliston, Director, Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on May 30, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Texas Department of Motor Vehicles board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §504.702 and §504.851.

§217.28. *Specialty License Plates, Symbols, Tabs, and Other Devices.*

(a) - (h) (No change.)

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801 whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.40 of this subchapter (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity[; and that the applicant's non-profit status is current at the time of application];

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the Board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The Board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the Board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the Board will return the application as incomplete unless the Board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The Board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.22(c)(3)(B) of this subchapter as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 [20] days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 [7] days in advance of the meeting. Public comment will be received at the Board's meeting.

(7) Final approval.

(A) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the Board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

§217.40. *Marketing of Specialty License Plates through a Private Vendor.*

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

(d) Board decision.

(1) Decision. The decision of the Board will be based on:

(A) compliance with Transportation Code, §504.851 and §504.852;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(h);

(iv) the criteria designated in §217.22(c)(3)(B) of this subchapter (relating to Motor Vehicle Registration) as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 [~~20~~] days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for submission of comments. Written comments are welcome and must be received by the department at least 10 [~~7~~] days in advance of the meeting. Public comment will be received at the Board's meeting.

(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 April 18, 2011.

TRD-201101446

Brett Bray

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: May 29, 2011

For further information, please call: (512) 467-3853



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 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §§26.1, 26.2, 26.4, 26.5

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §26.1, concerning perpetual care cemetery fees; §26.2, concerning maintenance of perpetual care cemetery records; and §26.4, concerning time requirements for ordering and setting a burial marker or monument in a perpetual care cemetery; and adopts new §26.5, concerning time requirements for issuance of a conveyance document for a cemetery plot, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1418).

The amendments are adopted to update the rules, the need for which was discovered as a result of the recent review of these rules conducted in accordance with Government Code, §2001.039. New §26.5 is adopted to set a deadline that is consistent with the deadline set out in the department's Legal Opinion 98-48.

The amendments to §26.1 accomplish two things. The amendment deletes §26.1(a)(3). This change removes the ability of an insolvent permit holder to request a one-year reduction in its annual fee. In the last five years, the department has not received a request under the current rule and is of the opinion that each perpetual care cemetery should pay its cost of regulation.

The second change adds language to §26.1(b)(4) which ties the fee for examinations of new perpetual care cemetery certificate holders and the fee for extra examinations of perpetual care cemeteries to the fee charged for specialty examinations of other entities under §3.36(h) of this title. Examination rates are set by using the average salary for an average tenured employee. The Department resources necessary for these examinations are similar.

Additionally, the amendment allows these perpetual care cemetery examination fees to automatically change to mirror any change to the specialty examination fee for other entities under §3.36(h). Currently, the new and extra examination fee for perpetual care cemeteries, like the specialty examination fee for other entities under §3.36(h), is \$600 per day plus actual travel expenses. Therefore, this amendment does not change the current examination fees for perpetual care cemeteries.

The amendments to §26.2 simplify recordkeeping requirements for permit holders by allowing the maintenance of records in an

electronic database as long as the records can be retrieved without impeding the examination process. The amendments eliminate the need to retain certain records and reduce the retention time for others. A certificate holder's general file is no longer required to contain a copy of its certificate of authority, its most recent annual statement, previously examined amendments to the perpetual care fund trust agreement, all correspondence with the department for the previous three years, all examination reports for the previous three years, and cemetery price lists used before the prior examination. A certificate holder who has a limited scope examination or who is rated a 3 or lower is required to retain the signed acknowledgement by its board of directors to the examination report. All certificate holders are required to maintain a record of department approvals upon which the certificate holder relies, and a list of all its maps and plats.

The amendment to §26.4 adds a requirement in subsection (f) to maintain a list of all markers sold for the examination period. This information is needed to test and verify that timelines for marker ordering and setting are consistently met. Additionally a typographical error in §26.4(c)(2) has been corrected.

Adopted new §26.5 sets a deadline for issuing a conveyance document for a cemetery plot. The deadline is 20 days after the month in which the purchase contract is paid in full. The deadline is consistent with that established by department Legal Opinion 98-48. Placing the deadline in a rule clarifies that a violation of the deadline will subject the violator to enforcement action.

The Department received no comments regarding the proposed amendments and new rule.

The amendments and the new rule are adopted under Health and Safety Code §712.008(a), which provides that the commission may adopt rules to enforce and administer Chapter 712, including rules establishing fees to defray the costs of enforcing and administering Chapter 712. The amendment to §26.4 is also adopted under Health and Safety Code §712.008(b)(1), which states that the commission shall adopt rules establishing reasonable standards for timely placement of burial markers or monuments in a perpetual care cemetery. New rule §26.5 is also adopted under Health and Safety Code §711.012(a), which authorizes the Finance Commission to adopt rules to enforce and administer Health and Safety Code §711.038 relating to perpetual care cemeteries. Section 711.038 concerns the sale of plots and the issuance of certificates of ownership.

This agency 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 April 15, 2011.

TRD-201101431

A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: May 5, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1300



CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.31, 33.33, 33.35

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §33.31, concerning records that must be kept related to currency exchange transactions; §33.33, concerning what receipts must be issued related to currency exchange transactions; and §33.35, concerning records that must be kept related to money transmission transactions, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1420).

These amendments arise from the recodification of federal FinCEN regulations under the Bank Secrecy Act (BSA). In an effort to increase efficiency, FinCEN's rules have been reorganized and renumbered into a new tenth chapter of Title 31 of the Code of Federal Regulations (CFR). Effective March 1, 2011, FinCEN's regulations transfer from 31 CFR Part 103 to 31 CFR Chapter X. The transfer and reorganization of the BSA regulations from Part 103 to Chapter X of Title 31 of the CFR does not alter any existing regulatory obligation or impose any new obligation. As a result of this transfer all references in 7 TAC Chapter 33 to 31 CFR Part 103 are now incorrect. The amendments update these references to conform to the new codification.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §151.102, which authorizes the Commission to adopt rules to administer and enforce Finance Code Chapter 151.

This agency 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 April 15, 2011.

TRD-201101432

A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: May 5, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1300



PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 75. APPLICATIONS SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §75.1

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §75.1, concerning charter applications.

Section 75.1 is adopted without changes to the text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1422) and will not be republished.

In general, the purpose of the amendments is to update the rule with the Department's new website address.

The 30-day comment period ended April 4, 2011, during which no comments were received on the proposed rule amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 92.

This agency 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 April 15, 2011.

TRD-201101433

Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: May 5, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1350



CHAPTER 79. MISCELLANEOUS SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §79.122

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter H, §79.122, concerning consumer complaint procedures.

Section 79.122 is adopted without changes to the text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1423) and will not be republished.

In general, the purpose of the amendments is to update the Department's new email address.

The 30-day comment period ended April 4, 2011, during which no comments were received on the proposed rule amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 13.

This agency 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 April 15, 2011.

TRD-201101434
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: May 5, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1350



CHAPTER 80. TEXAS RESIDENTIAL
MORTGAGE LOAN ORIGINATOR
REGULATIONS
SUBCHAPTER B. PROFESSIONAL CONDUCT
7 TAC §80.9

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter B, §80.9, concerning required disclosures.

Section 80.9 is adopted without changes to the text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1423) and will not be republished.

In general, the purpose of the amendment is to reconcile the rule to the Department's new website address and e-mail address. The amendment also updates the Residential Mortgage Loan Originator Disclosure form to be applicable to license types which, prior to the SAFE Act, were not required to be licensed and in anticipation of the April 1, 2011 change in compensation rules by the Federal Reserve.

The 30-day comment period ended April 4, 2011, during which no comments were received on the proposed rule amendments.

The amendments are adopted under Texas Finance Code §11.306, which authorizes the Commission to adopt mortgage broker rules as provided by Chapter 156 and under Finance Code §156.102.

The statutory provisions affected by the amendments are contained in Texas Finance Code, §156.004.

This agency 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 April 15, 2011.

TRD-201101435
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: May 5, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 475-1350



PART 5. OFFICE OF CONSUMER
CREDIT COMMISSIONER

CHAPTER 83. CONSUMER LOANS

SUBCHAPTER J. DUTIES AND AUTHORITY
OF AUTHORIZED LENDERS

7 TAC §83.831

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §83.831, concerning Approval of Electronic Recordkeeping Systems and Optical Imaging Systems. The commission adopts the amendments without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1424).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §83.831 is to clarify the software review process conducted by the Office of Consumer Credit Commissioner (OCCC), one of the commission agencies. These revisions are in response to a finding in an audit of OCCC examination procedures. The suggested changes will provide conformance to the agency's current practices and are mostly technical in nature.

The OCCC circulated a draft of these revisions to interested stakeholders. In response to the agency's circulation of the draft, the agency received early or pre-comments prior to the original presentation of the rule to the commission. The OCCC believes that the informal comments received and the participation of stakeholders in the rulemaking process has greatly benefited the resulting rule. The amendments incorporate some of the industry's input and serve to refine the changes in certain areas.

The last two sentences of subsection (a) are being deleted, as much of this language is being relocated to new subsection (b). Subsection (b) specifically relates to the software review for licensees under Texas Finance Code, Chapter 342, Subchapters E and F. Section 83.831(b) requires these licensees to use a reviewed software system, maintain a manual recordkeeping system in compliance with §83.828, or use a proprietary software system not sold or distributed to other licensees aside from affiliates. The latter two options for a manual system or proprietary software system have been relocated from subsection (a).

New subsection (b) of §83.831 continues by stating that a list of reviewed non-proprietary software systems will be maintained on the OCCC's website, which places this agency policy into regulation. The final sentence of §83.831(b) has been carried over from subsection (a) and continues the requirement that licensees provide documentation to explain how required information is maintained within the system.

Section 83.831(c) has been added and states that Chapter 342, Subchapter G licensees (secondary mortgage lenders) are not required to submit electronic recordkeeping systems for review. These systems are reviewed during the course of the examination process.

Technical corrections have been made to subsection (d) (former subsection (b)) to maintain consistent language, add descriptive taglines, and provide clarification. In addition, new paragraph (3) outlines the responsibility for filing non-proprietary software systems. Section 83.831(d)(3) states that while a non-proprietary software vendor may make the filing on behalf of a licensee, the licensee is still responsible to ensure review of the system prior to use. Additionally, subsections (d), (e), and (f) have been relettered for formatting purposes.

The amendments to §83.831 are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas

Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the amendments to §83.831 are contained in Texas Finance Code, Chapter 342.

This agency 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 April 15, 2011.

TRD-201101436

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: May 5, 2011

Proposal publication date: March 4, 2011

For further information, please call: (512) 936-7621



CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER D. OPERATION OF PAWNSHOPS

7 TAC §85.402

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §85.402, concerning Recordkeeping. The commission adopts the amendments without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1426).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §85.402 is to clarify the software review process conducted by the Office of Consumer Credit Commissioner (OCCC), one of the commission agencies. These revisions are in response to a finding in an audit of OCCC examination procedures. The suggested changes will provide conformance to the agency's current practices and are mostly technical in nature.

The OCCC circulated a draft of these revisions to interested stakeholders. In response to the agency's circulation of the draft, the agency received early or pre-comments prior to the original presentation of the rule to the commission. The OCCC believes that the informal comments received and the participation of stakeholders in the rulemaking process has greatly benefited the resulting rule. The amendments incorporate some of the industry's input and serve to refine the changes in certain areas.

The term "reviewed" as opposed to an "approved" non-proprietary software system is being amended. The terminology change to "reviewed" is contained throughout the amendments for both rules in order to more appropriately reflect the OCCC's regulatory role concerning software systems. While the OCCC reviews non-proprietary software systems for compliance with the law and directs licensees to perform necessary corrections, licensees maintain responsibility to periodically check their software systems for accuracy and to seek updates to those systems. In other words, the OCCC's review of a non-proprietary system at one point in time does not provide any sort of waiver of the licensee's responsibility. Thus, the agency will

continue to conduct the same review of non-proprietary software systems as it has done in the past; however, the "review" language more accurately describes the responsibilities of both parties with regard to those systems.

Much of the language in §85.402(d) has been continued from the former rule, but for better clarity and compliance with *Texas Register* guidelines, the entire subsection is being deleted and replaced with new language. Section 85.402(d) requires licensees to use a reviewed software system, maintain a manual record-keeping system in compliance with subsection (f), or use a proprietary software system not sold or distributed to other licensees aside from affiliates. The latter two options for a manual system or proprietary software system have been maintained from former subsection (d). Additionally, the concept that all systems in place on the effective date of the rule do not have to resubmit the system to the agency has also been continued from the former rule.

Subsection (d) of §85.402 contains a statement regarding a list of reviewed non-proprietary software systems being maintained on the OCCC's website, which places this agency policy into regulation. The final sentence of §85.402(d) requires that licensees provide documentation to explain how required information is maintained within the system.

Technical corrections have been made to subsection (e) to maintain consistent terminology and provide clarification. In addition, paragraph (4) of subsection (e), relating to removal of a system from the agency's list, is being deleted and replaced with new language. In addition to the continued use of parallel phrasing to provide consistency, the changes to §85.402(e)(4) allow a pawnbroker or vendor time to make corrections prior to removal from the list, if the additional time will not harm pledgors.

Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the effective date for the changes included in this adoption will be June 6, 2011.

The amendments to §85.402 are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the amendments to §85.402 are contained in Texas Finance Code, Chapter 371.

This agency 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 April 15, 2011.

TRD-201101437

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: June 6, 2011

Proposal publication date: March 4, 2011

For further information, please call: (512) 936-7621



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.5

The Texas Department of Rural Affairs (TDRA) adopts an amendment to §255.5, concerning the Disaster Relief Fund, without changes to the proposal published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1210). The adopted amendment sets a funding priority for the Disaster Relief Fund.

In accordance with §2001.039 of the Texas Government Code, the agency has reviewed the Texas Administrative Code, Title 10, Part 6, Chapter 255. The agency has determined that at this time revisions need to be made to §255.5. In addition, the agency published for public comment proposed amendments covering §255.5.

No comments were received.

The amendment is adopted under the Texas Government Code §487.052, which provides the Texas Department of Rural Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2011.

TRD-201101447

Howard G. Baldwin, Jr.

Interim Executive Director

Texas Department of Rural Affairs

Effective date: May 8, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 936-6734



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §§164.2, 164.4, 164.6

The Texas Medical Board (Board) adopts amendments to §164.2, concerning Definitions, §164.4, concerning Board Certification, and §164.6, concerning Required Disclosures on Websites, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1216) and will not be republished.

The amendment to §164.2 adds definitions for applicants, application, board, and certifying board.

The amendment to §164.4 establishes the process for applicants to have certifying boards approved by the Medical Board for purposes of advertising.

The amendment to §164.6 provides that this section applies only to licensees who bill for services provided via the Internet.

No comments were received regarding adoption of the amendments.

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.

This agency 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 April 15, 2011.

TRD-201101438

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

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



CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.7

The Texas Medical Board (Board) adopts new §166.7, concerning Report of Impairment on Registration Form, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1217) and will not be republished.

The new section provides that if a licensee has an impairment that affects a licensee's ability to actively practice medicine, the licensee shall be given the opportunity to place the license on retired status, convert the license to an administrative medicine license, cancel the license, or be referred to the Texas Physician Health Program.

No comments were received regarding adoption of the new rule.

The new rule 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 new rule is also authorized by Texas Occupations Code, §156.001 et seq., §164.061, and §167.005.

This agency 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 April 15, 2011.

TRD-201101439

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 5, 2011
Proposal publication date: February 25, 2011
For further information, please call: (512) 305-7016



CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1, §175.2

The Texas Medical Board (Board) adopts amendments to §175.1, concerning Application Fees, and §175.2, concerning Registration and Renewal Fees, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1218) and will not be republished.

The amendment to §175.1 establishes the fee for the application of a certifying board evaluation at \$200.

The amendment to §175.2 establishes the fee for the application for certifying board evaluation renewals at \$200.

No comments were received regarding adoption of the amendments.

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 §153.051, 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 April 15, 2011.

TRD-201101440
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 5, 2011
Proposal publication date: February 25, 2011
For further information, please call: (512) 305-7016



CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.4, §185.6

The Texas Medical Board (Board) adopts amendments to §185.4, concerning Procedural Rules for Licensure Applicants, and §185.6, concerning Annual Renewal of License, without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11470) and will not be republished.

The amendment to §185.4 corrects the name for the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA) and corrects a rule citation.

The amendment to §185.6 provides that CME may be approved by the board for course credit.

No comments were received regarding adoption of the amendments.

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 §204.101, 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 April 15, 2011.

TRD-201101441
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 5, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 305-7016



CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

22 TAC §§187.70 - 187.72

The Texas Medical Board (Board) adopts amendments to §187.70, concerning Purposes and Construction, §187.71, concerning Hearing Before a Panel of Board Representatives, and §187.72, concerning Decision of the Panel, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1220) and will not be republished.

The amendment to §187.70 provides that the Board may automatically suspend the license of a physician who has been found guilty of certain drug-related felonies by a trier of fact.

The amendment to §187.71 provides that the Board may conduct a hearing in order for the purpose of determining whether to automatically suspend the license of a physician who has been found guilty of certain drug-related felonies by a trier of fact.

The amendment to §187.72 provides that if a disciplinary panel of the board elects to automatically suspend the license of a physician that the order shall be considered administratively final for purposes of appeal. In addition, if a panel recommends the automatic suspension of a license, the panel shall also either offer an order with terms on how the suspension may be probated or that the physician's license should be revoked.

No comments were received regarding adoption of the amendments.

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: gov-

ern 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 §164.057, 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 April 15, 2011.

TRD-201101442

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

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



CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

The Texas Medical Board (Board) adopts an amendment to §196.1, concerning Relinquishment of License, and the repeal of §196.3, concerning Surrender Associated with Impairment, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1221) and will not be republished.

The amendment to §196.1 provides that in addition to voluntary relinquishment, a licensee may request cancellation of a license.

The repeal of §196.3 repeals this section as licensees may no longer surrender their license due to an impairment through a confidential rehabilitation order.

No comments were received regarding adoption of the rules.

22 TAC §196.1

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 §164.061, 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 April 15, 2011.

TRD-201101443

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

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

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22 TAC §196.3

The repeal 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 repeal is also authorized by §164.061, 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 April 15, 2011.

TRD-201101444

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 5, 2011

Proposal publication date: February 25, 2011

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 200. HEALTHCARE-ASSOCIATED INFECTIONS

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§200.1 - 200.10

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§200.1 - 200.10, concerning the reporting of healthcare-associated infections (HAI). Sections 200.3, 200.4, 200.6 and 200.7 are adopted with changes to the proposed text as published in the October 22, 2010, issue of the *Texas Register* (35 TexReg 9471). Sections 200.1, 200.2, 200.5, and 200.8 - 200.10 are adopted without changes, and the sections will not be republished.

BACKGROUND AND PURPOSE

The new sections are necessary to comply with Health and Safety Code, Chapter 98, "Reporting of Health Care-Associated Infections and Preventable Adverse Events," which requires the department to establish the Texas Healthcare-Associated Infection Reporting System. General hospitals (other than pediatric and adolescent hospitals) and ambulatory surgical centers are required to report surgical site infections associated with seven surgeries. Pediatric and adolescent hospitals are required to report surgical site infections associated with three surgeries. In addition, general hospitals are required to report the incidence of laboratory-confirmed central line-associated bloodstream infections occurring in any special care setting and

the incidence of respiratory syncytial virus (RSV) occurring in any pediatric inpatient unit.

Health and Safety Code, Chapter 98, also requires the department to: (1) establish the Advisory Panel on Healthcare-Associated Infections; (2) provide for the education and training of health care facility staff; (3) review reporting activities of health care facilities to ensure the data provided is valid; (4) compile and make available to the public a summary, by health care facility, of the infections reported by the facility; (5) make the departmental summary available on an Internet website; and (6) inform the public of the option to report suspected healthcare-associated infections to the department.

SECTION-BY-SECTION SUMMARY

New §200.1 defines ambulatory surgical centers, central lines, general hospitals, great vessels, pediatric and adolescent hospitals, special care setting, and other words. New §200.2 identifies who shall report; new §200.3 identifies how to report HAI data to the department; new §200.4 identifies the surgeries or procedures from which infections are to be reported, and includes alternative surgical site infections to report if a healthcare facility does not perform at least a monthly average of 50 of any combination of procedures included in §200.4; new §200.5 addresses data to report; new §200.6 and new §200.7 provide language stating when reporting will begin for specific procedures and a schedule for reporting; new §200.8 and new §200.10 address processes for data validation and data verification; and new §200.9 addresses how HAI data will be displayed on the website.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were one trade association and individuals on behalf of three facilities. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §200.1(11), the Texas Hospital Association (THA) commented that the department should amend the definition to read: "General hospital--A hospital licensed as a general hospital under Health and Safety Code, Chapter 241, or a hospital that provides surgical or obstetrical services and that is maintained or operated by the state."

Response: The commission disagrees with this comment and explains the definition is referencing the definition as found in current statute (Health and Safety Code Chapter 98). No change was made to the rule as a result of this comment.

Comment: Concerning §200.1(22), the THA and Cedar Park Regional Medical Center commented that the department should amend the definition to read: "Special care setting--A unit or service of a general, pediatric or adolescent hospital that provides treatment to inpatients who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit and any critical care unit. If such a hospital does not have an intensive care unit listed in the Annual Survey of Hospitals published by the American Hospital Association, the Texas Department of State Health Services and the THA (or their respective successors), the hospital shall be deemed not to have a special care setting under the terms of these rules."

Response: The commission disagrees with the comment. "Special care setting" is defined in legislation and is codified in Health and Safety Code, Chapter 98. However, the department through education and training will refer to the NHSN for specific examples of special care setting so that reporting will be consistent with NHSN guidelines. No change was made to the rule as a result of this comment.

Comment: Concerning §200.4(b), the THA and Cedar Park Regional Medical Center commented that the subsection should be amended to remove the language referring to ambulatory surgical centers, from reporting certain events in special care settings.

Response: The commission agrees with the comment. The proposed language "and ambulatory surgical centers" has been removed from the rule.

Comment: Concerning §200.4(c), the THA commented that language should be added to the subsection that states "other than pediatric and adolescent hospitals."

Response: The commission agrees with the comment and the language was added to the rule, as well as clarifying reporting exceptions for hospitals or ambulatory surgical centers. For consistency, the language "other than a pediatric and adolescent hospital" was also added to §200.4(d).

Comment: Concerning §200.4(d), the THA commented that the language should be changed to read: "A general hospital other than a pediatric and adolescent hospital or ambulatory surgical center that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (c) of this section shall report, subject to §200.4(d), HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by the National Healthcare Safety Network (NHSN). The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year as determined by facility contact. A general hospital or ambulatory surgical center is not required to report under this subsection if the top three procedures specified in subsection (d) are not listed by NHSN as reportable."

Response: The commission disagrees with this comment, and the rule will not be changed as a result of this comment. The intent is to assure that the public has access to HAI reporting data even if facilities perform few procedures.

Comment: Concerning §200.4(f), the THA commented that language should be changed to read as follows: "A pediatric and adolescent hospital that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (e) of this section shall report, subject to §200.4(f), the HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year. Reporting of HAI data for all three surgeries shall begin for the entire quarter in which the enrollment deadline occurs as specified in §200.6 of this title (relating to When to Initiate Reporting). A pediatric and adolescent hospital is not required to report under this subsection if the top three procedures specified in subsection (f) are not listed by NHSN as reportable."

Response: The commission disagrees with this comment. The intent is to assure that the public has access to HAI reporting

data even if facilities perform few procedures. No change was made to the rule as a result of this comment.

Comment: Concerning the rules in Chapter 200 of this title, the THA commented that the department should consider adding language to the rules to clarify that reporting applies to hospital-acquired infections and not to infections present on admission.

Response: The commission disagrees with this comment. The definition of Healthcare-associated infection in §200.1(13), conforms with the definition as it is found in the Health and Safety Code, Chapter 98. No change is indicated for revision to the rules in this chapter at this time.

Comment: Concerning the proposed rules in general, the THA commented that the department should consider providing more time between the effective date of the rules and the data-collection deadlines, so as to allow affected hospitals and ambulatory surgical centers sufficient opportunity to enroll in a secure electronic interface and collect their first three months worth of data.

Response: The commission disagrees with this comment. Texas facilities have been aware of HAI reporting requirements starting in 2007. The department believes that the rules allow for sufficient time to enroll and report in accordance with state statute. No change is required to the rules in this chapter at this time.

Comment: Concerning §200.3(e)(2), Children's Memorial Hermann Hospital and Cedar Park Regional Medical Center commented on the paragraph stating that the facility treating the patient who did not perform the surgery must report to the department the infection and name of the facility alleged to have performed the procedure. They commented that this will add an additional burden to the reporting facility that did not perform the original surgical procedure.

Response: The commission agrees with this comment. New language reflecting facility procedural reporting was added and the requirement to report to the department was deleted.

Comment: Concerning the rules in general, Cedar Park Regional Medical Center commented that facilities that might share a Centers for Medicare and Medicaid Services (CMS) number would need to contact the Centers for Disease Control and Prevention (CDC) instead of the department to acquire individual numbers for each facility site and/or licensure.

Response: The commission agrees that the facilities that share a CMS number will need separate facility identification numbers. The department disagrees that the facility will need to contact the CDC. The CDC has not been designated as the secure electronic interface.

Comment: Concerning the rules in general, Cedar Park Regional Medical Center commented that the alternative reporting for facilities performing a monthly average of less than 50 on the indicated procedures could have an added burden by complying with this language.

Response: The commission disagrees with this comment and the rules will not be changed. This is required by Health and Safety Code, Chapter 98.

Comment: Concerning §200.4(e)(3) and §200.6(b)(3), Cedar Park Regional Medical Center commented that there is a typographical error concerning medical terms.

Response: The commission agrees with this comment and added "Ventriculoperitoneal shunt procedures (Ventricular shunt operations)" and "ventriculoperitoneal" for correction.

Comment: Concerning §200.7(a), Baylor Regional Medical Center - Grapevine commented that for implant cases, the correction period should be extended to 15 months from the month of the procedure to allow for post discharge reporting.

Response: The commission agrees with this comment. The graphic of applicable deadlines regarding surgical site infections related to implants was revised.

Comment: Baylor Regional Medical Center - Grapevine commented that facilities that perform low volumes of reportable procedures may have a higher risk of complications and request that data be included to indicate this as well as adding comments regarding the low volume of reported procedures.

Response: The commission disagrees with the comment and the rule will not be changed. There is a mechanism for comments to be posted by individual facilities as part of §200.9(b), and may be used for the purpose of citing the low volume of certain procedures reported. In addition, the reported denominator data are another avenue that will reflect the low number of procedures.

Comment: Baylor Regional Medical Center - Grapevine commented that facility contact information should be published to facilitate hospital to hospital communications regarding infections that may be a result of a procedure performed at a different facility.

Response: The commission disagrees with this comment as it relates to §200.2(e) and the rule will not be changed. The posting of facility contact data from over 1000 facilities is not a function of the department. This information is readily available through other sources.

A minor revision to §200.3(c)(2) clarifies that a facility shall contact the designated electronic interface administrator instead of the department to receive an identification number for reporting HAI data.

STATUTORY AUTHORITY

The new sections are adopted under Health and Safety Code, §98.101, which authorizes the Executive Commissioner to adopt rules to implement Chapter 98; 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 Health and Safety Code, Chapter 1001.

§200.3. *How to Report.*

(a) Facilities shall submit HAI data required by this section to a secure, electronic interface designated by the department.

(b) Facilities shall comply with the process of the designated secure, electronic interface to allow the department access to HAI data as specified in §§200.3 - 200.7 of this title.

(c) Facilities shall use their facility identification number to identify their facility in the electronic data and correspondence with the department. Each facility meeting the definition of ambulatory surgical center or general hospital as defined in §200.1(1) and (11) of this title (relating to Definitions) shall have its own facility identification number.

(1) CMS certified health care facilities shall use the CMS-assigned provider number.

(2) If a facility has multiple campuses or a hospital and ambulatory surgical center are associated by ownership, each site shall each use a unique CMS provider number. In the event that a facility is not CMS certified or a facility operates multiple facilities under one CMS number, the facility shall contact the designated electronic interface administrator to receive a facility identification number.

(3) The relationship between CMS-assigned and department-assigned facility identifiers and the name and license number of the facility is public information.

(d) The department shall notify the facility contact by email, fax, or in writing 90 calendar days in advance of any change in requirements for reporting HAI data.

(e) Facilities shall report HAI data on patients who are admitted to the facility for inpatient treatment of a surgical site infection associated with a procedure listed in §200.4 of this title (relating to Which Events to Report) within 30 calendar days of the procedure or within 1 year of the procedure if the procedure involved an implant.

(1) If the facility treating the patient performed the procedure, the facility shall report the infection in the designated electronic data interface according to the surveillance methods described by the interface and these rules.

(2) If the facility treating the patient did not perform the surgery the treating facility shall notify the facility that performed the procedure, document the notification, and maintain this documentation for audit purposes. The facility that performed the procedure shall verify the data related to the SSI and shall report the infection in the designated electronic data interface according to the surveillance methods described by the interface and these rules.

§200.4. Which Events to Report.

(a) ICD-9 codes as designated by the federal Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) or its successor shall constitute the definition of events listed in this rule. Facilities shall adapt to changes in ICD-9-CM specifications as directed by NHSN and the department.

(b) All general hospitals shall report the number of device days and laboratory-confirmed central line-associated primary bloodstream infections in special care settings including the causative pathogen.

(c) General hospitals, other than pediatric and adolescent hospitals, and ambulatory surgical centers (except those hospitals or ambulatory surgical centers described in subsection (d) of this section) shall report the HAI data related to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

(1) Colon surgeries (Colon surgery--17.31 - 17.36, 17.39, 45.03, 45.26, 45.41, 45.49, 45.52, 45.71 - 45.76, 45.79, 45.81 - 45.83, 45.92 - 45.95, 46.03, 46.04, 46.10, 46.11, 46.13, 46.14, 46.43, 46.52, 46.75, 46.76, 46.94).

(2) Hip arthroplasties (Hip prosthesis--00.70 - 00.73, 00.85 - 00.87, 81.51 - 81.53).

(3) Knee arthroplasties (Knee prosthesis--00.80 - 00.84, 81.54, 81.55).

(4) Abdominal hysterectomies (Abdominal hysterectomy--68.31, 68.39, 68.41, 68.49, 68.61, 68.69).

(5) Vaginal hysterectomies (Vaginal hysterectomy--68.51, 68.59, 68.71, 68.79).

(6) Coronary artery bypass grafts (Coronary artery bypass graft with both chest and donor site incisions--36.10 - 36.14, 36.19; Coronary artery bypass graft with chest incision only--36.15 - 36.17, 36.2).

(7) Vascular procedures (Abdominal aortic aneurysm repair--38.34, 38.44, 38.64; Carotid endarterectomy--38.12; Peripheral vascular bypass surgery--39.29).

(d) A general hospital, other than a pediatric and adolescent hospital, or ambulatory surgical center that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (c) of this section shall report HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year as determined by facility contact.

(e) Pediatric and adolescent hospitals except those described in subsection (f) of this section shall report the HAI data relating to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

(1) Spinal surgery with instrumentation (Spinal fusion--81.00 - 81.08, 81.62 - 81.64; Laminectomy--03.01, 03.02, 03.09, 80.50, 80.51, 80.53, 80.54, 80.59, 84.60 - 84.69, 84.80 - 84.85; Refusion of spine--81.30 - 81.39).

(2) Cardiac procedures, excluding thoracic cardiac procedures (Cardiac surgery--35.00 - 35.04, 35.10 - 35.14, 35.20 - 35.28, 35.31 - 35.35, 35.39, 35.42, 35.50, 35.51, 35.53, 35.54, 35.60 - 35.63, 35.70 - 35.73, 35.81 - 35.84, 35.91 - 35.95, 35.98, 35.99, 37.10, 37.11, 37.24, 37.31 - 37.33, 37.35, 37.36, 37.41, 37.49, 37.60; Heart transplant--37.51 - 37.55).

(3) Ventriculoperitoneal shunt procedures (Ventricular shunt operations), including revision and removal of shunt--02.2, 02.31 - 02.35, 02.39, 02.42, 02.43, 54.95).

(f) A pediatric and adolescent hospital that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (e) of this section shall report the HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year. Reporting of HAI data for all three surgeries shall begin for the entire quarter in which the enrollment deadline occurs as specified in §200.6 of this title (relating to When to Initiate Reporting).

(g) Facilities shall also report denominator data for the events identified above for calculation of risk adjusted infection rates as required in Texas Health and Safety Code, §98.106(b). NHSN protocols shall be used for the determination of denominator data.

§200.6. When to Initiate Reporting.

(a) All healthcare facilities shall enroll in the secure, electronic interface within 90 calendar days of the effective date of this rule, or the designation of the secure electronic interface, whichever is later.

(b) Facilities shall submit HAI data beginning with the entire reporting quarter of the effective date in subsection (a) of this section.

(1) All facilities--HAI data relating to central line-associated primary bloodstream infections in special care units.

(2) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to knee

arthroplasties as defined in §200.4(c)(3) of this title (relating to Which Events to Report) or the three surgical procedures most frequently performed as described in §200.4(d) of this title.

(3) Pediatric and adolescent hospitals--HAI data relating to ventriculoperitoneal shunts as defined in §200.4(e)(3) of this title or the three surgical procedures most frequently performed as defined in §200.4(f) of this title.

(c) In addition to the data listed in subsection (b) of this section, facilities shall submit the following data beginning January 1, 2012.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals - HAI data relating to hip arthroplasties as defined in §200.4(c)(2) of this title and coronary artery bypass grafts as defined in §200.4(c)(6) of this title or HAI data relating to the three surgical procedures most frequently performed as described in §200.4(d) of this title.

(2) Pediatric and adolescent hospitals - HAI data relating to cardiac procedures as defined in §200.4(e)(2) of this title or the three surgical procedures most frequently performed as described in §200.4(f) of this title.

(d) In addition to the data listed in subsections (b) and (c) of this section, facilities shall submit the following data beginning January 1, 2013.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to abdominal and vaginal hysterectomies as defined in §200.4(c)(4) and §200.4(c)(5) of this title, colon surgeries as defined in §200.4(c)(1) of this title, and vascular procedures as defined in §200.4(c)(7) of this title or the three surgical procedures and associated infections most frequently performed as described in §200.4(d) of this title.

(2) Pediatric and adolescent hospitals--HAI data relating to spinal surgeries with instrumentation as defined in §200.4(e)(1) of this title or the three surgical procedures most frequently performed as described in §200.4(f) of this title.

(e) Facilities that are required to report after this initial enrollment period (e.g., newly licensed, change in provider status, etc.) shall enroll within 90 calendar days of the receipt of a CMS provider number or a HAI reporting facility identification number and shall submit data beginning with the entire reporting quarter after receipt of the identification number.

§200.7. Schedule for HAI Reporting.

(a) Facilities shall submit HAI data according to the following schedule in Table 1.
Figure: 25 TAC §200.7(a)

(1) HAI data for device days and procedures occurring between January 1 and March 31 shall be submitted no later than May 31 of the same calendar year.

(2) HAI data for device days and procedures occurring between April 1 and June 30 shall be submitted no later than August 31, of the same calendar year.

(3) HAI data for device days and procedures occurring between July 1 and September 30 shall be submitted no later than November 30 of the same calendar year.

(4) HAI data for device days and procedures occurring between October 1 and December 31 shall be submitted no later than February 28 of the following calendar year.

(b) If any of the dates in subsection (a) of this section fall on a weekend or holiday, facilities shall submit on the following business day.

This agency 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 April 14, 2011.

TRD-201101418

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 4, 2011

Proposal publication date: October 22, 2010

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.34

The Texas Board of Criminal Justice adopts the amendments to §163.34, Carrying of Weapons, without changes to the text as proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1261).

The amendments are necessary to conform the rule to state and federal law.

No comments were received.

The amendments are adopted under Texas Government Code §509.003 and Texas Occupations Code §1701.257.

Cross Reference to Statutes: Texas Government Code §492.013.

This agency 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 April 12, 2011.

TRD-201101373

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 2, 2011

Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



37 TAC §163.46

The Texas Board of Criminal Justice adopts the amendments to §163.46, Allocation Formula for Community Corrections Program, without changes to the text as proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1263).

The amendments are necessary to clarify the existing procedures.

No comments were received.

The amendments are adopted under Texas Government Code §509.011.

Cross Reference to Statutes: Texas Government Code §509.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2011.

TRD-201101370

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 2, 2011

Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



CHAPTER 195. PAROLE

37 TAC §195.61

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §195.61, Method of Payment for Parole Supervision and Administrative Fees, without changes to the text as proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1264).

The amendments add another method for collecting the fee contingent upon the approval of the Texas Department of Criminal Justice.

No comments were received.

The amendments are adopted under Texas Government Code §508.182.

Cross Reference to Statutes: Texas Government Code §492.013; Texas Code of Criminal Procedure Article 42.037.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2011.

TRD-201101371

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 2, 2011

Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



37 TAC §§195.71 - 195.78

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §§195.71 - 195.78, concerning drug and alcohol testing of offenders under supervision of the Texas Department of Criminal Justice Parole Division, without changes to the text as

proposed in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1264).

The amendments are nonsubstantive and clarify the current procedures.

No comments were received.

The amendments are adopted under Texas Government Code §508.184.

Cross Reference to Statutes: Texas Government Code §492.013.

This agency 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 April 12, 2011.

TRD-201101375

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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Proposal publication date: February 25, 2011

For further information, please call: (936) 437-2141



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES SUBCHAPTER F. DEAF AND HARD OF HEARING DRIVER IDENTIFICATION PROGRAM

40 TAC §§109.601, 109.603, 109.605, 109.607, 109.609, 109.611

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts new rules to Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter F, Deaf and Hard of Hearing Driver Identification Program, §§109.601, 109.603, 109.605, 109.607, 109.609 and 109.611, for the Office for Deaf and Hard of Hearing Services. The new rules are adopted without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1271) and will not be republished.

DARS adopts new Subchapter F, §109.601, Purpose; §109.603, Statutory Authority; §109.605, Definitions; §109.607, Eligibility; §109.609, Deaf and Hard of Hearing Driver Visor Identification Card; and §109.611, Consumer Confidentiality, to establish rules to govern its compliance with Texas Human Resources Code Chapter 81, §81.019, which requires DARS to design and provide for the issuance of a symbol or other form of identification that may be attached to a motor vehicle regularly operated by a person who is deaf or hard of hearing.

No comments were received regarding adoption of the rules.

The new rules are adopted pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2011.

TRD-201101391

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: May 3, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 424-4050



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §815.170, §815.171

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 815, relating to Unemployment Insurance, *without* changes, as published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 909):

Subchapter F. Extended Benefits, §815.170 and §815.171

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 815 rule amendments is to adjust unemployment eligibility periods, as necessary, to maximize receipt of 100 percent federally shared extended unemployment benefits in accordance with the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312); the American Recovery and Reinvestment Act of 2009, enacted February 17, 2009 (P.L. 111-5), Division B, Title II, relating to Assistance for Unemployed Workers and Struggling Families, §2005. This authority was granted to the Commission under House Bill (HB) 4586, 81st Texas Legislature, Regular Session (2009).

The Commission must take this action in order to continue paying unemployed individuals who are exhausting their regular and emergency unemployment benefits. During this period of high, sustained unemployment, these 100 percent federally shared extended benefits are vital to out-of-work Texans who are struggling to pay their bills while seeking work. These benefits also serve as a much-needed stabilizing factor in local economies.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(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 F. EXTENDED BENEFITS

The Commission adopts the following amendments to Subchapter F:

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

Section 815.170(b)(1) - (2) adds an additional calendar year in the comparison period when determining whether there is a state "on" indicator for the purposes of paying extended benefits.

To pay extended benefits, a state must reach a trigger related to statewide unemployment. Under authority granted by the legislature, Texas may use a temporary trigger based upon its Total Unemployment Rate (TUR).

If the TUR average equals or exceeds 6.5 percent and is at least 110 percent of the corresponding three-month period in either or both of the prior two calendar years (look-back period), a state must offer 13 weeks of extended benefits. If the average TUR equals or exceeds 8 percent and meets the same 110 percent test, 20 weeks of extended benefits must be available.

As part of the TUR trigger methodology, the U.S. Department of Labor is instructed to compute the three-month average TUR each week and compare it to the same look-back period in either or both of the two preceding calendar years.

During 2011, the reference months for Texas will be in calendar years 2009 and 2010. The unemployment rates--and therefore the moving three-month average for both 2009 and 2010--are likely to be closer to, or even higher than, the rate for the equivalent period in 2011. Texas will need to look back three years, to 2008, to meet the 110 percent criterion and remain triggered on extended benefits. Congress recognized this dilemma; P.L. 111-312 allows states to amend their law and temporarily add a third year to the look-back period to take advantage of continued 100 percent federal funding of extended benefits.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

Section 815.171(a) adds a reference to §815.170(b) to indicate that a high unemployment period also exists under the new three-year look-back option.

No comments were received.

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

The rules are adopted under Texas Labor Code §301.0015, 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, Title 4, Subtitle A, 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 April 12, 2011.

TRD-201101380

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Effective date: May 2, 2011

Proposal publication date: February 18, 2011

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



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The staff of the Texas Department of Insurance (Department) has filed Petition No. W-0411-02-I proposing amendments to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) for consideration by the Commissioner, concerning changes to the statutory references in Part Two C.8. of the Workers' Compensation and Employer Liability Insurance Policy (the policy), the Federal Coal Mine Health and Safety Act Coverage Endorsement (WC 00 01 02), and the Outer Continental Shelf Lands Act Coverage Endorsement (WC 00 01 09 A); and editorial changes to Part Two B, C, and D of the policy and the Information Page (WC 00 00 01). The petition was filed on April 13, 2011.

Staff requests that the proposed revisions to the policy, the Federal Coal Mine Health and Safety Act Coverage Endorsement, the Outer Continental Shelf Lands Act Coverage Endorsement, and the Information Page, all of which are contained in the Basic Manual, be available for use for policies with an effective date of July 1, 2011; and be required for use for policies with an effective date on or after January 1, 2012.

Article 5.96 and §2052.002 of the Texas Insurance Code authorize the filing of this petition and the action requested of the Commissioner. Article 5.96 authorizes the Department to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance. Section 2052.002 requires the Commissioner to prescribe standard policy forms and a uniform policy for workers compensation insurance.

The proposed amendments to the policy change the name of the Federal Coal Mine Health and Safety Act of 1969 to the Federal Coal Mine Safety and Health Act, update the statutory reference to the United States Code (U.S.C.) for the Federal Coal Mine Safety and Health Act, and update the statutory reference to the U.S.C. for the Outer Continental Shelf Lands Act.

The proposed amendments to WC 00 01 02 amend the name of the Federal Coal Mine Health and Safety Act of 1969 to the Federal Coal Mine Safety and Health Act and update the statutory reference in the U.S.C. from "30 USC §§931-942" to "30 U.S.C. §§801-945."

While the staff is aware that in 1977, the Federal Coal Mine Health and Safety Act of 1969 was renamed the Federal Mine Safety and Health Act (Mine Act), the proposed statutory citation, 30 U.S.C. §§801-945, is correct, and the proposed amendments are necessary to make the policy and information page consistent with the workers' compensation and employers' liability policy and information page used in most other states, thereby promoting efficiency and accuracy among policyholders and insurance companies doing business in multiple states.

The proposed amendment to WC 00 01 09 A updates the statutory reference to the U.S.C. from "43 USC §§1331-1356" to "43 U.S.C. §§1331-1356a."

The proposed amendments to Part Two B, C, and D include minor editorial changes to make those subsections consistent with other parts of the policy.

The proposed amendments to WC 00 00 01 replace the words "Blank Insurance Company" with "Insurer" in the space for the name of the insurance company writing the workers' compensation coverage.

The amendments are necessary to ensure that the relevant statutes are cited correctly in the policy, to ensure consistency within the policy, and to ensure clarity. While staff is aware that the change being recommended in the petition does not reflect the current common name of 30 U.S.C. §§801-945, the changes proposed are necessary to make the policy, endorsements, and information page consistent with the ones in use in most other states.

Copies of the full text of the staff petition and the proposed exhibits are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed exhibits, please contact Sylvia Gutierrez at ChiefClerk@tdi.state.tx.us, (512) 463-6327 (Reference No. W-0411-02-I).

These amendments are subject to the Commissioner's consideration for approval without a hearing. Any comments or requests for a hearing may be filed with the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, Austin, Texas 78714-9104, within 15 days of publication of this notice. An additional copy of the comments should be simultaneously submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation Classification and Premium Calculation Division, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104.

This notification is made pursuant to Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the require-

ments of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201101416

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: April 14, 2011



Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The staff of the Texas Department of Insurance (Department) has filed Petition No. W-0411-03-I proposing amendments to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) for consideration by the Commissioner, concerning a change in the permissible methods of distribution of experience modifier calculations to allow the experience modifier to be made available electronically or by mail. The petition was filed on April 18, 2011.

Staff requests that the proposed revisions to the Basic Manual apply to the distribution of all experience modifiers issued on or after July 1, 2011.

Article 5.96 and §2053.052 of the Texas Insurance Code authorize the filing of this petition and the action requested of the Commissioner. Article 5.96 authorizes the Department to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance. Section 2053.052 requires the Commissioner to adopt a uniform experience rating plan for workers' compensation insurance.

The petition proposes to change the wording in Basic Manual Texas Experience Rating Plan Section I.A. and Rule D.3. of the Basic Manual Appendix to allow a copy of the experience modifier calculation to be "made available" to the insured rather than requiring that a copy of the experience modifier be "furnished" or "forwarded" to the insured, as is currently required. Historically, one copy of the experience modifier calculation has been mailed to the insured. Mailing paper copies

of important documents was the standard before creating and sending reliable electronic copies became feasible, due to a variety of factors, including appropriate standardized, widely available technology to receive and verify the authenticity of such documents. Sending the experience modifier calculation by mail required time to transport the document, as well as other resources, such as fuel, ink, and paper. Electronic transmission allows for quicker, easier access to the experience modifier calculations than was possible at the time the current rule was enacted. The amendments are necessary to enable insurers to make a free copy of the experience modifier available electronically or by mail. The insured would still be able to choose to receive a hard copy of the experience modifier free of charge.

Copies of the full text of the staff petition and the proposed exhibits are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed exhibits, please contact Sylvia Gutierrez at ChiefClerk@tdi.state.tx.us, (512) 463-6327 (Reference No. W-0411-03-I).

These amendments are subject to the Commissioner's consideration for approval without a hearing. Any comments or requests for a hearing may be filed with the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, Austin, Texas, 78714-9104, within 15 days of publication of this notice. An additional copy of the comments should be simultaneously submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation Classification and Premium Calculation Division, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104.

This notification is made pursuant to Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201101458

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: April 18, 2011



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 Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 12 (Loans and Investments), comprised of Subchapter A (§§12.1 - 12.11); Subchapter B (§§12.31 - 12.33); Subchapter C (§12.61 and §12.62); and Subchapter D (§12.91).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Kaylene Ray, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201101512

A. Kaylene Ray

General Counsel

Texas Department of Banking

Filed: April 20, 2011



On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 25 (Prepaid Funeral Contracts), comprised of Subchapter A (§§25.1 - 25.8); Subchapter B (§§25.10 - 25.14, 25.17 - 25.19, 25.21 - 25.25, 25.31 and 25.41); and Subchapter C (§§25.51 - 25.59).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Kaylene Ray, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201101513

A. Kaylene Ray

General Counsel

Texas Department of Banking

Filed: April 20, 2011



Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 102, Educational Programs, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 102 are organized under Subchapter A, Grants.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 102, Subchapter A, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-201101502

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 20, 2011



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 102, Educational Programs, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 102 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs; Subchapter BB, Commissioner's Rules Concerning Mas-

ter Teacher Grant Programs; Subchapter CC, Commissioner's Rules Concerning Coordinated Health Programs; Subchapter DD, Commissioner's Rules Concerning the Texas Accelerated Science Achievement Program Grant; Subchapter EE, Commissioner's Rules Concerning Pilot Programs; Subchapter FF, Commissioner's Rules Concerning Educator Award Programs; Subchapter GG, Commissioner's Rules Concerning Early College Education Program; and Subchapter HH, Commissioner's Rules Concerning the Texas Adolescent Literacy Academics.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 102, Subchapters AA-HH, continue to exist.

The public comment period on the review of 19 TAC Chapter 102, Subchapters AA-HH, begins April 29, 2011, and ends May 31, 2011. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-201101503
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 20, 2011



Texas Department of Rural Affairs

Title 10, Part 6

In accordance with §2001.039, Texas Government Code, the Texas Department of Rural Affairs submits notice of the agency's intention to review the rules found in Chapter 255, Texas Community Development Program. Review of the rules within this chapter will determine whether the reasons for adoption of the rules continue to exist.

Comments on this rule review may be submitted to Mark Wyatt, Director, Texas Community Development Block Grant Program, Texas Department of Rural Affairs, P.O. Box 12877, Austin, Texas 78711; (512) 936-6725, mark.wyatt@tdra.texas.gov. Comments must be received no later than 30 days from the date of publication of this rule review in the *Texas Register*.

TRD-201101507
Howard G. Baldwin, Jr.
Interim Executive Director
Texas Department of Rural Affairs
Filed: April 20, 2011



Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (Board) has completed its review of §163.34, concerning Carrying of Weapons, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reason for initially adopting this rule continues to exist and hereby readopts this section.

Notice of the review was published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1345). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §163.34 in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1261). The Board adopted the amended rule on April 8, 2011, and the adoption notice is published in this issue of the *Texas Register*.

TRD-201101374
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: April 12, 2011



The Texas Board of Criminal Justice (Board) has completed its review of §163.46, concerning Allocation Formula for Community Corrections Program, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reason for initially adopting this rule continues to exist and hereby readopts this section.

Notice of the review was published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1345). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §163.46 in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1263). The Board adopted the amended rule on April 8, 2011, and the adoption notice is published in this issue of the *Texas Register*.

TRD-201101369
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: April 12, 2011



The Texas Board of Criminal Justice (Board) has completed its review of §195.61, concerning Method of Payment for Parole Supervision and Administrative Fees, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reason for initially adopting this rule continues to exist and hereby readopts this section.

Notice of the review was published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6099). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §195.61 in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1264). The Board adopted the amended rule on April 8, 2011, and the adoption notice is published in this issue of the *Texas Register*.

TRD-201101372
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: April 12, 2011



The Texas Board of Criminal Justice (Board) has completed its review of §§195.71 - 195.78, concerning Parole, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reason for initially adopting these rules continues to exist and hereby readopts these sections.

Notice of the review was published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1345). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §§195.71 - 195.78 in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1264). The Board adopted the amended rules on April 8, 2011, and the adoption notice is published in this issue of the *Texas Register*.

TRD-201101376

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: April 12, 2011



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Pursuant to the notice of proposed rule review published in the October 15, 2010, issue of the *Texas Register* (35 TexReg 9377), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on October 15, 2010, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 65, Unethical or Fraudulent Claims Practices.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and these sections are retained in their present form. However, any such revisions in the future will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 65. The completion of the review of this chapter concludes the rule review process.

TRD-201101410

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: April 13, 2011



Pursuant to the notice of proposed rule review published in the October 15, 2010, issue of the *Texas Register* (35 TexReg 9377), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on October 15, 2010, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 69, Medical Examination Orders.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and these sections are retained in their present form. However, any such revisions in the future will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 69. The completion of the review of this chapter concludes the rule review process.

TRD-201101411

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: April 13, 2011



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §200.7(a)

Table 1. HAI Reporting Deadlines*

| Reporting Quarter | January 1 - March 31 | April 1 - June 30 | July 1 - September 30 | October 1 - December 31 |
|-----------------------------------|---------------------------------|------------------------------|----------------------------------|------------------------------------|
| Facility Data Submission Deadline | May 31 | August 31 | November 30 | February 28 |
| Departmental Data Reconciliation | June 15 | September 15 | December 15 | March 15 |
| Facility Correction | June 30 | September 30 | December 31 | March 31 |
| Departmental Data Summary | NA | October 15 | NA | April 15 |
| Facility Comment Period | NA | October 30 | NA | April 30 |
| Departmental Review of Comments | NA | November 15 | NA | May 15 |
| Posting of Summary | NA | December 1 | NA | June 1 |

* Reporting deadline for infections related to implant procedures are the same dates but in the calendar year following the procedure.

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.

Texas State Affordable Housing Corporation

Notice of Funding Availability

The Texas State Affordable Housing Corporation is giving Notice of Funding Availability (NOFA) for a cycle of the Texas Foundations Fund. Pending Board approval, funding availability for this cycle is \$300,000, comprised of up to six grants of up to \$50,000 per grant. All grants shall be subject to the Texas Foundations Fund Guidelines and the NOFA and Application Requirements found at www.tsahc.org.

The Texas Foundations Fund provides grants to nonprofit organizations and rural governmental entities (or their instrumentalities) for (i) the construction, rehabilitation, and/or critical repair of single family homes for Texas residents of very low or extremely low income, with a particular emphasis on serving people with disabilities and/or those living in rural Texas and (ii) the provision of additional supportive housing services for very low or extremely low income residents of multifamily rental units.

Applications are due on Friday, June 24, 2011 by 5:00 p.m., and recommendations by the Advisory Council of the Texas Foundations Fund are anticipated to be submitted to the Board of Directors at its regularly scheduled board meeting in August.

TRD-201101489

David Long
President

Texas State Affordable Housing Corporation
Filed: April 19, 2011

Office of the Attorney General

Notice of Intent to Amend and Extend Consultant Services Contract

The Child Support Division (CSD) of the Office of the Attorney General (OAG) currently has a consulting services contract with Deloitte Consulting, LLP of 400 West 15th Street, Suite 1700, Austin, Texas 78701. Deloitte Consulting is providing consulting services related to:

- (1) Documenting requirements, use cases, activity diagrams and storyboard for renewal of the Establishment and Enforcement functions (unique processes).
- (2) Developing acceptance criteria for the Establishment and Enforcement renewal.
- (3) Implementing the development, system test, pre development, user acceptance test, staging and production environments for the Pilot ECM implementation.
- (4) Assisting with the selection and deployment of hardware and software for the TXCSES 2.0 system and system development lifecycle environments.
- (5) Continuing to mentor CSD staff into their new organizational roles.
- (6) Providing guidance, subject matter expertise, oversight, and assistance to the OAG in managing the TXCSES 2.0 projects.

(7) Providing continuity assurance by participating in Quality Management activities to review design and development artifacts against the standards and guidelines and validate that the artifacts implement the business requirements.

The original contract was executed on January 22, 2007, and expired on August 31, 2007, with five options to extend. CSD and Deloitte Consulting, LLP are currently executing the fourth optional renewal which concludes on August 31, 2011.

Deloitte Consulting was selected as the consultant for this project after a competitive process whereby the OAG evaluated four proposals that were submitted as a result of the invitation to submit proposals that was published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 8019).

The OAG intends to extend this consulting services contract and amend it to describe Deloitte Consulting's role after submitting Business Process Redesign (BPR) recommendations. Pursuant to Texas Government Code, Chapter 2254, Subchapter B, before extending and amending the contract with Deloitte Consulting, the OAG publishes this notice and invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

SCOPE OF SERVICES:

The scope of work focuses on:

Continue providing guidance, subject matter expertise, oversight, and assistance to the OAG for Development and Implementation Continuity Assurance in the design, development and implementation of solutions recommended by the Business Process Redesign (BPR) Study completed in 2007. This includes:

- (1) Reviewing solutions and work products produced by an implementation vendor for quality, completeness, adherence to standards, and alignment with the T2 end-state architecture.
- (2) Building out the necessary technical environments for system testing, training, and production environments for the Phase 1 renewal.
- (3) Oversee implementation of the changes to the system development lifecycle processes and tools as approved by CSD.

FINDING OF FACT:

The OAG is submitting a request to the Budget, Planning & Policy Division of the Governor's Office for a Finding of Fact that the requested consulting services are necessary. Extension of the contract or execution of a new contract is contingent upon receipt of this Finding of Fact.

CRITERIA FOR SELECTION:

The OAG intends to negotiate with Deloitte Consulting the extension and amendment to its consulting services contract to include this scope of work, unless the OAG receives a better offer for the desired consulting services. The OAG will make its selection based on demonstrated competence, knowledge, and qualifications, considering the reasonableness of the proposed fees for consulting services.

SUBMITTING OFFERS:

Any consultant submitting an offer in response to this notice must provide the following with the offer:

- (1) The consultant's legal name and address
- (2) A description of the consultant's experience in the business process redesign field
- (3) Information regarding the qualifications, education, and experience of the team(s) proposed to provide these consulting services
- (4) The price to perform the entire scope of services
- (5) The earliest date on which the consultant could begin to provide services
- (6) A list of three references, including any Child Support customers for which the consultant has performed services
- (7) A previous or sample BPR implementation plan that represents the consultant's work
- (8) A completed Historically Underutilized Businesses subcontracting plan (the forms can be found at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)
- (9) The following completed forms (available from the OAG Contact identified below): Certification Regarding Lobbying, Consultant Assurances with Certification, and Consultant Release of Liability (to References)

In order to be considered for this Consulting Services contract, a Response should be submitted, in accordance with the instructions in this notice to the OAG by 2:00 p.m. (CST) on May 31, 2011.

Telephone and facsimile responses will not be accepted. Responses may be submitted by mail to the mailing address listed below, or may be hand delivered to the physical address listed below.

Mailing Address:

Office of the Attorney General
Child Support Division
Attn: David Cousins, Assistant Attorney General
P.O. Box 12017
Austin, TX 78711-2017
Email: David.Cousins@cs.oag.state.tx.us
Physical Address:
Office of the Attorney General
Child Support Division
Attn: David Cousins, Assistant Attorney General
5500 E. Oltorf St., Room 375
Austin, TX 78741-7400
Email: David.Cousins@cs.oag.state.tx.us

QUESTIONS:

Questions concerning this notice and invitation should be submitted in writing or by email to the point of contact listed above.

OAG RIGHTS:

The OAG reserves the right to accept or reject any or all offers submitted. The OAG is under no obligation to execute any contract on the basis of this notice. The OAG will not pay for any costs incurred by any entity in responding to this notice.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201101480
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: April 19, 2011



Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and State of Texas v. Monument Inn Restaurant, Ltd., Monument Inn, Inc., Robert Law, Individually, et al.*; Cause No. 2010-34645; in the 215th Judicial District Court, Harris County, Texas.

Nature of Defendants' Operations: Defendants owned and/or operated a popular Houston restaurant near the San Jacinto Monument, discharged wastewater into waters of the state on numerous occasions in violation of their discharge permit.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendants to collectively pay \$15,500 in civil penalties, one-half of the \$31,000 total penalty. If Defendants do not comply with the injunction, the State has the potential to receive \$47,307 in additional civil penalties, which is one-half of a deferred penalty of \$94,614. In addition, Defendants installing a new wastewater treatment facility.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201101506
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: April 20, 2011



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/25/11 - 05/01/11 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 04/25/11 - 05/01/11 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/11 - 05/31/11 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/11 - 05/31/11 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-201101463

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 18, 2011

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Court of Criminal Appeals

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 11-002

ORDER AMENDING TEXAS RULES APPELLATE PROCEDURE

It is hereby ordered that:

1. Pursuant to Texas Government Code §§22.108 and 22.109, the Texas Rules of Appellate Procedure are amended as noted in the attached documents.
2. Comments on these revisions may be submitted to the Court of Criminal Appeals in writing on or before June 30, 2011.
3. These amended rules, with any changes made after public comments are received, take effect on September 1, 2011.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. submit a copy of this order for publication in the *Texas Register*.

SIGNED AND ENTERED this 14th day of April, 2011.

Sharon Keller, Presiding Judge

Lawrence E. Meyers, Judge

Tom Price, Judge

Paul Womack, Judge

Cheryl Johnson, Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Cathy Cochran, Judge

AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

Rule 50. Reconsideration on Petition for Discretionary Review

~~Within 60 days after a petition for discretionary review is filed with the clerk of the court of appeals that delivered the decision, the justices who participated in the decision may, as provided by subsection (a), reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.~~

~~(a) If the court's original opinion or judgment is corrected or modified, that opinion or judgment is withdrawn and the modified or corrected opinion or judgment is substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.~~

~~(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.~~

Notes and Comments

Comment to 2011 change: Rule 50 is abolished. Motions for rehearing serve the same purpose.

68.2. Time to File Petition

~~(a) *First Petition.* The petition must be filed within 30 days after either the day the court of appeals' judgment was rendered or the day the last timely motion for rehearing or timely motion for en banc reconsideration was overruled by the court of appeals.~~

Notes and Comments

Comment to 2011 change: The amendment to Rule 68.2(a) resolves timely filing questions concerning motions for en banc reconsideration by including those motions in calculating time to file.

68.3. Where to File Petition

~~(a) The petition and all copies of the petition must be filed with the clerk of the court of appeals, but if the State's Prosecuting Attorney files a petition, the State's Prosecuting Attorney may file the copies of the petition - but not the original - with the clerk of the Court of Criminal Appeals instead of with the court of appeals clerk.~~

~~(b) *Petition Filed in Court of Criminal Appeals.* If a petition is mistakenly filed in the Court of Criminal Appeals, the petition is deemed to have been filed the same day with the court of appeals clerk, and the Court of Criminal Appeals clerk must immediately send the petition to the court of appeals clerk.~~

Notes and Comments

Comment to 2011 change: Rule 68.3(b) is added to address and prevent the untimely filing of petitions for discretionary review that are incor-

rectly filed in the Court of Criminal Appeals rather than in the court of appeals.

68.7. Court of Appeals Clerk's Duties

(a) *On Filing of the Petition.* Upon receiving the petition, the court of appeals clerk must file the original petition and note the filing on the docket.

(b) *Reply.* The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c) *Sending Petition and Reply to Court of Criminal Appeals.* ~~Unless a petition for discretionary review is dismissed under Rule 50,~~ The clerk of the court of appeals must, within 60 days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

Notes and Comments

Comment to 2011 change: Rule 68.7(c) is amended to delete reference to Rule 50, which is abolished.

68.11. Service on State Prosecuting Attorney

In addition to the service required by Rule 9.5, service of the petition, the reply, and any amendment or supplementation of a petition or reply must be made on the State Prosecuting Attorney, ~~P.O. Box 12405, Austin, Texas 78711.~~

Notes and Comments

Comment to 2011 change: The address for the State Prosecuting Attorney is deleted because it is has changed and may change again.

79.2. Contents

(a) The motion must briefly and distinctly state the grounds and arguments relied on for rehearing.

(b) A motion for rehearing an order that grants discretionary review may not be filed.

(c) A motion for rehearing an order that refuses ~~or dismisses~~ a petition for discretionary review may be grounded only on substantial intervening circumstances or on other significant circumstances which are specified in the motion. Counsel must certify that the motion is so grounded and that the motion is made in good faith and not for delay.

(d) A motion for rehearing an order that denies habeas corpus relief under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed. The Court may on its own initiative reconsider the case.

Notes and Comments

Comment to 2011 change: Rule 79.2(c) is amended so that it applies only to petitions for discretionary review that are refused. Additionally, the certification requirement is changed to encompass a broader basis for rehearing.

VERIFICATION

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF _____

_____, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."

Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF _____, 20__.

Signature of Notary Public

PETITIONER'S INFORMATION

Petitioner's printed name: _____

State bar number, if applicable: _____

Address: _____

Telephone: _____

Fax: _____

INMATE'S DECLARATION

I, _____, am the applicant / petitioner (circle one) and being presently incarcerated in _____, declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on _____, 20____.

Signature of Applicant / Petitioner (circle one)

PETITIONER'S INFORMATION

Petitioner's printed name: _____

Address: _____

Telephone: _____

Fax: _____

Signed on _____, 20____.

Signature of Petitioner

TRD-201101425

Louise Pearson

Clerk of the Court

Court of Criminal Appeals

Filed: April 15, 2011

◆ ◆ ◆
Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

City Credit Union, Dallas, Texas - See *Texas Register* issue dated November 26, 2010.

InvesTex Credit Union, Houston, Texas - See *Texas Register* issue dated January 28, 2011.

Cabot & NOI Employees Credit Union, Pampa, Texas - See *Texas Register* issue dated February 25, 2011.

Articles of Incorporation - 50 Years to perpetuity - Approved

FedStar Credit Union, College Station, Texas

TRD-201101501

Harold E. Feeney

Commissioner

Credit Union Department

Filed: April 20, 2011

◆ ◆ ◆
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 (TWC), §7.075. TWC, §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. TWC, §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 **May 30, 2011**. TWC, §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, Build-

ing 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 May 30, 2011**. 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, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: B & F Jolly 2, LP; DOCKET NUMBER: 2010-0453-PST-E; IDENTIFIER: RN102244464; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.242(9) and Texas Health and Safety Code (THSC), §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with Stage II equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §334.7(d)(3), §334.8(c)(4)(C) and (5)(B)(i), by failing to notify the agency of any change or additional information regarding the underground storage tanks (USTs) within 30 days of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of liquid and debris; PENALTY: \$26,828; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Cherokee Water Company; DOCKET NUMBER: 2011-0131-AIR-E; IDENTIFIER: RN105948533; LOCATION: Longview, Gregg County; TYPE OF FACILITY: property management; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition of outdoor burning within the state of Texas; PENALTY: \$4,985; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: City of Albany; DOCKET NUMBER: 2010-2012-MWD-E; IDENTIFIER: RN101918456; LOCATION: Albany, Shackelford County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010035002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for total suspended solids; PENALTY: \$1,120; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: City of Azle; DOCKET NUMBER: 2010-1847-MWD-E; IDENTIFIER: RN101609873; LOCATION: Tarrant County;

TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES), Permit Number WQ0011183003, Interim I Effluent Limitations and Monitoring Requirements, Numbers 1 and 6, 30 TAC §305.125(1) and TWC, §26.121, by failing to comply with permitted effluent limits for ammonia nitrogen and dissolved oxygen; TPDES Permit Number WQ0011183003, Operational Requirements Number 1, and 30 TAC §305.125(1) and (5), by failing to properly maintain the clarifier units; PENALTY: \$37,160; Supplemental Environmental Project (SEP) offset amount of \$37,160 applied to Azle Collection Event and Ash Creek and Reynolds Branch Creek Cleanup; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Grapevine; DOCKET NUMBER: 2011-0089-PST-E; IDENTIFIER: RN102064482; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,875; SEP offset amount of \$15,000 applied to Tire Collection Event; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: D & D CONTRACTORS, INCORPORATED; DOCKET NUMBER: 2011-0055-MLM-E; IDENTIFIER: RN105745624; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: highway 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; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$5,475; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: DIAMOND SHAMROCK REFINING COMPANY, L.P.; DOCKET NUMBER: 2010-1729-IHW-E; IDENTIFIER: RN100542802; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §335.2(a), by failing to prevent the storage of industrial solid waste without authorization; 30 TAC §335.4 and TWC, §26.121, by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste so as to cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to the waters in the state without authorization; 30 TAC §335.6(c), by failing to update the facility's notice of registration regarding waste management activities; PENALTY: \$104,975; SEP offset amount of \$41,990 applied to Texas Association of Resource Conservation and Development Areas, Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2010-1975-AIR-E; IDENTIFIER: RN100211077; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §§116.115(b), 116.615(2) and 122.143(4), and THSC, §382.085(b), Oil and Gas General Operating Permit Number O-390, Site-Wide Requirement (b)(7)(B), and Standard Permit Registration Number 32928, Maximum Emission Rates, by failing to comply with hourly emissions limits; PENALTY: \$6,550; ENFORCEMENT COORDINATOR: Audra Benoit, (409)

899-8799; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: FAMCOR OIL, INCORPORATED; DOCKET NUMBER: 2011-0068-AIR-E; IDENTIFIER: RN106023484; LOCATION: Coldspring, San Jacinto County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the conditions of a permit by rule; 30 TAC §122.121 and THSC, §382.085(b), by failing to apply for a Federal Operating Permit; PENALTY: \$30,000; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 899-8785; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: FOUR HAYS, INCORPORATED dba Burleson Car Wash and Oil Change; DOCKET NUMBER: 2010-2007-PST-E; IDENTIFIER: RN101545119; LOCATION: Burleson, Johnson County; TYPE OF FACILITY: car wash and vehicle lubrication shop; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: GOLDEN SPREAD REDI-MIX, INCORPORATED; DOCKET NUMBER: 2011-0166-IWD-E; IDENTIFIER: RN105776132; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: ready-mix concrete; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG110968, Part III, Section A., by failing to comply with permit effluent limits for total suspended solids; PENALTY: \$2,200; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: HAR26 Incorporated dba Har26 Food Mart; DOCKET NUMBER: 2011-0151-PST-E; IDENTIFIER: RN102719879; LOCATION: North Richland Hills, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,925; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: HLM Development, L.L.C.; DOCKET NUMBER: 2011-0538-WQ-E; IDENTIFIER: RN104633110; LOCATION: Parker County; TYPE OF FACILITY: development company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2010-2023-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), New Source Review Permit Number 5972A, Special Conditions Number 1, and Federal Operating Permit Number O-01320, Special Terms and Conditions Number 15, by failing to prevent unauthorized emissions during an event that occurred on August 26, 2010 (Incident Number 144030); PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Southeast Texas Regional

Planning Commission, Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2010-1929-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), New Source Review (NSR) Permit Number 20134, Special Conditions Number 1, Federal Operating Permit Number O-02286, Special Terms and Conditions Number 10, by failing to prevent unauthorized emissions during an emissions event; 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), NSR Permit Number 29516, Special Conditions Number 1, Federal Operating Permit Number O-02288, Special Terms and Conditions Number 16, by failing to prevent unauthorized emissions during an emissions event; PENALTY: \$20,000; SEP offset amount of \$10,000 applied to Texas Air Research Center, Flare Minimization and Air Quality Modeling; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Mallard Point Wastewater Treatment Plant, LLC; DOCKET NUMBER: 2011-0158-MWD-E; IDENTIFIER: RN102342722; LOCATION: Hunt County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014215001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, 30 TAC §305.125(1) and TWC, §26.121, by failing to comply with permitted effluent limits for biochemical oxygen demand and pH; TPDES Permit Number WQ0014215001, Sludge Provisions and 30 TAC §305.125(17), by failing to timely submit monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0014215001, Monitoring and Reporting Requirements Number 1; and 30 TAC §319.1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$6,664; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Matus Construction Group; DOCKET NUMBER: 2011-0539-WQ-E; IDENTIFIER: RN106104052; LOCATION: McLennan County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2010-2019-MWD-E; IDENTIFIER: RN101524452; LOCATION: Cameron County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013462008, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for ammonia nitrogen; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013462008, Monitoring and Reporting Requirements Number 1, by failing to submit results at the intervals specified in the permit; PENALTY: \$1,255; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: Nasir Mujahid dba Terrys Food Mart 2; DOCKET NUMBER: 2010-2055-PST-E; IDENTIFIER: RN102017670; LO-

CATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,925; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: NEW EVEREST GROUP CORPORATION dba Lil's General Food Store; DOCKET NUMBER: 2011-0022-PST-E; IDENTIFIER: RN101552966; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Regatta Ridge LLC; DOCKET NUMBER: 2011-0537-WQ-E; IDENTIFIER: RN106096340; LOCATION: Bell County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Ruble Petroleum, Incorporated dba Nat 24 #1; DOCKET NUMBER: 2011-0234-PST-E; IDENTIFIER: RN102250933; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the USTs; PENALTY: \$4,610; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: S B Five Star Incorporated dba M P Mart; DOCKET NUMBER: 2011-0099-PST-E; IDENTIFIER: RN101542298; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection for the underground storage tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between monitoring); PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Shell Petroleum, L.L.C. dba Shell Petroleum; DOCKET NUMBER: 2010-0260-PST-E; IDENTIFIER: RN101444149; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to notify the agency of any change or additional information regarding underground storage tanks (USTs) within 30 days from the date of occurrence of the change or addition; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable

financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$14,529; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: SIBER ENTERPRISE, INCORPORATED dba Star Food N Grocery; DOCKET NUMBER: 2011-0185-PST-E; IDENTIFIER: RN101273993; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; 30 TAC §334.42(a), by failing to design, install, and operate all components of an underground storage tank (UST) system in a manner that will prevent releases of regulated substances due to structural failure for as long as the UST system is used to store regulated substances; PENALTY: \$2,905; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 422-8968; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Southern Union Pipeline, Ltd.; DOCKET NUMBER: 2010-1992-AIR-E; IDENTIFIER: RN100225010; LOCATION: Midland, Pecos County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.143(4), Federal Operating Permit Number O-0689, General Operating Permit 514, Site-wide requirements (b)(8)(B)(iv)(c), and THSC, §382.085(b), by failing to maintain an observation log for visible emissions from stationary vents; 30 TAC §122.145(2)(A) and §122.145(2)(B), and THSC, §382.085(b), by failing to submit complete and accurate semiannual deviation reports; PENALTY: \$7,250; SEP offset amount of \$2,900 applied to Texas Association of Resource Conservation and Development Areas, Clean School Buses; ENFORCEMENT COORDINATOR: Gena Hawkins, (512) 239-2583; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(27) COMPANY: Sunoco Partners Marketing & Terminals L.P.; DOCKET NUMBER: 2011-0106-IWD-E; IDENTIFIER: RN100214626; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: petroleum marine terminal with secondary lubricating, oil blending and packaging facility and marine petroleum cargo handling; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0001151000, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids and oil and grease; PENALTY: \$13,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: SV-ONA Lakeline Land Limited Partnership; DOCKET NUMBER: 2010-2064-EAQ-E; IDENTIFIER: RN105157648; LOCATION: Austin, Williamson County; TYPE OF FACILITY: property with an associated office building complex; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j)(1), and Water Pollution Abatement Plan (WPAP) Number 11-07012601, Standard Conditions Number 4, by failing to obtain approval of a modification to an approved WPAP prior to initiating physical and operational modifications to a water quality pond; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(29) COMPANY: Traveling Tiger Centers LLC; DOCKET NUMBER: 2010-2083-PWS-E; IDENTIFIER: RN101180529; LOCATION: Hudspeth County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected and did not provide public notices of the failure to collect; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five distribution coliform samples for the months following a total coliform-positive sample result and failed to provide public notification of the failure to collect; PENALTY: \$2,112; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(30) COMPANY: Yantis Partners, Ltd.; DOCKET NUMBER: 2011-0502-WQ-E; IDENTIFIER: RN106072143; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201101481
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 19, 2011

◆ ◆ ◆
Enforcement Orders

An agreed order was entered regarding City of O'Brien, Docket No. 2008-0454-MWD-E on April 11, 2011 assessing \$37,409 in administrative penalties with \$37,409 deferred.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ronald West, L.L.C., Docket No. 2008-1371-MLM-E on April 11, 2011 assessing \$1,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Carl Bell dba PoPoPs Ice House, Docket No. 2008-1590-MLM-E on April 11, 2011 assessing \$5,291 in administrative penalties with \$1,691 deferred.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tyson Poultry, Inc., Docket No. 2009-0601-AIR-E on April 11, 2011 assessing \$15,753 in administrative penalties with \$3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manuel Antonio Moscoso dba Texas Lawn Maintenance & Landscaping, Docket No. 2009-0751-LII-E on April 11, 2011 assessing \$450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Godley, Docket No. 2009-0907-MWD-E on April 11, 2011 assessing \$44,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LeAnn Baker, Allan Stuart, Terri Stuart, and Lee Willis, dba Pleasure Point Water Supply Corporation, Docket No. 2009-0973-PWS-E on April 11, 2011 assessing \$7,389 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of New Boston, Docket No. 2009-1297-MWD-E on April 11, 2011 assessing \$28,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pioneer Natural Resources USA, Inc., Docket No. 2009-1510-AIR-E on April 11, 2011 assessing \$30,516 in administrative penalties with \$6,103 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reynaldo Diaz dba MIS 5819, Docket No. 2009-1547-PST-E on April 11, 2011 assessing \$13,361 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Turner Industries Group, L.L.C., Docket No. 2009-1616-AIR-E on April 11, 2011 assessing \$18,125 in administrative penalties with \$3,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding White Buffalo Environmental Services, LLC, Dead Bison, Inc., and Gregory Swindle, Docket No. 2009-1678-MLM-E on April 11, 2011 assessing \$13,436 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 8 Mile Park, L.P., Docket No. 2009-1829-MWD-E on April 11, 2011 assessing \$39,998 in administrative penalties with \$35,920 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tiki Food Mart, L.L.C., Docket No. 2009-2052-PST-E on April 11, 2011 assessing \$13,935 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Little Elm, Docket No. 2010-0249-MWD-E on April 11, 2011 assessing \$12,225 in administrative penalties with \$2,445 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kavmel Inc. dba Shop Smart 2, Docket No. 2010-0364-PST-E on April 11, 2011 assessing \$6,964 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NextEra Energy Project Management, LLC, Docket No. 2010-0564-PWS-E on April 11, 2011 assessing \$6,272 in administrative penalties with \$1,254 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Juan Sanchez, Docket No. 2010-0612-LII-E on April 11, 2011 assessing \$1,245 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-0656-AIR-E on April 11, 2011 assessing \$80,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2010-0709-AIR-E on April 11, 2011 assessing \$235,330 in administrative penalties with \$47,066 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713)

767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Atlas Pallet Industries, Inc., Docket No. 2010-0759-AIR-E on April 11, 2011 assessing \$1,130 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard L. Tillery, Docket No. 2010-0797-MLM-E on April 11, 2011 assessing \$7,646 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranger Utility Company, Docket No. 2010-0867-PWS-E on April 11, 2011 assessing \$1,695 in administrative penalties with \$339 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding AMISH GROUP, INC. dba Truckers Paradise, Docket No. 2010-1003-PST-E on April 11, 2011 assessing \$8,043 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-03087.

A default order was entered regarding SODA WATER SUPPLY CORPORATION, Docket No. 2010-1010-PWS-E on April 11, 2011 assessing \$312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TRIPLE A DUMP TRUCK SERVICE, L.L.C., Docket No. 2010-1012-MSW-E on April 11, 2011 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Abdelrahim A. Zardeh dba Toney's Fina, Docket No. 2010-1020-PST-E on April 11, 2011 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP, Docket No. 2010-1143-EAQ-E on April 11, 2011 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bayer MaterialScience LLC, Docket No. 2010-1148-AIR-E on April 11, 2011 assessing \$19,836 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KAS INVESTMENTS, LTD., Docket No. 2010-1165-PWS-E on April 11, 2011 assessing \$2,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Happy Hill Farm Children's Home, Inc. dba Happy Hill Farm Academy, Docket No. 2010-1209-MWD-E on April 11, 2011 assessing \$15,300 in administrative penalties with \$3,060 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Irzum Business, Inc. dba Alexander Food Store, Docket No. 2010-1230-PST-E on April 11, 2011 assessing \$5,356 in administrative penalties with \$1,071 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Leggett dba Country Lake Water Supply, Docket No. 2010-1252-PWS-E on April 11, 2011 assessing \$6,674 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ray L. Averyt dba Hilltop Mobile Home Park, Docket No. 2010-1256-PWS-E on April 11, 2011 assessing \$3,231 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DHAN GURU INC dba Food & Fuel 3, Docket No. 2010-1307-PST-E on April 11, 2011 assessing \$12,838 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2010-1318-AIR-E on April 11, 2011 assessing \$61,450 in administrative penalties with \$12,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2010-1331-AIR-E on April 11, 2011 assessing \$21,346 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUCKLEY OIL COMPANY, Docket No. 2010-1343-DCL-E on April 11, 2011 assessing \$12,600 in administrative penalties with \$2,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OGRE, Inc. dba Mur-Tex, Docket No. 2010-1355-AIR-E on April 11, 2011 assessing \$18,000 in administrative penalties with \$3,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sebastian Municipal Utility District, Docket No. 2010-1374-PWS-E on April 11, 2011 assessing \$2,895 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Saint Jo, Docket No. 2010-1384-MWD-E on April 11, 2011 assessing \$10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CEMEX Construction Materials South, LLC, Docket No. 2010-1411-IWD-E on April 11, 2011 assessing \$9,315 in administrative penalties with \$1,863 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Neal's Lodges, Inc., Docket No. 2010-1419-PWS-E on April 11, 2011 assessing \$1,958 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arnold Billups dba A & M Mobile Home Park, Docket No. 2010-1437-PWS-E on April 11, 2011 assessing \$550 in administrative penalties with \$110 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mc-OO, Inc. dba Mc-O Construction, Docket No. 2010-1442-MLM-E on April 11, 2011 assessing \$6,250 in administrative penalties with \$1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KMCO L.P., Docket No. 2010-1446-AIR-E on April 11, 2011 assessing \$4,450 in administrative penalties with \$890 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Water Control and Improvement District No. 89, Docket No. 2010-1457-MWD-E on April 11, 2011 assessing \$22,660 in administrative penalties with \$4,532 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tommy Chen dba Downtown Shell, Docket No. 2010-1461-PST-E on April 11, 2011 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2010-1468-AIR-E on April 11, 2011 assessing \$9,075 in administrative penalties with \$1,815 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Polk County, Docket No. 2010-1477-AIR-E on April 11, 2011 assessing \$9,110 in administrative penalties with \$1,822 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GE Engine Services - Dallas L.P., Docket No. 2010-1492-AIR-E on April 11, 2011 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc., Docket No. 2010-1497-MWD-E on April 11, 2011 assessing \$2,800 in administrative penalties with \$560 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nickie Joe Sublett dba Uphill Dairy, Docket No. 2010-1507-AGR-E on April 11, 2011 assessing \$1,240 in administrative penalties with \$248 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Watco Tanks, Inc., Docket No. 2010-1510-AIR-E on April 11, 2011 assessing \$3,175 in administrative penalties with \$635 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2010-1515-AIR-E on April 11, 2011 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2010-1524-AIR-E on April 11, 2011 assessing \$4,082 in administrative penalties with \$816 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Structures of America, Inc., Docket No. 2010-1529-MWD-E on April 11, 2011 assessing \$3,158 in administrative penalties with \$631 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2010-1550-AIR-E on April 11, 2011 assessing \$5,150 in administrative penalties with \$1,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. du Pont de Nemours and Company, Docket No. 2010-1556-AIR-E on April 11, 2011 assessing \$27,675 in administrative penalties with \$5,535 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Celanese Ltd., Docket No. 2010-1559-AIR-E on April 11, 2011 assessing \$3,975 in administrative penalties with \$795 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUC-EE'S, LTD. dba Buc-ees 16, Docket No. 2010-1567-PST-E on April 11, 2011 assessing \$18,375 in administrative penalties with \$3,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Gas Processing, Inc., Docket No. 2010-1583-AIR-E on April 11, 2011 assessing \$3,125 in administrative penalties with \$625 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pioneer Natural Resources USA, Inc., Docket No. 2010-1587-AIR-E on April 11, 2011 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matthew Lucas dba Lake Travis Brush Recycling, Docket No. 2010-1617-MLM-E on April 11, 2011 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Gypsum Company, Docket No. 2010-1628-AIR-E on April 11, 2011 assessing \$17,375 in administrative penalties with \$3,475 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holly Park Marina, Inc., Docket No. 2010-1637-SLG-E on April 11, 2011 assessing \$1,300 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOPAL INTERNATIONAL, INC. dba Star Stop 3, Docket No. 2010-1657-PST-E on April 11, 2011 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Composite Materials, LLC, Docket No. 2010-1662-AIR-E on April 11, 2011 assessing \$8,300 in administrative penalties with \$1,660 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wellborn Special Utility District, Docket No. 2010-1670-MWD-E on April 11, 2011 assessing \$5,694 in administrative penalties with \$1,138 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Explorer Pipeline Company, Docket No. 2010-1671-IWD-E on April 11, 2011 assessing \$7,125 in administrative penalties with \$1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL Petrochemicals USA, Inc., Docket No. 2010-1675-AIR-E on April 11, 2011 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LODGE LUMBER COMPANY, INC., Docket No. 2010-1677-PST-E on April 11, 2011 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JYKM UNION, INC. dba Thrall Food Store, Docket No. 2010-1680-PST-E on April 11, 2011 assessing \$4,105 in administrative penalties with \$821 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOD IS THE GREATEST INC. dba Daves Express, Docket No. 2010-1688-PST-E on April 11, 2011 assessing \$2,858 in administrative penalties with \$571 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HIMCHULI INTERNATIONAL LLC dba Easy Mart, Docket No. 2010-1701-PST-E on April 11, 2011 assessing \$1,975 in administrative penalties with \$395 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PSNKI INVESTMENT INC dba 7 Circle, Docket No. 2010-1712-PST-E on April 11, 2011 assessing \$14,104 in administrative penalties with \$2,820 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Breckenridge, Docket No. 2010-1715-MWD-E on April 11, 2011 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NIRMAL & ARMAAN ENTERPRISES, INC. dba MC Corner Texaco, Docket No. 2010-1758-PST-E on April 11, 2011 assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Commodore Cove Improvement District, Docket No. 2010-1788-MWD-E on April 11, 2011 assessing \$4,417 in administrative penalties with \$883 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I.L.P., Docket No. 2010-1808-MWD-E on April 11, 2011 assessing \$3,170 in administrative penalties with \$634 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hughes Springs, Docket No. 2010-1821-MWD-E on April 11, 2011 assessing \$1,300 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Daingerfield, Docket No. 2010-1925-MWD-E on April 11, 2011 assessing \$4,260 in administrative penalties with \$852 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ryan Companies US, Inc., Docket No. 2011-0018-WQ-E on April 11, 2011 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Carleton Construction, Ltd., Docket No. 2011-0064-WQ-E on April 11, 2011 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Lorenzo E. Mata, Docket No. 2011-0040-WOC-E on April 11, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dexter Monroe, Docket No. 2011-0041-WOC-E on April 11, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Larry W. Gray, Docket No. 2011-0042-WOC-E on April 11, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Charley McKelvin, Docket No. 2011-0011-WOC-E on April 11, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201101511

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 20, 2011



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 (TWC), §7.075. TWC, §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. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, 2011**. TWC, §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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ascend Performance Materials LLC; DOCKET NUMBER: 2010-0088-AIR-E; TCEQ ID NUMBER: RN100238682; LOCATION: Farm-to-Market Road 2917, eight miles south of Interstate Highway 35, Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and Air Permit Number 18251, Special Condition Number 1, by failing to prevent unauthorized emissions on August 25, 2008, and lasted 18 minutes; Air Permit Number 38336, PSD-TX-910, and N-011, Special Condition Number 1, 30 TAC §116.115(c), and THSC, §382.085(b), by failing to prevent unauthorized emissions on September 25, 2009, and lasted nine hours and 30 minutes; 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Numbers 18251 and 38336, Special Conditions Number 1, by failing to prevent unauthorized emissions on April 22, 2010, and lasted two hours and 11 minutes; PENALTY: \$22,175, Supplemental Environmental Project (SEP) offset amount of \$11,087 applied to Brazoria County Vehicle and Equipment Program; STAFF ATTORNEY: Jeffrey J. Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Jose Pena; DOCKET NUMBER: 2010-0788-LII-E; TCEQ ID NUMBER: RN105912588; LOCATION: 3425 Castle Rock Lane, Garland, Dallas County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration without holding or possessing a license or registration; PENALTY: \$250; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201101483

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 19, 2011



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and

petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, 2011**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Cecil D. Hutcheson; DOCKET NUMBER: 2010-1596-WOC-E; TCEQ ID NUMBER: RN105972061; LOCATION: 2201 Research Boulevard, Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: TWC §37.003, Texas Health and Safety Code, §341.034(b), and 30 TAC §30.5(a) and §30.381(b), by failing to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water; PENALTY: \$625; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(2) COMPANY: City of Scottsville; DOCKET NUMBER: 2010-1254-PWS-E; TCEQ ID NUMBER: RN101227619; LOCATION: Farm-to-Market Road 2199 off Highway 80, east of Marshall, Harrison County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §209.122(c)(2)(A) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis and failing to provide public notification of the failure to sample for the following months: February, April, May, July, August, September, and October 2008 and February 2010; 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and failing to provide public notification of the MCL exceedence for the month of March 2010; 30 TAC §290.109(c)(3)(A)(i) and §290.122(c)(2)(A), by failing to collect, within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample, three repeat distribution coliform samples for each routine distribution coliform-positive sample, and failing to provide public notification of the failure to collect repeat distribution samples during the month of March 2010; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at

least five routine distribution coliform samples the month following a coliform-positive sample result, and failing to provide public notification of the failure to sample for the month of April 2010; PENALTY: \$4,372; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Connie Rogers DBA Alamo Pumping BLU Site; DOCKET NUMBER: 2010-1591-SLG-E; TCEQ ID NUMBER: RN103160156; LOCATION: approximately three miles south-southwest of the City of San Juan, and approximately 1/3 mile east of the intersection of South Stewart Road, East Balli Road, Hidalgo County; TYPE OF FACILITY: unregistered beneficial land use; RULES VIOLATED: 30 TAC §312.4(d) and TCEQ Default Order 2009-0673-SLG-E, Ordering Provision Numbers 2.a. and 2.b.ii., by failing to obtain authorization for the land application of sewage sludge; and Administrative Penalty Account Number 23605360 and TCEQ Municipal Sludge Transporter Fees associated with account Numbers 0800436H and 0800521H for Fiscal Years 2006 - 2010; PENALTY: \$11,250; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: DRC Business Inc. d/b/a Kountry Kwik; DOCKET NUMBER: 2010-1227-PWS-E; TCEQ ID NUMBER: RN100927888; LOCATION: 29720 Huffman Cleveland Road, Huffman, Harris County; TYPE OF FACILITY: gasoline service station and convenience store with a public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and failing to provide notice to persons served by the facility regarding the failure to conduct routine coliform monitoring; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of four repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and failing to provide notice to persons served by the facility regarding the failure to collect repeat samples; PENALTY: \$3,927; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: EnviroGreen Recovery Solutions LLC; DOCKET NUMBER: 2010-1224-MLM-E; TCEQ ID NUMBER: RN105880348 and RN105953244; LOCATION: 24942 Highway 73, Winnie, Jefferson County (Site 1) and 22352 Vincent Road, Hampshire, Jefferson County (Site 2); TYPE OF FACILITY: unauthorized waste processing and disposal sites; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to prohibit the unauthorized outdoor burning of municipal solid wastes (MSW) for the purposes of disposal at Site 1; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW at Site 1; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW at Site 2; PENALTY: \$10,468; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Ray Carpenter dba Carpenter Dirt Work; DOCKET NUMBER: 2010-1928-MSW-E; TCEQ ID NUMBER: RN105114946; LOCATION: 3005 East Highway 190, Lampasas, Lampasas County; TYPE OF FACILITY: composting facility; RULES VIOLATED: 30 TAC §328.5(h) and TCEQ Agreed Order (AO) Docket Number 2007-1807-MLM-E, Ordering Provision Number 2.b.i., by failing to have a fire prevention and suppression plan; and 30 TAC §328.5(d) and TCEQ AO Docket Number 2007-1807-MLM-E, Ordering Provision Number

2.b.ii., by failing to establish and maintain financial assurance for the closure of a composting facility that stores combustible materials outdoors; PENALTY: \$12,008; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: S.A.A.A. ENTERPRISES, INC. dba West Airport Food Mart; DOCKET NUMBER: 2010-1805-PST-E; TCEQ ID NUMBER: RN102262854; LOCATION: 12400 South Gessner Drive, Houston, Harris County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: THSC, §382.085(b), 30 TAC §115.248(1), and TCEQ AO Docket Number 2008-1656-PST-E, Ordering Provision Number 2.b.i., by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; PENALTY: \$7,800; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201101482

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 19, 2011



Notice of Water Quality Applications

The following notice was issued on April 8, 2011 through April 15, 2011.

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

CITY OF HENDERSON has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010187002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 2397 Farm-to-Market Road 782 North, approximately 2.3 miles north of U.S. Highway 259 and 0.8 mile west of Farm-to-Market Road 782 in Rusk County, Texas 75652.

WEST PARK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012346001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 19310 Katy Freeway, approximately 800 feet north of Interstate Highway 10 and approximately 3,200 feet east of Fry Road at the south termination of a Harris County Flood Control District ditch in Harris County, Texas 77084.

DIANA SPECIAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011199001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 1/4 mile east of the intersection of U.S. Highway 259 and Farm-to-Market Road 3245 on the north side of Farm-to-Market Road 3245 in Upshur County, Texas 75640.

CITY OF DENISON has applied for a renewal of TPDES Permit No. WQ0010079003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located east of the City of Denison, approximately 1,600 feet east and 2,200 feet north of the intersection of Center Street and Farm-to-Market Road 120 in Grayson County, Texas 75021.

CITY OF CANTON has applied for a renewal of TPDES Permit No. WQ0010399002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards for Total Copper. The variance would authorize a three-year period in which to conduct a water quality study of Mill Creek, into which the treated domestic wastewater is discharged. The study would show whether a site-specific amendment to water quality standards is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located 4,000 feet northeast of the intersection of Interstate Highway 20 and State Highway 19 and approximately 5,000 feet northwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 17 in Van Zandt County, Texas 75103.

CITY OF HEMPHILL has applied for a renewal of TPDES Permit No. WQ0010493002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 0.75 mile south of the Hemphill City Hall on Farm-to-Market Road 2971 (Beckom Road) in Sabine County, Texas 75948.

CITY OF AUSTIN has applied for a new permit, proposed TPDES Permit No. WQ0010543015, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located 1.3 miles north of Pearce Lane and 1.2 miles west of Wolf Lane in Travis County, Texas 78617.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT - FONDREN ROAD has applied for a renewal of TPDES Permit No. WQ0010570001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located on the south side of Hampton Road, approximately 0.5 mile west of the intersection of Fondren Road and Main Street (U.S. 90A) in Harris County, Texas 77071.

CITY OF BIG WELLS has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0013782001 to remove the existing final phase effluent limitations and monitoring requirements (to authorize less stringent effluent limitations). The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 2,000 feet west of Farm-to-Market Road 1867 and 2,200 feet south of U.S. Highway 85 in Dimmit County, Texas 78830.

CITY OF INDUSTRY has applied for a renewal of TPDES Permit No. WQ0013897001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located approximately 6,500 feet northwest of the intersection of State Highway 159 and Farm-to-Market Road 109 in Austin County, Texas 78944.

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 website at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201101510
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 20, 2011

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Texas Health and Human Services Commission

Notice of Procurement for Consulting Services for the "Medical Transportation Program Second Study" (RFP #529-11-0014)

I. Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for Consulting Services for the "Medical Transportation Program Second Study" (RFP #529-11-0014). HHSC seeks to procure the services of a consultant to complete an independent, unbiased, statistically valid and timely study of the Medical Transportation Program, as specified in the *Frew* Corrective Action Order: Transportation, entered in the class action lawsuit, *Frew, et al. v. Suehs, et al. (Frew)*, Civil Action No. 3:93CV65, pursuant to this RFP.

II. The successful respondent will be expected to deliver a study of the effectiveness of medical transportation services for *Frew* class members (Medicaid recipients from birth through age 20). The study requires an assessment of class members (or their parent/guardian) and the Medicaid providers who serve class members. The study is expected to last approximately 12 months and must include an assessment of each Standard Metropolitan Statistical Area and the rural areas in each of the 11 HHSC regions. The successful respondent will be expected to submit interim as well as final reports.

The RFP is located in full on HHSC's Business Opportunities Page under link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_home.shtml. HHSC also posted notice of the procurement on the Texas Marketplace on April 22, 2011.

III. The successful contractor will be expected to develop sampling strategies and data collection instruments, complete class member and provider surveys, conduct data analysis, and submit interim and final reports according to the timeline agreed upon by HHSC and the contractor and within 12 months after the contract start date.

IV. Health and Human Services Commission's Sole Point-Of-Contact For Procurement

Peggie Laser

Procurement Manager

Texas Health and Human Services Commission

4405 North Lamar Blvd.

Austin, TX 76756-3422

(512) 206-5278

Peggie.Laser@hhsc.state.tx.us

V. All questions regarding the RFP must be sent in writing to the above-referenced contact by 2:00 p.m. Central Time on May 6, 2011. HHSC will post all written questions received with HHSC's responses on its website on May 13, 2011, or as they become available. All proposals must be received at the above-referenced address on or before 2:00 p.m. Central Time on May 23, 2011. Proposals received after this time and date will not be considered.

VI. HHSC will hold a Vendor Conference on May 2, 2011 from 10:00 a.m. to 12:00 p.m. at the Brown-Heatly Building, Room 1420, located at 4900 N. Lamar Blvd., Austin, TX 78751.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-201101474
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 19, 2011

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Notice of Procurement - The Multiple Consultant Services Blanket Contract, RFP #529-11-0045

I. Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consultant services to assist the State in securing a blanket contract for a pool of multiple pre-qualified and readily accessible consultants for The Multiple Consultant Services Blanket Contract, RFP #529-11-0045. HHSC seeks to maintain a pool of highly skilled professional consultants who will provide comprehensive and professional services to assist the State in meeting Federal and State legislative mandates and other program requirements with more efficiency pursuant to this RFP.

II. The primary objectives for this procurement include the following:

Administrative time, paperwork, and scheduling will be reduced and streamlined through the blanket consultant contracting process.

HHSC will be enabled to respond to and/or meet Federal and State legislative mandates and other program requirements in a progressively timely manner.

HHSC will have the ability to plan, manage, and deliver health and human services to Texans in a more productive, effective, and efficient manner.

The RFP is located in full on HHSC's Business Opportunities Page under "Contracting Opportunities" link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_home.shtml. HHSC also posted notice of the procurement on the Texas Marketplace on April 25, 2011.

III. The successful contractor will demonstrate the ability to meet these objectives and will be evaluated, in part, by the degree to which the respondent shows how it will achieve them.

IV. Health and Human Services Commission's Sole Point-Of-Contact for Procurement

Peggie J. Laser, Procurement Manager

Texas Health and Human Services Commission

4405 N. Lamar Blvd., Bldg. 1

Mail Code: 2020

Austin, Texas 78756

(512) 206-5278

Peggie.laser@hhsc.state.tx.us

V. All questions regarding the RFP must be sent in writing to the above-referenced contact by 2:00 p.m. Central Time on May 3, 2011. HHSC will post all written questions received with HHSC's responses on its website on May 18, 2011, or as they become available. All proposals must be received at the above-referenced address on or before 2:00 p.m.

Central Time on June 13, 2011. Proposals received after this time and date will not be considered.

VI. HHSC will not hold a Vendor Conference for this RFP.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-201101473

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for 17-Alpha Hydroxyprogesterone Caproate

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rate for 17-Alpha Hydroxyprogesterone Caproate.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rate is proposed to be effective June 1, 2011, for 17-Alpha Hydroxyprogesterone Caproate.

Methodology and Justification. The proposed payment rate was calculated in accordance with 1 TAC: §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners; including medical services, and physician administered drugs/biologicals.

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by two percent. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral

testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101467

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for Diabetic Equipment and Supplies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Diabetic Equipment and Supplies (CCP).

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective July 1, 2011, for Diabetic Equipment and Supplies (CCP).

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC: §355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services; and §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by two percent. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, is being proposed to begin February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101465
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for Incontinence Supplies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Incontinence Supplies (wipes).

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective July 1, 2011, for Incontinence Supplies (wipes).

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC: §355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services; and §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by two percent. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512)

491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101464
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Calendar Fee Reviews

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the quarterly Medicaid Calendar Fee Review.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective July 1, 2011, for this Medicaid Calendar Fee Review for the following services:

- (1) Allergy Testing
- (2) Auditory System Surgery
- (3) Blood Products
- (4) Medicine (Other)
- (5) Cardiovascular Services
- (6) Chemotherapy Services
- (7) Echocardiography and Electrocardiography
- (8) Esophageal Motility, Function and Reflux Testing
- (9) Hemodialysis and End-Stage-Renal-Disease Services
- (10) Intravenous and Infusion Treatment
- (11) Male Genital System Surgery
- (12) Medical and Surgical Supplies ("A Codes" (Urinary supplies, Ostomy Supplies, Radiologic Supplies))
- (13) Noninvasive Cranial Tests and Vascular Studies
- (14) Ophthalmological Services

- (15) Other Medical Services ("M Code")
- (16) Outpatient Prospective Payment System (OPPS or "C Codes")
- (17) Special Procedures of the Ears, Nose and Throat
- (18) Speech and Hearing Tests and Devices; and Swallowing Evaluations

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

Section 355.8001, which addresses the reimbursement methodology for vision care services;

Section 355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;

Section 355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

Section 355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy and;

Section 355.8141, which addresses the reimbursement for hearing aid services; and

Section 355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by two percent. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101466
 Steve Aragon
 Chief Counsel
 Texas Health and Human Services Commission
 Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for Mobility Aids

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Mobility Aids.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective July 1, 2011, for Mobility Aids.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC: §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by two percent. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail

Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101462
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for Otolaryngology and Audiometry Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Otolaryngology and Audiometry Services:

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective July 1, 2011, for Otolaryngology and Audiometry Services.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC: §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by two percent. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas

78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101461
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for Substance Use Disorder Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Substance Use Disorder Services.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective June 1, 2011, for Substance Use Disorder Services.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC: §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners; and §355.8241, which addresses the reimbursement methodology for Chemical Dependency Treatment Facilities.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101460

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 18, 2011



Notice of Public Hearing on Proposed Medicaid Payment Rates for Surgical Procedures

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 17, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Surgical Procedures (which include: bone void filler, cartilage and hormone implants, removal of arthroplasty or allograft, anastomosis, hip resurfacing, and metacarpal/tarsal/phalangeal implants).

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective July 1, 2011, for Surgical Procedures (which include: bone void filler, cartilage and hormone implants, removal of arthroplasty or allograft, anastomosis, hip resurfacing, and metacarpal/tarsal/phalangeal implants).

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC: §355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services; §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners; and §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening,

Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by two percent. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, is being proposed to begin February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201101459

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 18, 2011



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

| Location | Name | License # | City | Amendment # | Date of Action |
|---------------|---|-----------|---------|-------------|----------------|
| Houston | The Methodist Hospital Research Institute | L06383 | Houston | 00 | 03/16/11 |
| Houston | Triad Isotopes, Inc. | L06327 | Houston | 00 | 03/24/11 |
| Throughout TX | Anderson Perforating, Ltd. | L06392 | Albany | 00 | 03/24/11 |
| Throughout TX | Rising Star Services | L06393 | Midland | 00 | 03/21/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amendment # | Date of Action |
|----------------|---|-----------|----------------|-------------|----------------|
| Amarillo | Cardinal Health | L03398 | Amarillo | 39 | 03/23/11 |
| Angleton | Isotherapeutics Group, L.L.C. | L05969 | Angleton | 17 | 03/11/11 |
| Angleton | Isotherapeutics Group, L.L.C. | L05969 | Angleton | 18 | 03/30/11 |
| Austin | CardioTexas, P.L.L.C. | L06330 | Austin | 01 | 03/09/11 |
| Austin | Seton Healthcare dba Seton Medical Center Williamson | L06128 | Austin | 14 | 03/21/11 |
| Austin | Worldwide Clinical Trials Drug Development Solutions, Inc. | L04427 | Austin | 20 | 03/28/11 |
| Austin | St. David's Healthcare Partnership, L.P., L.L.P. | L06335 | Austin | 03 | 03/29/11 |
| Beaumont | Baptist Hospital of Southeast Texas | L00358 | Beaumont | 131 | 03/25/11 |
| Beaumont | Baptist Hospital of Southeast Texas | L00358 | Beaumont | 132 | 03/30/11 |
| Bedford | Columbia North Hills Outpatient Imaging Center Subsidiary L.P., dba Bedford Imaging Center | L03455 | Bedford | 57 | 03/18/11 |
| Benbrook | Weatherford International, Inc. | L00747 | Benbrook | 88 | 03/31/11 |
| Bonham | Attentus Bonham, L.P. | L03331 | Bonham | 40 | 03/14/11 |
| Bryan | St. Joseph Regional Health Center | L00573 | Bryan | 76 | 03/21/11 |
| Conroe | Drilling Specialties Company | L04825 | Conroe | 15 | 03/24/11 |
| Corpus Christi | N-Spec Quality Services, Inc. | L05113 | Corpus Christi | 41 | 03/30/11 |
| Dallas | PETNET Solutions, Inc. | L05193 | Dallas | 38 | 03/11/11 |
| Dallas | Baylor University Medical Center | L01290 | Dallas | 100 | 03/09/11 |
| Dallas | Building Materials Corporation of America dba GAF Materials Corporation | L03811 | Dallas | 19 | 03/10/11 |
| Dallas | Crown Imaging, L.L.C. | L06223 | Dallas | 03 | 03/30/11 |
| Del Rio | Val Verde Regional Medical Center | L01967 | Del Rio | 33 | 03/11/11 |
| Del Rio | Val Verde Regional Medical Center | L01967 | Del Rio | 34 | 03/25/11 |
| El Paso | BRK Brands, Inc. | L03725 | El Paso | 15 | 03/11/11 |
| El Paso | The University of Texas at El Paso | L00159 | El Paso | 65 | 03/25/11 |
| Ennis | PRHC Ennis, L.P. dba Ennis Regional Medical Center | L05427 | Ennis | 10 | 03/21/11 |
| Fort Worth | Allied International Emergency, L.L.C. | L06394 | Fort Worth | 01 | 03/10/11 |
| Fort Worth | Fort Worth Heart, P.A. | L05480 | Fort Worth | 36 | 03/17/11 |
| Fort Worth | Darren Lackan, M.D., P.A. dba Diabetes and Thyroid Center of Fort Worth | L06074 | Fort Worth | 04 | 03/28/11 |
| Frisco | Tenet Hospital dba Centennial Medical Center | L05768 | Frisco | 12 | 03/23/11 |
| Greenville | Hunt Memorial Hospital District dba Hunt Regional Medical Center | L01695 | Greenville | 42 | 03/30/11 |
| Harlingen | South Heart Clinic, P.L.L.C. | L06301 | Harlingen | 02 | 03/09/11 |
| Hereford | Deaf Smith County Hospital District dba Hereford Regional Medical Center | L03111 | Hereford | 17 | 03/11/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

| Location | Name | License # | City | Amendment # | Date of Action |
|-------------|---|-----------|-------------|-------------|----------------|
| Houston | Gulf Coast Cancer Center | L05185 | Houston | 14 | 03/09/11 |
| Houston | Memorial Hermann Hospital System dba Memorial Hospital Southwest | L00439 | Houston | 160 | 03/10/11 |
| Houston | Rice University | L01772 | Houston | 22 | 03/18/11 |
| Houston | RCOA Imaging Services | L06091 | Houston | 02 | 03/23/11 |
| Houston | Sightline West Houston IMRT, L.L.C. | L06299 | Houston | 03 | 03/23/11 |
| Houston | Memorial Hermann Hospital System dba Memorial Hospital Memorial City | L01168 | Houston | 124 | 03/24/11 |
| Houston | The Methodist Hospital | L00457 | Houston | 180 | 03/23/11 |
| Houston | Allied Wireline Services, L.L.C. | L06374 | Houston | 02 | 03/28/11 |
| Houston | Baker Hughes Oilfield Operations, Inc. dba Baker Atlas Houston Technology Center | L04452 | Houston | 50 | 03/25/11 |
| Houston | Professional Service Industries, Inc. | L00203 | Houston | 130 | 03/31/11 |
| Houston | Memorial Hermann Hospital System dba Memorial Hospital Southwest | L00439 | Houston | 161 | 03/31/11 |
| Houston | University of Houston at Clear Lake | L02108 | Houston | 20 | 03/30/11 |
| Houston | South Texas Nuclear Pharmacy | L05304 | Houston | 10 | 04/01/11 |
| Houston | Nuclear Imaging Services, L.P. | L05791 | Houston | 112 | 03/28/11 |
| Irving | Healthcare Associates of Irving, L.P. | L05371 | Irving | 09 | 03/25/11 |
| Kingsville | Texas A&M University Kingsville | L01821 | Kingsville | 45 | 03/31/11 |
| Lamesa | Dawson County Hospital District dba Medical Arts Hospital | L06244 | Lamesa | 06 | 03/22/11 |
| Lubbock | University Medical Center | L04719 | Lubbock | 117 | 03/22/11 |
| Lubbock | Texas Tech University | L01536 | Lubbock | 94 | 03/18/11 |
| Lubbock | M. Fawwaz Shoukfeh, M.D., P.A. dba Texas Cardiac Center | L05276 | Lubbock | 15 | 03/18/11 |
| Lubbock | Covenant Health System dba Joe Arrington Cancer Research and Treatment Center | L04881 | Lubbock | 52 | 03/17/11 |
| Lubbock | University Medical Center | L04719 | Lubbock | 118 | 03/24/11 |
| Lubbock | Texas Tech University Health Science Center | L01869 | Lubbock | 90 | 03/21/11 |
| Lufkin | The Heart Institute of East Texas, P.A. | L04147 | Lufkin | 20 | 03/16/11 |
| McAllen | Texas Oncology, P.A. | L05485 | McAllen | 10 | 03/11/11 |
| Midland | Midland County Hospital District dba Midland Memorial Hospital | L00728 | Midland | 99 | 03/25/11 |
| Nacogdoches | Memorial Hospital | L01071 | Nacogdoches | 48 | 03/15/11 |
| Nacogdoches | TH Healthcare, Ltd., A Limited Texas Partnership dba Nacogdoches Medical Center | L02853 | Nacogdoches | 45 | 03/22/11 |
| Odessa | Sivalls, Inc. | L02298 | Odessa | 41 | 03/16/11 |
| Odessa | Big State X-Ray | L02693 | Odessa | 81 | 03/30/11 |
| Orange | Cardinal Health 414, L.L.C. dba Cardinal Health Nuclear Pharmacy Services | L04785 | Orange | 38 | 03/17/11 |
| Pasadena | Arkema, Inc. | L06321 | Pasadena | 01 | 03/14/11 |
| Pasadena | Chevron Phillips Chemical Company, L.P. | L00230 | Pasadena | 84 | 03/22/11 |
| Port Arthur | The Premcor Refining Group, Inc. | L04871 | Port Arthur | 19 | 03/10/11 |
| Port Arthur | Science Engineering, Ltd. | L04677 | Port Arthur | 08 | 03/23/11 |
| Queen City | International Paper Company | L01686 | Queen City | 38 | 03/29/11 |
| Round Rock | Texas Oncology, P.A. | L06349 | Round Rock | 03 | 03/23/11 |
| San Angelo | Regional Employee Assistance Program dba Community Medical Associates | L06172 | San Angelo | 03 | 03/15/11 |
| San Antonio | The University of Texas Health Science Center at San Antonio | L01279 | San Antonio | 126 | 03/11/11 |
| San Antonio | Adult Cardiovascular Consultants, P.A. | L05836 | San Antonio | 05 | 03/14/11 |
| San Antonio | South Texas Radiology Imaging Centers | L00325 | San Antonio | 193 | 03/15/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

| Location | Name | License # | City | Amendment # | Date of Action |
|---------------|---|-----------|---------------|-------------|----------------|
| San Antonio | Methodist Healthcare System of San Antonio Ltd., L.L.P. | L00594 | San Antonio | 285 | 03/17/11 |
| San Antonio | ACASA, Ltd. dba Sendero Imaging and Treatment Center | L05567 | San Antonio | 16 | 03/17/11 |
| San Antonio | The University for Texas Health Science Center at San Antonio | L01279 | San Antonio | 127 | 03/21/11 |
| San Antonio | U.T. Medicine San Antonio Ambulatory Surgery Center | L05410 | San Antonio | 17 | 03/11/11 |
| San Antonio | Medi-Physics, Inc. | L04764 | San Antonio | 41 | 03/21/11 |
| San Antonio | ACASA, Ltd. | L05567 | San Antonio | 17 | 03/28/11 |
| San Antonio | Cardinal Health | L02033 | San Antonio | 105 | 03/25/11 |
| Sherman | North Texas Cardiology | L05395 | Sherman | 13 | 03/11/11 |
| Sugar Land | U.S. Imaging, Inc. dba Fort Bend Imaging | L04459 | Sugar Land | 37 | 03/30/11 |
| Sugar Land | Fort Bend County Road and Bridge | L05346 | Sugar Land | 02 | 03/23/11 |
| Sweetwater | Ludlum Measurements, Inc. | L01963 | Sweetwater | 93 | 03/23/11 |
| Temple | Kings Daughters Hospital | L00666 | Temple | 52 | 03/25/11 |
| Throughout TX | J-W Wire Company | L06132 | Addison | 15 | 03/08/11 |
| Throughout TX | Texas Department of Transportation | L00197 | Austin | 154 | 03/14/11 |
| Throughout TX | Oxea Corporation | L06079 | Bishop | 01 | 03/23/11 |
| Throughout TX | City of Brownwood | L05073 | Brownwood | 08 | 03/22/11 |
| Throughout TX | Tapco International, Inc. | L04990 | Channelview | 27 | 03/17/11 |
| Throughout TX | Alliance Geotechnical Group, Inc. | L05314 | Dallas | 15 | 03/22/11 |
| Throughout TX | Pioneer Wireline Services, L.L.C. | L06220 | Graham | 07 | 03/22/11 |
| Throughout TX | Quality Inspection and Testing, Inc. | L06371 | Houston | 01 | 03/21/11 |
| Throughout TX | HVJ Associates, Inc. | L03813 | Houston | 46 | 03/11/11 |
| Throughout TX | Baker Hughes Oilfield Operations, Inc. dba Baker Atlas | L00446 | Houston | 163 | 03/29/11 |
| Throughout TX | Halliburton Energy Services, Inc. | L00442 | Houston | 123 | 03/25/11 |
| Throughout TX | Spectral Oil and Gas Corporation | L06231 | Humble | 01 | 03/08/11 |
| Throughout TX | QISI, Inc. dba Quality Inspections Services | L06219 | La Porte | 07 | 03/16/11 |
| Throughout TX | Weld Spec, Inc. | L05426 | Lumberton | 92 | 03/24/11 |
| Throughout TX | E&P Wireline Services, L.L.C. | L05738 | Midland | 21 | 03/31/11 |
| Throughout TX | Midwest Inspection Services | L03120 | Perryton | 120 | 03/30/11 |
| Throughout TX | Professional Services Industries | L04946 | San Antonio | 13 | 03/31/11 |
| Throughout TX | O'Connor & Kezar, L.L.C. | L06318 | San Antonio | 01 | 03/30/11 |
| Throughout TX | Schlumberger Technology Corporation | L00764 | Sugar Land | 120 | 03/29/11 |
| Tyler | East Texas Medical Center | L00977 | Tyler | 149 | 03/28/11 |
| Wichita Falls | Andre P. Desire, M.D., P.A. | L06043 | Wichita Falls | 03 | 03/25/11 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License # | City | Amendment # | Date of Action |
|---------------|----------------------------|-----------|---------|-------------|----------------|
| Houston | Mallinckrodt Medical, Inc. | L03008 | Houston | 85 | 03/21/11 |
| Throughout TX | French Engineering, Inc. | L04572 | Houston | 09 | 03/16/11 |

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

TRD-201101420
Lisa Hernandez
General Counsel
Department of State Health Services

Filed: April 14, 2011



Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

| Location | Name | License # | City | Amendment # | Date of Action |
|---------------|---------------------------------|-----------|-------------|-------------|----------------|
| Houston | Surefire Industries USA, L.L.C. | L06385 | Houston | 00 | 04/13/11 |
| Throughout TX | Naylon A. McBride | L06400 | Floresville | 00 | 04/04/11 |
| Throughout TX | Precision NDT, L.L.C. | L06399 | Henderson | 00 | 03/16/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amendment # | Date of Action |
|----------------|--|-----------|----------------|-------------|----------------|
| Arlington | USMD Hospital at Arlington | L05727 | Arlington | 10 | 04/06/11 |
| Austin | Seton Healthcare dba Seton Medical Center Austin | L02896 | Austin | 116 | 04/04/11 |
| Austin | Capital Cardiovascular Consultants | L05590 | Austin | 16 | 04/04/11 |
| Austin | Seton Healthcare dba Seton Medical Center Hays | L06254 | Austin | 09 | 04/04/11 |
| Austin | Austin Surgical Hospital | L06297 | Austin | 01 | 04/04/11 |
| Beaumont | Wayne S. Margolis, M.D., P.A. | L06049 | Beaumont | 04 | 04/01/11 |
| Bryan | St. Joseph Regional Health Center | L00573 | Bryan | 77 | 04/04/11 |
| Carrollton | Trinity MC, L.L.C. dba Baylor Medical Center at Carrollton | L03765 | Carrollton | 63 | 04/05/11 |
| Corpus Christi | Radiology & Imaging of South Texas, L.L.P. dba Alameda Imaging Center | L05182 | Corpus Christi | 29 | 04/06/11 |
| Dallas | Baylor University Medical Center | L01290 | Dallas | 101 | 04/01/11 |
| Dallas | Cardinal Health | L02048 | Dallas | 137 | 04/08/11 |
| Dallas | North Texas Cardiovascular Associates, P.A. | L05602 | Dallas | 10 | 04/12/11 |
| Dallas | Rosa of North Dallas, L.L.C. | L06186 | Dallas | 04 | 04/11/11 |
| Deer Park | Equistar Chemicals, L.P. | L00204 | Deer Park | 65 | 04/11/11 |
| Denton | Denton Cancer Center, L.L.P. | L05945 | Denton | 05 | 04/04/11 |
| El Paso | Cardinal Health | L01999 | El Paso | 114 | 04/04/11 |
| Fort Worth | Oncology Hematology Consultants, P.A. dba The Center for Cancer and Blood Disorders | L05919 | Fort Worth | 18 | 04/11/11 |
| Freeport | The Dow Chemical Company | L00451 | Freeport | 90 | 04/08/11 |
| Houston | Memorial Hermann Hospital System dba Memorial Hospital Memorial City | L01168 | Houston | 125 | 03/29/11 |
| Houston | Memorial Hermann Hospital System dba Memorial Hospital Memorial City | L01168 | Houston | 126 | 04/11/11 |
| Houston | Institute of Biosciences and Technology | L04681 | Houston | 32 | 04/08/11 |
| Houston | Proportional Technologies, Inc. | L04747 | Houston | 28 | 04/01/11 |
| Houston | Wyle Laboratories, Inc. | L04813 | Houston | 10 | 04/01/11 |
| Houston | Houston Medical Imaging | L05184 | Houston | 14 | 04/08/11 |
| Houston | Memorial City Cardiology Associates dba Katy Cardiology Associates | L05713 | Houston | 14 | 04/04/11 |
| Houston | RCOA Imaging Services | L06091 | Houston | 03 | 03/31/11 |
| Houston | Triad Isotopes, Inc. | L06327 | Houston | 01 | 04/04/11 |
| Houston | Triad Isotopes, Inc. | L06327 | Houston | 02 | 04/08/11 |
| Katy | St. Catherine Health and Wellness Center | L05310 | Katy | 22 | 04/01/11 |
| LaPorte | QISI, Inc. dba Quality Inspection Services | L06219 | LaPorte | 08 | 04/04/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

| | | | | | |
|---------------|---|--------|-----------------|-----|----------|
| Lubbock | University Medical Center | L04719 | Lubbock | 119 | 04/12/11 |
| Lubbock | Covenant Health System dba Joe Arrington Cancer Research and Treatment Center | L04881 | Lubbock | 53 | 04/07/11 |
| Queen City | International Paper Company | L01686 | Queen City | 39 | 04/05/11 |
| San Antonio | Methodist Healthcare System of San Antonio Ltd., L.L.P. | L00594 | San Antonio | 286 | 04/11/11 |
| San Antonio | Trinity University | L01668 | San Antonio | 44 | 04/12/11 |
| San Antonio | Christus Santa Rosa Health Care | L02237 | San Antonio | 127 | 04/06/11 |
| San Antonio | City Public Service | L02876 | San Antonio | 26 | 03/28/11 |
| San Antonio | Central Cardiovascular Institute of San Antonio | L04892 | San Antonio | 24 | 04/08/11 |
| San Antonio | Intec | L05150 | San Antonio | 16 | 04/05/11 |
| Sherman | Sherman/Grayson Hospital, L.L.C. dba Texas Health Presbyterian Hospital - WNJ | L06354 | Sherman | 01 | 04/08/11 |
| Throughout TX | Desert Industrial X-Ray, L.P. | L04590 | Abilene | 115 | 03/29/11 |
| Throughout TX | Lower Colorado River Authority | L02738 | Austin | 47 | 03/30/11 |
| Throughout TX | NDE Solutions, L.L.C. | L05879 | College Station | 29 | 04/07/11 |
| Throughout TX | IRISNDT, Inc. | L04769 | Deer Park | 93 | 04/01/11 |
| Throughout TX | Gray Wireline Service, Inc. | L03541 | Fort Worth | 37 | 04/07/11 |
| Throughout TX | Gray Wireline Service, Inc. | L03541 | Fort Worth | 38 | 04/13/11 |
| Throughout TX | Proportional Technologies, Inc. | L04747 | Houston | 29 | 04/08/11 |
| Throughout TX | RCOA Imaging Services, Inc. | L05329 | Houston | 16 | 04/13/11 |
| Throughout TX | H. H. Holmes Testing Laboratories, Inc. | L06313 | Richardson | 02 | 03/29/11 |
| Throughout TX | Alamo Environmental, Inc. dba Alamo 1 | L06247 | San Antonio | 01 | 04/06/11 |
| Throughout TX | Advanced Inspection Technologies | L06228 | Spring | 03 | 04/11/11 |

RENEWAL OF LICENSES ISSUED:

| Location | Name | License # | City | Amendment # | Date of Action |
|---------------|--|-----------|--------------|-------------|----------------|
| Ennis | PRHC Ennis, L.P. dba Ennis Regional Medical Center | L05427 | Ennis | 11 | 04/04/11 |
| Throughout TX | Sonic Surveys, Ltd. | L02622 | Mont Belvieu | 24 | 03/29/11 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License # | City | Amendment # | Date of Action |
|---------------|------------------------------------|-----------|---------|-------------|----------------|
| Plano | Plano Oncology Center, Ltd. | L05874 | Plano | 01 | 03/30/11 |
| Plano | 3T Diagnostic Imaging Center, Ltd. | L05924 | Plano | 03 | 03/30/11 |
| Throughout TX | Geosyntec Consultants | L06060 | Austin | 02 | 04/11/11 |
| Throughout TX | Ground Technology, Inc. | L05125 | Houston | 13 | 04/11/11 |

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201101505
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: April 20, 2011



Texas Lottery Commission

Instant Game Number 1322 "Funky 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1322 is "FUNKY 5'S". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1322 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1322.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000 or \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1322 - 1.2D

| PLAY SYMBOL | CAPTION |
|--------------------|----------------|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWV |
| 26 | TWSX |
| 27 | TWSV |
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| 5X SYMBOL | WINX5 |
| \$5.00 | FIVE\$ |
| \$10.00 | TEN\$ |
| \$15.00 | FIFTN |
| \$20.00 | TWENTY |
| \$25.00 | TWY FIV |
| \$40.00 | FORTY |

| | |
|----------|----------|
| \$50.00 | FIFTY |
| \$100 | ONE HUND |
| \$500 | FIV HUND |
| \$1,000 | ONE THOU |
| \$50,000 | 50 THOU |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1322), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1322-0000001-001.

K. Pack - A pack of "FUNKY 5'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FUNKY 5'S" Instant Game No. 1322 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FUNKY 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "5X" play symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "5X" (win x 5) play symbol will only appear on intended winning tickets as dictated by the prize structure.

C. No four or more duplicate non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and \$10).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "FUNKY 5'S" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FUNKY 5'S" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FUNKY 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FUNKY 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FUNKY 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the

ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1322. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1322 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$5 | 480,000 | 12.50 |
| \$10 | 640,000 | 9.38 |
| \$15 | 180,000 | 33.33 |
| \$20 | 160,000 | 37.50 |
| \$50 | 80,000 | 75.00 |
| \$100 | 7,500 | 800.00 |
| \$200 | 250 | 24,000.00 |
| \$500 | 700 | 8,571.43 |
| \$1,000 | 150 | 40,000.00 |
| \$5,000 | 20 | 300,000.00 |
| \$50,000 | 6 | 1,000,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1322 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1322, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101421

Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: April 14, 2011



Instant Game Number 1323 "Triple Cash"

The Texas Lottery Commission filed for publication Instant Game Number 1323, "Triple Cash". The document was published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2537). The table on page 2541 was incorrect. The number of winners for the prize level of \$1,000 is 38, instead of 28. The correct table reads as follows:

Figure 2: GAME NO. 1323 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$1 | 608,000 | 15.00 |
| \$2 | 668,800 | 13.64 |
| \$3 | 334,400 | 27.27 |
| \$4 | 106,400 | 85.71 |
| \$6 | 60,800 | 150.00 |
| \$10 | 76,000 | 120.00 |
| \$20 | 15,010 | 607.59 |
| \$30 | 6,460 | 1,411.76 |
| \$60 | 3,040 | 3,000.00 |
| \$100 | 722 | 12,631.58 |
| \$500 | 304 | 30,000.00 |
| \$1,000 | 38 | 240,000.00 |
| \$1,500 | 25 | 364,800.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

TRD-201101500
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: April 20, 2011



Instant Game Number 1338 "Super 8'\$"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1338 is "SUPER 8'\$". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1338 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1338.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 8 SYMBOL, \$1.00, \$2.00, \$4.00, \$6.00, \$8.00, \$18.00, \$28.00, \$38.00, \$88.00, \$100, \$188 or \$888.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1338 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|----------|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 8 SYMBOL | EGT |
| \$1.00 | ONE\$ |
| \$2.00 | TWO\$ |
| \$4.00 | FOUR\$ |
| \$6.00 | SIX\$ |
| \$8.00 | EIGHT\$ |
| \$18.00 | EIGN |
| \$28.00 | TWY EGT |
| \$38.00 | THY EGT |
| \$88.00 | ETY EGT |
| \$100 | ONE HUND |
| \$188 | HUND 88 |
| \$888 | 8HUND 88 |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$6.00, \$8.00 or \$18.00.

G. Mid-Tier Prize - A prize of \$28.00, \$38.00, \$70.00, \$88.00, \$100 or \$188.

H. High-Tier Prize - A prize of \$888.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1338), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1338-0000001-001.

K. Pack - A pack of "SUPER 8'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER 8'S" Instant Game No. 1338 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals an "8" play symbol in the play area, the player wins the PRIZE below it. No portion of the display printing nor any

extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. Non-winning play symbols will never appear with the same prize symbol (i.e., 1 and \$1).

F. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER 8'S" Instant Game prize of \$1.00, \$2.00, \$4.00, \$6.00, \$8.00, \$18.00, \$28.00, \$38.00, \$70.00, \$88.00, \$100 or \$188, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$28.00, \$38.00, \$70.00, \$88.00, \$100 or \$188 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER 8'S" Instant Game prize of \$888, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated

by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SUPER 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SUPER 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1338. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1338 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$1 | 707,200 | 11.54 |
| \$2 | 761,600 | 10.71 |
| \$4 | 108,800 | 75.00 |
| \$6 | 54,400 | 150.00 |
| \$8 | 108,800 | 75.00 |
| \$18 | 27,200 | 300.00 |
| \$28 | 4,420 | 1,846.15 |
| \$38 | 1,020 | 8,000.00 |
| \$70 | 340 | 24,000.00 |
| \$88 | 510 | 16,000.00 |
| \$100 | 340 | 24,000.00 |
| \$188 | 680 | 12,000.00 |
| \$888 | 170 | 48,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.60. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1338 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1338, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101422
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: April 14, 2011



Instant Game Number 1355 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1355 is "WEEKLY GRAND". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1355 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1355.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, \$2.00, \$4.00, \$5.00, \$10.00, \$40.00, \$100, \$300, GRAND SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL and TOP HAT SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1355 - 1.2D

| PLAY SYMBOL | CAPTION |
|--------------------|----------|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| \$2.00 | TWO\$ |
| \$4.00 | FOUR\$ |
| \$5.00 | FIVE\$ |
| \$10.00 | TEN\$ |
| \$40.00 | FORTY |
| \$100 | ONE HUND |
| \$300 | THR HUND |
| GRAND SYMBOL | WEEK |
| CLOVER SYMBOL | CLVR |
| DIAMOND SYMBOL | DIAMD |
| GOLD BAR SYMBOL | GOLD |
| POT OF GOLD SYMBOL | POTGLD |
| MONEY BAG SYMBOL | MBAG |
| TOP HAT SYMBOL | TPHAT |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4) digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$300.

H. High-Tier Prize - A prize of \$1,000/wk (\$1,000 per week for 20 years).

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1355), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1355-0000001-001.

K. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and

back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY GRAND" Instant Game No. 1355 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if YOUR NUMBER beats THEIR NUMBER in any one row across, the player will win the prize for that row. If the player reveals the GRAND symbol, the player will win \$1,000 per week for 20 years. In Game 2, if the player reveals 3 matching prize amounts, the player will win that amount. If the player reveals 3 GRAND symbols, the player will win \$1,000 per week for 20 years. In Game 3, if the player matches 2 out of 3 play symbols, the player will win \$20 instantly. No portion of the display printing nor any ex-

traneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 15 (fifteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 15 (fifteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. No three or more matching non-winning prize symbols on a ticket.
- B. Consecutive non-winning tickets will not have identical play data, spot for spot.
- C. The \$300 and GRAND prize symbols will appear on every ticket unless otherwise restricted.
- D. The GRAND prize symbol may only be used in Games 1 and 2 as shown in the Game Programming section.
- E. Non-winning prize symbols will not match a winning prize symbol on a ticket.
- F. Game 1: No ties between YOUR NUMBER play symbols and THEIR NUMBER play symbols in a row.
- G. Game 1: No duplicate rows on a ticket.
- H. Game 1: No duplicate non-winning prize symbols on a ticket.
- I. Game 2: No 4 or more of a kind.
- J. Game 3: There will never be 3 matching symbols in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY GRAND" Instant Game prize of \$1,000 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 1270) payment process. With this plan, a payment of \$1,000.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$300, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 33,600,000 tickets in the Instant Game No. 1355. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1355 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$2 | 4,569,600 | 7.35 |
| \$4 | 3,091,200 | 10.87 |
| \$5 | 201,600 | 166.67 |
| \$10 | 336,000 | 100.00 |
| \$20 | 201,600 | 166.67 |
| \$40 | 187,040 | 179.64 |
| \$300 | 10,640 | 3,157.89 |
| \$1,000/WK | 4 | 8,400,000.00 |

* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.91. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1355 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1355, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101423
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: April 14, 2011



Instant Game Number 1356 "Texas Lottery® Black Series III - Limited Edition"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1356 is "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1356 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1356.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$1MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1356 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|----------|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWV |
| 26 | TWSX |
| 27 | TWSV |
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| COIN SYMBOL | COIN |
| \$10.00 | TEN\$ |
| \$20.00 | TWENTY |
| \$50.00 | FIFTY |
| \$100 | ONE HUND |
| \$200 | TWO HUND |

| | |
|----------------|----------|
| \$500 | FIV HUND |
| \$1,000 | ONE THOU |
| \$10,000 | 10 THOU |
| \$1MILL SYMBOL | ONE MILL |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1356), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1356-0000001-001.

K. Pack - A pack of "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game No. 1356 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game is determined once the latex on the ticket is scratched off to expose 66 (sixty-six) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "coin" play symbol, the player wins the PRIZE for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 66 (sixty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 66 (sixty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 66 (sixty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 66 (sixty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No more than five duplicate non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and \$10).

G. The "COIN" (auto win) play symbol will only appear once on a ticket.

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game prize of \$1,000, \$5,000 or \$10,000 or \$1,000,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TEXAS LOTTERY® BLACK SERIES III - LIMITED EDITION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1356. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1356 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$10 | 840,000 | 7.14 |
| \$20 | 840,000 | 7.14 |
| \$50 | 90,000 | 66.67 |
| \$100 | 25,000 | 240.00 |
| \$200 | 9,000 | 666.67 |
| \$500 | 4,300 | 1,395.35 |
| \$1,000 | 400 | 15,000.00 |
| \$5,000 | 100 | 60,000.00 |
| \$10,000 | 16 | 375,000.00 |
| \$1,000,000 | 6 | 1,000,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.32. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1356 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1356, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101424
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: April 14, 2011

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Texas Department of Motor Vehicles

Major Consulting Services Contract Award

The Texas Department of Motor Vehicles (department) awarded the contract pursuant to Request for Proposals (RFP) for the Organizational Assessment of the Texas Department of Motor Vehicles (RFP No. 608-11-62001). The RFP was published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 315).

Description of Work to be Performed under the Contract

The deliverables include an independent, top-down study of the department to evaluate appropriateness of organizational structure, to optimize performance, to improve quality, to promote the effective and efficient use of resources, and to assist in the identification of future resource needs.

In addition, the deliverables include an organizational cultural analysis and an efficiency review of the department's current organizational structure. The organizational cultural analysis will include a cultural

and SWOT (strengths, weaknesses, opportunities, and threats) analysis.

Further, the deliverables include a determination regarding whether the department is structured in an efficient and effective manner to be an independent, retail-oriented, economic development engine that serves the State of Texas as a whole.

The deliverables involve review, analysis, and recommendations regarding the department, including the impact of any changes to the department's responsibilities resulting from the 82nd Legislative Session.

Name and Business Address of the Selected Consultant

The Azimuth Group, Inc.

6611 Hillcrest, Suite 441

Dallas, Texas 75205

Total Value of the Contract

The total value of the contract is \$457,400.

Beginning and Ending Dates of the Contract

The contract became effective on April 15, 2011. The contract will terminate at 11:59 p.m. on August 31, 2011, unless otherwise terminated sooner as provided in the contract.

Date for Completion of Deliverables

The final written report is due on July 20, 2011. The Azimuth Group, Inc. must formally present the findings, results, and recommendations to the Texas Department of Motor Vehicles Board at the August 2011, board meeting, subject to the final schedule of board meetings.

TRD-201101504

Brett Bray

General Counsel

Texas Department of Motor Vehicles

Filed: April 20, 2011

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 April 18, 2011, to amend 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 Buford Media Group, L.L.C. for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39335.

The requested amendment is to reduce its service area footprint by removing the following: Aspermont, Bandera, Bartlett, Blanco, Brownsboro, Caddo Mills, Charlotte, Granger, Ladonia, Leonard, Lone Oak, Murchison, Overton, Troup, West Tawakoni, and Wolfe City, 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 39335.

TRD-201101498

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 19, 2011

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) of an application on April 14, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Gregg and Smith Counties, Texas.

Docket Style and Number: Application of Upshur Rural Electric Cooperative Corporation to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Gregg and Smith Counties. Docket Number 39308.

The Application: The application of Upshur Rural Electric Cooperative Corporation (URECC) for a proposed 69-kV transmission line in Gregg and Smith Counties, Texas. The proposed project is designated as the Kilgore to Mount Earra 69-kV Transmission Line Project. The proposed project is presented with eight alternate routes. URECC has designated Route 3 as its preferred route. Any route presented in the application could, however, be approved by the Commission. Depending on the route chosen, the proposed line will be 5.4 to 6.3 miles in length. The proposed project will be constructed on single-pole wood structures. The total estimated cost for the project is \$1,980,715.97.

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 May 31, 2011. 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 39308.

TRD-201101471

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 18, 2011

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on April 13, 2011, for an amendment to certificated service area boundaries within McMullen County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative and AEP Texas Central Company to amend a Certificate of Convenience and Necessity for Service Area Boundaries within McMullen County. Docket Number 39323.

The Application: The proposed boundary change is for release of territory from AEP Texas Central Company (AEP TCC) to Medina Electric Cooperative, Inc. (MEC) so that MEC can serve a new gas treatment plant, Energy Transfer's Las Tiendas plant. MEC has the closest facilities to provide three phase distribution service to the requested point of service. There will be significant construction cost savings and minimal delays relating to the project if MEC can provide service. The

customer has requested service from MEC and MEC and AEP TCC are the only utilities affected by the boundary change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 9, 2011 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 comments should reference Docket Number 39323.

TRD-201101472
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 18, 2011



Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 15, 2011, for an amendment to certificated service area for a service area exception within Sherman County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Sherman County. Docket Number 39330.

The Application: Southwestern Public Service Company (SPS) filed an application for a service area boundary exception to allow SPS to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Inc. (RBEC). RBEC has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 9, 2011 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 comments should reference Docket Number 39330.

TRD-201101497
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2011



Notice of Filing to Withdraw a Custom Calling Feature, Call Intercept, from its Texas General Exchange Tariff Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of Verizon Southwest's application filed with the Public Utility Commission of Texas (commission) on March 11, 2011, to withdraw a custom calling feature, Call Intercept, from its Texas General Exchange Tariff pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Verizon Southwest to withdraw a custom calling feature, Call Intercept, from its Texas General Exchange Tariff - Docket Number 39247.

The Application: Verizon Southwest seeks to withdraw a custom calling feature, Call Intercept, from its Texas General Exchange Tariff. Customers will be able to subscribe to Anonymous Call Block or Caller ID in lieu of Call Intercept. The proceedings were docketed and suspended on March 15, 2011, to allow adequate time for review and intervention.

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 Docket Number 39247.

TRD-201101470
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 18, 2011



Workforce Solutions Capital Area

Request for Proposal Child Care Services

Workforce Solutions Capital Area Workforce Board is soliciting proposals for the management of its Child Care Services program.

Request for Proposal (RFP) packages may be obtained from Workforce Solutions Capital Area, 6505 Airport Blvd., Suite 101E, Austin, Texas, beginning Wednesday, April 20, 2011 at 1:00 p.m., and thereafter, weekdays from 8:00 a.m. to 5:00 p.m. RFP packages may be downloaded from the Board's website at www.wfscapitalarea.com or requests for RFP packages may also be emailed to niki.sanders@twc.state.tx.us.

Requests for all RFP packages include a Statement of Receipt that should be signed, dated, and faxed back to Workforce Solutions Capital Area at (512) 719-4710. The Statement of Receipt is the last page of the RFP packet.

All responses to the RFP must be received by Workforce Solutions Capital Area by 12:00 p.m. (noon) CST on May 23, 2011. The official time is determined by Workforce Solutions Capital Area. **ABSOLUTELY NO EXCEPTIONS WILL BE MADE.**

All inquiries regarding this solicitation should be directed to Elaine Clark at (512) 597-7109.

TRD-201101419
Alan D. Miller
Executive Director
Workforce Solutions Capital Area
Filed: April 14, 2011



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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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)