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# TEXAS REGISTER

*Volume 37 Number 2*

*January 13, 2012*

*Pages 85 - 146*

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*Allison Scott  
8th 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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***Texas Register***, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-3290

TO ALL TO WHOM THESE PRESENTS SHALL COME:

RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on December 21, 2010, as extreme fire hazard posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, anticipated high frontal winds will allow fire hazards to continue to create a threat of disaster for the people in the State of Texas; and

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, these exceptional drought conditions have reached historic levels, posing an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes all 254 counties in the State of Texas;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 27th day of December, 2011.

Rick Perry, Governor

TRD-201105850

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# THE ATTORNEY GENERAL

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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>.)

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## Requests for Opinions

### Requestor:

The Honorable Cathleen Parsley  
Chief Administrative Law Judge  
State Office of Administrative Hearings  
Post Office Box 13025  
Austin, Texas 78711-3025

Re: Whether the State Office of Administrative Hearings is authorized to bill certain agencies pursuant to chapter 2260, Government Code (RQ-1032-GA)

### Briefs requested by February 9, 2012

#### RQ-1033-GA

### Requestor:

The Honorable Dennis Bonnen  
Chair, Select Committee on Voter Identification and Voter Fraud  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Authority of a hospital district to sell a facility and lease it back to a third party (RQ-1033-GA)

### Briefs requested by February 9, 2012

#### RQ-1034-GA

### Requestor:

The Honorable Jeff Wentworth  
Chair, Select Committee on Open Government  
Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a member of a governmental body would be subject to the Open Meetings Act under various scenarios, including a press conference, a luncheon speech, a crisis simulation exercise, and a political candidate forum (RQ-1034-GA)

### Briefs requested by February 10, 2012

#### RQ-1035-GA

### Requestor:

The Honorable Jerry D. Rochelle  
Bowie County Criminal District Attorney  
Bowie County Plaza  
Post Office Box 3030  
601 Main Street  
Texarkana, Texas 75504

Re: Whether a retired United States District Judge is authorized to conduct a marriage ceremony in Texas (RQ-1035-GA)

### Briefs requested by February 10, 2012

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

TRD-201200043

Jay Dyer  
Deputy Attorney General  
Office of the Attorney General  
Filed: January 4, 2012

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# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 30. COMMUNITY DEVELOPMENT SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT PROGRAM

##### DIVISION 1. ALLOCATION OF PROGRAM FUNDS

###### 4 TAC §30.4

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to Texas Administrative Code, Title 4, Part 1, §30.4, concerning the disaster relief fund administered by the department's Office of Rural Affairs, in order to expand the allowable justifications for application for disaster relief funds by local units of government. The amendment would allow applicants to qualify for and seek disaster relief funding for drought disasters that have been declared by the Governor.

The department believes it is necessary to take this immediate action to address the extreme drought conditions that have affected the State of Texas. Several rural Texas communities are within 180 days of being without a dependable water supply, and this list will continue to grow as drought conditions persist. By updating the disaster eligibility language, many communities that are faced with immediate threats to the health and welfare of the community as a result of inadequate and potentially unavailable water supplies will be eligible to apply for funding that will assist in addressing their water issues. The immediate adoption of the new eligibility criteria will allow affected communities to apply for funding and be prepared to face their impending water supply shortage. The Texas Commission on Environmental Quality (TCEQ) has indicated that currently several rural cities are within 180 days of being without a dependable water supply, and the list could grow in the months ahead. While many of those cities have developed a plan to secure new water, they need funding to pursue their plans.

Amended §30.4(a) adds eligibility criteria required for a community to apply for disaster relief funding in response to a drought disaster declaration made by the Governor. An applicant must show that the area covered by the declaration would provide a new, permanent source of water for project beneficiaries, not redundant or backup supplies. TCEQ must have determined that the current water supply will not be available to beneficiaries within 180 days, creating a serious threat to the health and welfare of the community. There must be a showing that funds are for the minimum facilities necessary to meet TCEQ requirements, and the public utility water provider has already implemented stage one or two restrictive responses. A professional

engineer must certify that the facilities will meet the criteria set forth in §30.4(a).

The amended section is adopted on an emergency basis under the Texas Government Code, §487.351, as amended by Senate Bill 1, First Called Special Legislative Session, 2011, which provides the department with the authority to administer the state's allocation of federal funds provided under the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.), and to allocate such funds to eligible counties and municipalities under department rules; and §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

###### *§30.4. Disaster Relief Fund.*

(a) General provisions. Assistance under this fund is available to units of general local government for eligible activities under the Housing and Community Development Act of 1974, Title I, as amended, for the alleviation of a disaster situation. To receive assistance under this program category, the situation to be addressed with TxCDBG funds must be both unanticipated and beyond the control of the local government. For example, the collapse of a municipal water distribution system due to lack of regular maintenance does not qualify. If the same situation was caused by a tornado or flood, the community could apply for disaster relief funds. An applicant may not apply for funding to construct public facilities that did not exist prior to the occurrence of the disaster, except in response to a Governor's drought disaster declaration covering the area that would benefit from the project activities under the following conditions:[-]

(1) the new public facilities to be constructed must provide a new or improved source of water for the project beneficiaries;

(2) the new facilities are not a redundant or backup water supply;

(3) the new facilities are not temporary in nature;

(4) the Texas Commission on Environmental Quality (TCEQ) must have determined that an adequate water supply will not be available to the project beneficiaries within the next 180 days thereby creating a serious and immediate threat to the health or welfare of the community;

(5) the public utility providing water to the city or county residential users for the proposed project must have implemented either the first or second most restrictive response stage under its Drought Contingency Plan; and

(6) a professional engineer selected by the applicant must certify in the application that the proposed new facilities that would be funded with TxCDBG funds would meet the criteria specified in this rule.

(b) Other requirements. [Starting with the 2004 TxCDBG program year,] TxCDBG disaster relief funds will not be provided under the Federal Emergency Management Agency's Hazard Mitigation

Grant Program unless the Office receives satisfactory evidence that any property to be purchased was not constructed or purchased by the current owner after the property site location was officially mapped and included in a designated flood plain area. Additionally, in disaster relief situations, the TxCDBG dollars are to be viewed as gap financing or funds of last resort. In other words, the community may only apply to the Office for funding of those activities for which local funds are not available, i.e., the entity has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit as required by state statute, or assistance from other sources is not available. TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation. TxCDBG may prioritize throughout the program year the use of Disaster Relief assistance funds based on the type of assistance or activity under considerations and may allocate funding throughout the program year based on assistance categories. Assistance under the disaster relief fund is provided only if one of the following has occurred:

- (1) The President has issued a federal disaster declaration;
- or
- (2) The governor has declared a state of disaster or emergency.

(c) [(b)] Funding cycle. Funds for disaster relief projects will be awarded throughout the program year in response to disaster situations. The application for assistance must be submitted no later than 12 months from the date of the presidential declaration of a major disaster or governor's declaration of a state of disaster or emergency.

(d) [(e)] Selection procedures. As soon as an area qualifies for disaster relief assistance, the Office works with the local government, the governor's office, and the Emergency Management Division of the Texas Department of Public Safety to determine where TxCDBG funds can best be utilized. The Office then works with the unit of local government selected for funding to negotiate a contract. A unit of general local government cannot receive a disaster relief grant and an urgent need grant to address problems caused by the same natural disaster situation. In no instance will a unit of general local government receive more than one disaster relief grant to address a single occurrence of a natural disaster.

(e) [(d)] Funding priority. The Texas CDBG program prioritizes the use of the Disaster Relief Fund for projects in which

there are federal declarations that provide the federally required 25 percent match portion of the Federal Emergency Management Agency (FEMA) or Natural Resources Conservation Service (NRCS) approved budget covering approved repair and restoration activities. Priority is based on the date of the presidential declaration. For presidential declarations, Disaster Relief Funds are only used to assist eligible applicants in meeting the match requirements for FEMA Public Assistance categories A and C through G and NRCS Emergency Watershed Protection Program requiring a match for eligible costs associated with repairs and restoration of disaster-related infrastructure activities. The funding priority is the match requirements associated with FEMA Public Assistance categories A and C through G for repair or restoration rather than mitigation. Equal priority is given for the match requirements for projects in categories A and C through G addressing imminent threats to public safety. Federal hazard mitigation projects would be a lower funding priority and are not eligible under the provisions listed in this subsection. Applications must be submitted no later than 12 months from the presidential declaration. However, the Disaster Relief Fund will not necessarily retain the priority for the entire 12-month period. Disaster Relief Funds can only be used for repairs and restoration of damaged items in presidential declarations to pre-disaster conditions in design, function, and capacity.

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 December 30, 2011.

TRD-201105862  
Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Effective date: January 1, 2012  
Expiration date: April 29, 2012  
For further information, please call: (512) 463-4075

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules.

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

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures; §355.112, concerning Attendant Compensation Rate Enhancement; §355.308, concerning Direct Care Staff Rate Component; §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; and §355.5902, concerning Reimbursement Methodology for Primary Home Care.

##### Background and Justification

Sections 355.105, 355.112, 355.308, 355.503, 355.505, and 355.5902 establish cost reporting requirements and reimbursement methodologies for various long term services and supports programs administered by the Department of Aging and Disability Services (DADS). HHSC proposes to amend these rules to: 1) formalize certain existing practices; 2) clarify due dates for consolidated cost reports; 3) change how entities request that their cost reports be aggregated for purposes of determining compliance with Attendant Compensation Rate Enhancement (the Enhancement) spending requirements; 4) eliminate the requirement that all contracts in an aggregated group participate in the Enhancement at the same level; and 5) allow providers subject to a recoupment for failure to meet Enhancement spending requirements on a specific Attendant Compensation Report, and providers subject to recoupment for failure to meet Direct Care Staff Rate staffing and/or spending requirements on a specific Staffing and Compensation Report, to, in certain situations, request that HHSC recalculate their recoupment after combining that report with the provider's next cost report or Attendant Compensation or Staffing and Compensation Report, as appropriate.

##### *Formalize certain existing practices*

Section 355.105 details general reporting and documentation requirements, methods and procedures for provider cost reports. HHSC proposes to amend this section to formalize the requirement that providers who are required to submit a consolidated cost report submit it with the correct Consolidated Reporting Group number.

##### *Clarify due dates for consolidated cost reports*

Primary Home Care (PHC), Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA), CLASS--Case Management Agency (CMA), and Community Based Alternatives (CBA)--Home and Community Support Services (HCSS) providers are required to submit consolidated cost reports if the provider's legal entity controls more than one contract within a single program. Cost report submission for these providers is a two-step process with the provider first submitting a Consolidated Cost Reporting Schedule (the Schedule), which HHSC uses to assign the provider Consolidated Reporting Group Number(s), and then submitting its consolidated cost report(s) using the Consolidated Reporting Group Number(s) provided to it by HHSC.

HHSC proposes to amend §355.105 to clarify that the Schedule must be submitted to HHSC no later than 30 days following the end of the provider entity's fiscal year or 30 days from the transmittal date of the Schedule to the provider, whichever is later, and that the actual cost report(s) must be submitted to HHSC no later than 120 days following the end of the provider entity's fiscal year or 120 days from the transmittal date of the Schedule to the provider, whichever is later.

HHSC also proposes to amend §355.105 to indicate that failure on the provider's part to submit the Schedule timely does not qualify as a good cause for failure to submit cost reports by the cost report due date.

##### *Change how entities are to request that their cost reports be aggregated for purposes of determining compliance with Enhancement spending requirements*

Section 355.112 details requirements pertaining to the Enhancement. Currently providers are required to specify on their enrollment contract amendment their desire to have all their contracts or component codes that are participating in the Enhancement be considered as a group for purposes related to the Enhancement. HHSC proposes to amend this section to indicate that providers are to make this request upon submission of their Enhancement accountability report at the end of the Enhancement compliance period rather than upon enrollment in the Enhancement. Benefits of this change include: 1) providers will be able to make their decisions pertaining to grouping at the point when they have the most data available to determine whether grouping will benefit their entity; 2) consistency between the Enhancement and the nursing facility Direct Care Staff Rate will be increased by having providers request grouping in the same manner for both programs; and 3) the administrative burden for providers and HHSC will be reduced because group membership will no longer have to be tracked between enrollment and report submission.

*Eliminate the requirement that all contracts in an aggregated group participate in Enhancement at the same level*

Section 355.112 currently requires that providers who request that compliance with spending requirements be determined in the aggregate for all of their participating contracts have all their contracts participate in the Enhancement at the same level. HHSC proposes to amend this section to eliminate this requirement, which should increase provider flexibility in terms of participation in the Enhancement.

Sections 355.503, 355.505 and 355.5902 require that entities that operate multiple PHC, CLASS and/or CBA contracts that are participating in the Enhancement must file two cost reports for each program: one for contracts participating in the Enhancement and one for contracts not participating in the Enhancement. In order to accommodate the proposed change to §355.112 described in the previous paragraph, HHSC is proposing to amend these sections to indicate that, for each program, entities that operate contracts that are participating in the Enhancement at different levels must file a separate cost report for the contracts that are participating at each specific level as well as a cost report for contracts not participating in the Enhancement.

*Allow providers subject to a recoupment for failure to meet enhancement spending and/or staffing requirements on a specific report to, in certain situations, request that HHSC recalculate their recoupment after combining that cost report with the provider's next cost report or Attendant Compensation or Staffing and Compensation Report, as appropriate*

Certain providers are required to submit Attendant Compensation Reports or Staffing and Compensation Reports that cover a time period shorter than the provider's fiscal year. In some situations, this can be to the provider's disadvantage because compensation and staffing levels can fluctuate over the course of a provider's fiscal year. To address these situations, HHSC proposes to allow providers notified of a recoupment based on a report that covers a time period shorter than the provider's fiscal year to, in certain situations, request that HHSC recalculate their recoupment after combining the report with the provider's next cost report or Attendant Compensation or Staffing and Compensation Report, as appropriate.

Additional changes are proposed throughout the rules to update terms, remove obsolete or incorrect language, and clarify language.

#### Section-by-Section Summary

HHSC proposes amendments to §355.105 as follows:

Revise subsection (b)(4), requirements for cost report completion, to indicate that, if applicable, a completed cost report must be submitted with the correct Consolidated Reporting Group Number assigned by HHSC that is associated with the provider's current contract numbers.

Revise subsection (c) to describe the due dates for PHC, CLASS, and CBA Consolidated Reporting Schedules and cost reports and make conforming changes to the organizational structure of the subsection.

HHSC proposes amendments to §355.112 as follows:

Revise subsection (f), enrollment contract amendment, to: 1) require providers choosing to participate in the Enhancement to indicate a preferred participation level on their enrollment contract amendment; 2) delete a requirement that providers specify their desire to have all participating contracts or component codes be

considered as a group for purposes related to the Enhancement on their enrollment contract amendment; and 3) indicate that all contracts of a component code within a specific program must either participate at the same level or not participate in the Enhancement.

Revise subsection (o), enhanced attendant compensation, to delete requirements that providers participating as a group in the Enhancement must request a single attendant compensation level for all contracts and component codes in their group.

Revise subsection (s), spending requirements for participating contracts and component codes, to delete rule language that made the decision of whether a provider wanted their participating contracts and component codes to participate as individuals or a group for purposes of determining compliance with spending requirements dependent upon a provider indicating on their enrollment contract amendment, and to delete references to "unadjusted" accrued attendant compensation spending per unit of service.

Modify subsection (t), notification of recoupment, to indicate that providers notified of a recoupment based on a report described in subsection (h)(2)(A) or (h)(2)(F) may request that HHSC recalculate their recoupment after combining the report with the provider's next cost report or Attendant Compensation or Staffing and Compensation Report, as appropriate.

Revise subsections (w), (x), and (y) to eliminate references to groups.

Revise subsection (ee) to:

- 1) indicate that, to request aggregation, providers must submit an aggregation request at the time each Attendant Compensation Report or cost report is submitted;
- 2) eliminate references to groups;
- 3) indicate which types of ownership structures may request aggregation;
- 4) indicate that requests for aggregation must be submitted separately for each reporting period; and
- 5) exclude the PHC, CLASS, and CBA programs from the requirement that contracts or component codes that change ownership or terminate after the end of the applicable reporting period, but prior to the determination of compliance with Enhancement spending requirements, be excluded from all aggregate spending calculations.

HHSC proposes amendments to §355.308 as follows:

Modify subsection (s), notification of recoupment, to indicate that providers notified of a recoupment based on a report described in subsection (f)(2)(A) or (f)(2)(F) may request that HHSC recalculate their recoupment after combining the report with the provider's next cost report or Attendant Compensation or Staffing and Compensation Report, as appropriate.

Update a rule cross-reference in subsection (w), appeals. HHSC proposes amendments to §355.503 as follows:

Modify subsection (e)(3) to indicate that entities that operate contracts that are participating in the Enhancement program at different levels must file a separate cost report for the contracts that are participating at each specific level as well as a cost report for contracts not participating in the Enhancement.

HHSC proposes amendments to §355.505 as follows:

Modify subsection (b)(2) to indicate that entities that operate contracts that are participating in the Enhancement program at different levels must file a separate cost report for the contracts that are participating at each specific level as well as a cost report for contracts not participating in the Enhancement.

HHSC proposes amendments to §355.5902 as follows:

Modify subsection (b)(1) to indicate that entities that operate contracts that are participating in the Enhancement program at different levels must file a separate cost report for the contracts that are participating at each specific level as well as a cost report for contracts not participating in the Enhancement.

Additional changes are proposed throughout the rule to update terms, remove obsolete or incorrect language, and clarify language.

#### Fiscal Note

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

#### Small Business and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of the proposed rule amendments does not require any significant changes in practice or any additional costs to the contracted provider.

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

#### Public Benefit

Pam McDonald has also determined that for each of the first five years the amendments are in effect, the expected public benefits are that the rule amendments will: 1) enable providers to make their decisions pertaining to aggregating at the point when they have the most data available to determine whether aggregating will benefit their entity; 2) increase consistency between the Enhancement and the nursing facility Direct Care Staff Rate by requiring providers in both programs to request aggregation in the same manner; 3) reduce administrative burdens for providers and HHSC by eliminating the need to track group membership between enrollment and actual aggregation; 4) increase provider flexibility by allowing contracts in groups to participate in the Enhancement at varying levels; and 5) take fluctuations in attendant compensation over the course of a provider's fiscal year into account when determining compliance with Enhancement spending requirements.

#### Takings Impact Assessment

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

#### Regulatory Analysis

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

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

#### Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

## SUBCHAPTER A. COST DETERMINATION PROCESS

### 1 TAC §355.105, §355.112

#### Statutory Authority

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

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

*§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.*

(a) (No change.)

(b) Cost report requirements. Unless specifically stated in program rules, each provider must submit financial and statistical information on cost report forms provided by HHSC, or on facsimiles that are formatted according to HHSC specifications and are pre-approved by HHSC staff, or electronically in HHSC-prescribed format in programs where these systems are operational. The cost reports must be submitted to HHSC in a manner prescribed by HHSC. The cost reports must be prepared to reflect the activities of the provider while delivering contracted services during the fiscal year specified by the cost report. Cost reports or other special surveys or reports may be required for other periods at the discretion of HHSC. Each provider is responsible for accurately completing any cost report or other special survey or report submitted to HHSC.

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

(4) Requirements for cost report completion.

(A) A completed cost report must:

(i) be completed according to the cost determination rules of this chapter, program-specific allowable and unallowable rules, cost report instructions, and policy clarifications;

(ii) contain a signed, notarized, original certification page or an electronic equivalent where such equivalents are specifically allowed under HHSC policies and procedures;

(iii) be legible with entries in sufficiently dark print to be photocopied;

(iv) contain all pages and schedules;

(v) be submitted on the proper cost report form;

(vi) be completed using the correct cost reporting period; ~~and~~

(vii) contain a copy of the state-issued cost report training certificate except for cost reports submitted through the State of Texas Automated Information and Reporting System (STAIRS); ~~and~~ [-]

(viii) if applicable, be submitted with the correct Consolidated Reporting Group Number as described in subsection (c)(3) of this section.

(B) - (D) (No change.)

(5) - (6) (No change.)

(c) Cost report due date.

(1) Providers must submit cost reports to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the cost report forms, whichever due date is later.

(2) For SHARS, providers must submit cost reports to HHSC Rate Analysis as specified in §355.8443 of this title.

(3) For Primary Home Care (PHC), Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA), CLASS--Case Management Agency (CMA), and Community Based Alternatives (CBA)--Home and Community Support Services (HCSS), if a provider's legal entity controls more than one contract within a single program, the provider must submit a separate Consolidated Cost Reporting Schedule for each legal entity for each program.

(A) HHSC sends the Consolidated Cost Reporting Schedule to the provider for completion. The provider must complete and return the completed Consolidated Cost Reporting Schedule to HHSC Rate Analysis no later than 30 days after the end of the provider entity's fiscal year or 30 days after HHSC's transmittal date of the schedule to the provider, whichever due date is later.

(B) Upon receipt of the provider's completed Consolidated Cost Reporting Schedule, HHSC Rate Analysis will determine, and notify the provider of, the provider's Consolidated Reporting Group Number(s) as well as a list of the contract numbers associated with the Consolidated Reporting Group Number(s) for use in completing the provider's cost report(s).

(C) Providers in the programs named in this paragraph must submit cost reports to HHSC Rate Analysis no later than 120 days after the end of the provider entity's fiscal year or 120 days after HHSC's transmittal date of the Consolidated Cost Reporting Schedule to the provider for completion, whichever due date is later.

(D) Failure on the provider's part to submit a Consolidated Cost Reporting Schedule timely is not a good cause for failure to submit cost reports by the cost report due date specified in this paragraph.

(4) [(2)] HHSC may grant extensions of due dates for good cause. A good cause is defined as a circumstance which the provider could not reasonably be expected to control and for which adequate ad-

vance planning and organization would not have been of any assistance. Providers must submit requests for extensions in writing to HHSC Rate Analysis. Requests for extensions must be received by HHSC Rate Analysis prior to the cost report due date. HHSC staff will respond in writing to requests within 15 days of receipt.

(5) [(3)] HHSC may require additional financial and other statistical information, in the form of special surveys or reports, to ensure the fiscal integrity of the program. Providers must submit such additional information and/or special surveys or reports to HHSC Rate Analysis upon request by the date specified by HHSC Rate Analysis in its transmittal or cover letter to the special survey, report, or request for additional information.

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

§355.112. *Attendant Compensation Rate Enhancement.*

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

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, ICM--HCSS and AL/RC, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level. ~~[The participating provider must specify for each program the desire to have all participating contracts be considered as a group as defined in subsection (ee) of this section or as individuals for purposes related to the attendant compensation rate enhancement.]~~

(A) For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participate in the attendant compensation rate enhancement. ~~[If the PHC provider selects to have their contracts participating as a group as defined in subsection (ee) of this section, then the provider must select to have priority, nonpriority, or both priority and nonpriority services participate for the entire group of contracts.]~~

(B) For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/MR, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate. ~~[The participating provider must specify for each program the desire to have all participating component codes be considered as a group as defined in subsection (ee) of this section or as individuals for purposes related to the attendant compensation rate enhancement.]~~

(A) For the ICF/MR program, the participating provider must also specify the services he wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether he wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services. ~~[If the ICF/MR provider selects to have their component codes participate as a group as defined in subsection (ee) of this section, then the provider must have all participating services participate as a group.]~~

(B) For the HCS and TxHmL programs, eligible services are divided into two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite, supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. [If the HCS/TxHmL provider selects to have their component codes participating as a group as defined in subsection (ee) of this section, then the provider must have all participating categories participate as a group.] For providers delivering services in both the HCS and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level [; a provider whose participating contracts (for ICF/MR, HCS and TxHmL, participating component codes), are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts (for ICF/MR, HCS and TxHmL, participating component codes), are being considered as individuals can request to have them considered as a group].

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation [and group or individual status] in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disability Services' (DADS') signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) - (n) (No change.)

(o) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment.

[†] For CBA-HCSS and AL/RC, CLASS, DBMD, DAHS, ICM-HCSS and AL/RC, and RC, participating providers who select to have all of their contracts participate in a program as a group

must request a single attendant compensation level for the entire group of contracts.]

[(2) PHC providers participating as a group must select a single attendant compensation level for their entire group of contracts for the priority and/or nonpriority services they have selected for participation.]

(1) [(3)] ICF/MR providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation. [ICF/MR providers who select to have all their component codes participate as a group must select a single attendant compensation level for their entire group of contracts for the day habilitation and/or residential services they have selected for participation.]

(2) [(4)] HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-day habilitation and/or day habilitation services they have selected for participation. [HCS and TxHmL providers who select to have all their component codes participate as a group must select a single attendant compensation level for their entire group of contracts for the non-day habilitation services and/or day habilitation services they have selected for participation.]

(p) - (r) (No change.)

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code [if the provider requested participation individually for each contract or component code. A participating contract or component code that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. In all other cases, if the provider specified that he wished to have all participating contracts or component codes be considered as a group for purposes related to the attendant compensation rate enhancement (as specified in subsection (f) of this section) compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate Attendant Compensation Report described in subsection (h) of this section or, for cost reports functioning as Attendant Compensation Reports, the total attendant compensation as reported on the aggregated cost reports for the group]. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

[(†) For the rate years beginning September 1, 2003 and September 1, 2004, the attendant compensation spending per unit of service is multiplied by 1.10 to determine the adjusted attendant compensation per unit of service. The adjusted attendant compensation per unit of service will be subtracted from the accrued attendant compensation revenue to determine the amount to be recouped. If the adjusted

attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service; there is no recoupment.]

(1) ~~[(2)]~~ The ~~[For the rate year beginning September 1, 2005, and thereafter, the]~~ accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The ~~[unadjusted]~~ accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the ~~[unadjusted]~~ accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(2) ~~[(3)]~~ The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (1) of this section.

(3) ~~[(4)]~~ In cases where more than one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC, or its designee. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's next cost report or Attendant Compensation Report, as appropriate. The request must be in writing and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special mail delivery no later than 30 days after the date on the written notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. The written request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign

the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(u) - (v) (No change.)

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.15.

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.15.

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation ~~[and group status]~~ after a contract assignment. Participation ~~[and group status]~~ after a contract assignment is ~~[are]~~ determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation ~~[and group status]~~ remains the same while the assignor's level of participation ~~[and grouping status]~~ changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s). ~~[the following applies:]~~

~~[(i)]~~ In cases where the assignee is controlled by a legal entity that controls other contracts participating in the attendant compensation rate enhancement, the following applies:]

~~[(i)]~~ If the assignee's participating contracts are participating as a group as described in subsection (f) of this section, then the following applies:]

~~[(a)]~~ If the assignor was a participating contract, the new contract becomes part of the assignee's group at the level of participation of the assignee's group:]

~~[(b)]~~ If the assignor was not a participating contract, the new contract remains a nonparticipating contract.]

~~[(ii)]~~ If the assignee's participating contracts are participating as individuals as described in subsection (f) of this section, the following applies:]

~~[(a)]~~ If the assignor was a participating contract, the new contract continues participation at the assignor's level as an individual contract whether or not the assignor contract was part of a group:]

~~[(b)]~~ If the assignor was not a participating contract, the new contract remains a nonparticipating contract.]

~~[(ii)]~~ In cases where the assignee is controlled by a legal entity that does not control any contracts participating in the attendant compensation rate enhancement, the level of participation and individual or group status of the assignor contract(s) will continue unchanged under the assignee contract(s).]

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. ~~[Providers whose contracts or component codes are participating as a group must request withdrawal of all the contracts or component codes in the group.]~~ Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. ~~[Providers whose contracts or component codes are participating as a group must request the same reduction for all of the contracts or component codes in the group.]~~ Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(z) - (dd) (No change.)

(ee) Determination of compliance with spending requirements in the aggregate ~~[for a group]~~.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

~~[(E) Group--an entity, commonly owned corporation, or combined entity that controls more than one participating contract or component code within a single program.]~~

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with RC and CBA AL/RC considered a single program, and HCS and TxHmL considered a single program), [For a group,] compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity [group] at the end of the rate year, the effective date of the change of ownership of its [the group's] last participating contract or component code in the program, or the effective date of the termination of its [the group's] last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Attendant Compensation Report or cost report is submitted ~~[request to participate as a group, in a manner prescribed by HHSC, upon submission of each Enrollment Contract Amendment]~~. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) [(B)] Ownership changes or terminations. For the ICF/MR, HCS, TxHmL, DAHS, RC, DBMD, CBA--AL/RC and ICM AL/RC programs, contracts [Contracts] or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) - (hh) (No change.)

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

Filed with the Office of the Secretary of State on January 2, 2012.

TRD-201200003

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 12, 2012

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



## SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

### 1 TAC §355.308

#### Statutory Authority

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

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

§355.308. *Direct Care Staff Rate Component.*

(a) - (r) (No change.)

(s) Notification of recoupment based on Annual Staffing and Compensation Report or cost report. Facilities will be notified, in a manner specified by HHSC, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report or cost report as described in subsection (f) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter. Providers notified of a recoupment based on an Annual Staffing and Compensation Report described in subsection (f)(2)(A) or (f)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Annual Staffing and Compensation Report with the provider's next cost report or Staffing and Compensation Report, as appropriate. The request must be in writing and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special mail delivery no later than 30 days after the date on the written notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. The written request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable

signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(t) - (v) (No change.)

(w) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3)[(B)] of this title (relating to Informal Reviews and Formal Appeals).

(x) - (ee) (No change.)

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

Filed with the Office of the Secretary of State on January 2, 2012.

TRD-201200004

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 12, 2012

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



## SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

### 1 TAC §355.503, §355.505

#### Statutory Authority

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

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

§355.503. *Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.*

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

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Ag-



ing and Disability Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving AL/RC or Residential Care residents is 366 or fewer during its fiscal year. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.

(3) Number of cost reports to be submitted. ~~[Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement.]~~

(A) Contracted providers participating in the attendant compensation rate enhancement.

(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.

(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.

(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.

(C) Contractors participating and not participating in attendant compensation rate enhancement.

(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

(4) Reporting and verification of allowable cost.

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

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

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

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

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

(5) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

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

*§355.505. Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program.*

(a) (No change.)

(b) Reporting of cost.

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

(2) Number of cost reports to be submitted. ~~[Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one cost report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement.]~~ All legal entities must submit a cost report unless the number of days be-

tween the date the legal entity's first Texas Department of Aging and Disability Services (DADS) client received services and the legal entity's fiscal year end is 30 days or fewer.

(A) Contracted providers participating in the attendant compensation rate enhancement.

(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.

(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.

(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.

(C) Contractors participating and not participating in attendant compensation rate enhancement.

(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

(3) A provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by HHSC Rate Analysis before the due date of the cost report.

(c) - (j) (No change.)

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

Filed with the Office of the Secretary of State on January 2, 2012.

TRD-201200005

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 12, 2012

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

## SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

### 1 TAC §355.5902

#### Statutory Authority

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

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

§355.5902. *Reimbursement Methodology for Primary Home Care.*

(a) (No change.)

(b) Cost reporting. Provider agencies must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures).

(1) Number of cost reports to be submitted. [Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity; one cost report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement.] All legal entities must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) client received services and the legal entity's fiscal year end is 30 days or fewer. The legal entity may be excused from submitting a cost report if circumstances beyond the control of the legal entity make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the legal entity's custody by any governmental entity. Requests to be excused from submitting a cost report must be received at the address specified in the letter mailed along with the cost report before the due date of the cost report.

(A) Contracted providers participating in the attendant compensation rate enhancement.

(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.

(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.

(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.

(C) Contractors participating and not participating in attendant compensation rate enhancement.

(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

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

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

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

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

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

(c) - (g) (No change.)

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

Filed with the Office of the Secretary of State on January 2, 2012.

TRD-201200006

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 12, 2012

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

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## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 185. PHYSICIAN ASSISTANTS

##### 22 TAC §185.4

The Texas Medical Board (Board) proposes an amendment to §185.4, concerning Procedural Rules for Licensure Applicants.

The amendment provides grounds for the extension of licensure applications that have been on file with the Board for over one year and allow for an alternative licensure process for military spouses.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously proposes the rule review for Chapter 185.

Nancy Leshikar, General Counsel for the Board, has 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 have the rules for physician assistants be consistent with those for physicians, and to have rules that comply with Senate Bill 1733 that was passed during the 82nd Legislative Session that relates to licensure for military spouses.

Mrs. Leshikar has also 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. 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](mailto: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, §204.101, 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 §55.004, Texas Occupations Code.

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

*§185.4. Procedural Rules for Licensure Applicants.*

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

(c) The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefore [therefor], shall be submitted to the board unless the applicant requests a hearing within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of

Administrative Hearings and the board. The committee may refer any application for determination of eligibility to the full board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A physician assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(d) (No change.)

(e) Applicants for licensure:

(1) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

~~{(1) whose application for licensure which has been filed with the board office and which is in excess of one year old from the date of receipt, shall be considered inactive. Any fee previously submitted with the application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee;}~~

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application of licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by §185.7 of this title (relating to Temporary License);

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

(f) Alternative License Procedure for Military Spouse.

(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(A) holds an active unrestricted physician assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas physician assistant license; or

(B) within the five years preceding the application date held a physician assistant license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.

(3) Applications for licensure from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the board's licensure division.

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraphs (1) and (2) of this subsection:

(A) in demonstrating compliance with subsection (d) of this section must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced as a physician assistant, has been a student at an acceptable approved physician assistant program, or has been on the active teaching faculty of an acceptable approved physician assistant program, within one of the last three years preceding receipt of an Application for licensure;

(B) notwithstanding the one year expiration in subsection (e)(1) of this section, are allowed an additional 6 months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20 day deadline in subsection (e)(6) of this section, may be considered for permanent licensure up to 5 days prior to the board 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 January 2, 2012.

TRD-201200007

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: February 12, 2012

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



## PART 10. TEXAS FUNERAL SERVICE COMMISSION

### CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.3

The Texas Funeral Service Commission (commission) proposes an amendment to §203.3, concerning Funeral Director in Charge.

The commission has determined that this amendment will clarify an individual can not be designated as the funeral director and embalmer in charge of more than one establishment unless the additional establishment are operated as branches or satellites of a primary establishment. The amendment is also important to the simplification and streamlining of the provisional license program.

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

Mr. Robbins has further determined that for each year of the first five-year period the amendment is in effect, a public benefit will be increased accountability for the designated funeral director and/or embalmer in charge, along with assistance in streamlining and making more efficient the provisional licensing program.

Mr. Robbins has also determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic cost to persons who are required to comply with the section as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted in writing for a 30 day period to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or electronically to [info@tfsc.state.tx.us](mailto:info@tfsc.state.tx.us).

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

*§203.3. Funeral Director in Charge.*

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

(d) An individual may not be designated as the funeral director and/or an embalmer in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, same general management, and no establishment is more than 60 miles from any other establishment held under the same ownership conditions.

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

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

Filed with the Office of the Secretary of State on January 2, 2012.

TRD-201200002

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: February 12, 2012

For further information, please call: (512) 936-2469



## TITLE 34. PUBLIC FINANCE

## PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

### CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### 34 TAC §308.4

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to §308.4, concerning Death Benefits, to accomplish three objectives:

(1) to expand coverage of the death benefit annuity payable to the surviving spouse of a member who dies after meeting service requirements for a full annuity but before the age of 55 to surviving spouses of members who were actively performing service at the time of death (it is currently payable to surviving spouses of members vested as to service who have terminated service);

(2) to make death benefit annuities an alternative, electable by a surviving spouse, to a lump-sum return of contributions; and

(3) to clarify that a return of contributions based on the service of a member who dies before age 55 is calculated based on actual contributions plus any additional contributions, based on a department's contribution rate at the time of the member's death, that would have been made for the period necessary for full service retirement benefits.

The board proposes amendments to §308.4 for the purposes of filling a gap in the coverage of death benefit annuities payable by the System, preventing payment of more than one type of benefit based on non-service-related deaths under the same circumstances, and clarifying how projected contributions are to be calculated for certain lump-sum payments.

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

Ms. Walker also has determined that for each year of the first five years the amendments are in effect the public benefit will be to ensure that surviving spouses of deceased members of the System who had similar amounts of service are given the same options and to ensure that there is a clear and consistent method for calculating certain lump-sum payments by the System. There will be no costs to small businesses or individuals required to comply with the amendments as proposed.

Comments on the proposal may be submitted in writing to Sherri Walker, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577, not later than 2 p.m., Central Standard Time, on February 20, 2012. Comments may also be submitted electronically to [rules@ffpc.state.tx.us](mailto:rules@ffpc.state.tx.us) or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §864.007, which specifically authorizes the board to provide benefits for non-service-related deaths.

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

*§308.4. Death Benefits.*

(a) The beneficiary of a member who dies as a result of performing emergency service duties is entitled to a lump-sum benefit of \$60,000.

(b) The beneficiary of a deceased member whose death did not result from the performance of emergency service duties, including a member whose death resulted from the performance of active military duty, is entitled to the greater of:

(1) the amount contributed to the fund on the decedent's behalf; or

(2) the sum of the amount that has [would have] been contributed on the decedent's behalf from whatever source at the time of the member's death and the amount that would have been contributed by a department after the member's death, based on the department's contribution rate at the time of the member's death, at the end of the period required for full service retirement benefits.

(c) In lieu of the benefit provided by subsection (b) of this section, the [The] surviving spouse of a deceased member who dies as an active member of a participating department before retirement but after meeting the minimum age and service requirements for service retirement may elect to receive [is entitled to] two-thirds of the monthly annuity that the decedent would have received if the decedent had retired on the date of death.

(d) In lieu of the benefit provided by subsection (b) of this section, the [The] surviving spouse of a deceased member who dies [after terminating service with all participating departments and] after meet-

ing a service requirement under §864.001, Government Code, but before attaining the age of 55, may elect to receive [is entitled to] a death benefit annuity, beginning on the later of the date on which the decedent would have turned 55 or the date the surviving spouse applies for the annuity, equal to two-thirds of the monthly annuity to which the decedent would have been entitled on that date. This annuity is payable whether the deceased member, at the time of death, was active in a participating department or had terminated service with all participating departments.

(e) The surviving spouse of a person who dies after retirement is entitled to the benefit provided by §864.009, Government Code.

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

Filed with the Office of the Secretary of State on January 2, 2012.

TRD-201200001

Sherri Walker

Commissioner

Office of the Fire Fighters' Pension Commissioner

Earliest possible date of adoption: February 12, 2012

For further information, please call: (512) 299-4528

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# WITHDRAWN RULES

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

##### SUBCHAPTER J. PURCHASED HEALTH SERVICES

##### DIVISION 20. CASE MANAGEMENT FOR CHILDREN WHO ARE BLIND AND VISUALLY IMPAIRED

###### 1 TAC §355.8381

The Executive Commissioner of the Health and Human Services Commission, withdraws the proposed repeal of 1 TAC §355.8381, Case Management Reimbursement Methodology, which appeared in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3771).

Filed with the Office of the Secretary of State on December 28, 2011.

TRD-201105827

Steve Aragon  
Chief Counsel

Texas Health and Human Services Commission

Effective date: December 28, 2011

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



###### 1 TAC §355.8381

The Executive Commissioner of the Health and Human Services Commission, withdraws proposed new 1 TAC §355.8381, Case Management Reimbursement Methodology, which appeared in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3771).

Filed with the Office of the Secretary of State on December 29, 2011.

TRD-201105853

Steve Aragon  
Chief Counsel

Texas Health and Human Services Commission

Effective date: December 28, 2011

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



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 75. RULES OF PRACTICE

##### 22 TAC §75.2

Proposed amended §75.2, published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3787), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 28, 2011.

TRD-201105846



##### 22 TAC §75.17

Proposed amended §75.17, published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3788), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 28, 2011.

TRD-201105847



# ADOPTED RULES

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

## TITLE 13. CULTURAL RESOURCES

### PART 8. TEXAS FILM COMMISSION

#### CHAPTER 122. TEMPORARY USE OF STATE BUILDINGS AND GROUNDS BY TELEVISION OR FILM PRODUCTION COMPANIES

##### 13 TAC §122.2

The Texas Film Commission adopts an amendment to Title 13, Part 8, Chapter 122, §122.2, concerning Definitions, without changes to the proposed text as published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7953).

The adopted amendment to §122.2 provides specific insurance coverage requirements.

No comments were received regarding the amendment.

The amendment is adopted pursuant to the Texas Government Code §2165.008 which allows the Texas Film Commission to consider proposals pursuant to a procedure for the temporary use of state building or grounds by a production company; and Texas Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 27, 2011.

TRD-201105821

Michael Bryant

Assistant General Counsel

Texas Film Commission

Effective date: January 16, 2012

Proposal publication date: November 25, 2011

For further information, please call: (512) 463-9200



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

## SUBCHAPTER F. FEES

### 16 TAC §60.83

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 60, Subchapter F, §60.83, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7635) and will not be republished. The adoption takes effect January 16, 2012.

The adoption is necessary to implement House Bill (HB) 3287, 82nd Legislature, Regular Session (2011) regarding extending the time period for late renewals. HB 3287 amended Texas Occupations Code Chapter 51, to extend the late renewal provisions in §51.401(c) and (d). Under HB 3287 the time period to late renew the license, without having to apply for a new license and retake the examination, was extended to within 18 months of expiration. HB 3287 also allows a person whose license has expired for at least 18 months, but less than three years, to obtain approval from the Executive Director to renew the license without having to apply for a new license or retake the examination.

The amendment to §60.83 provides that a person whose license has been expired for more than 90 days but less than 18 months, instead of less than one year, may renew the license by paying a late renewal fee equal to two times the renewal fee. The amendment also adds a new provision stating that a person whose license has been expired for more than 18 months but less than three years may request that the Executive Director approve the license by submitting information sufficient to show just cause for the late renewal and paying to the Department a renewal fee equal to two times the normally required renewal fee.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the *Texas Register* on November 11, 2011. The 30-day public comment period closed on December 12, 2011. The Department received public comment from twelve interested parties: Franklin Padillia Electric, LLC and eleven individuals. The public comments are summarized below, followed by the Department's responses.

Four of the comments support the rule as published and therefore the Department makes no change in response to those comments.

One comment supports the rule but suggests that it be modified to allow late renewal beyond the extended period without retesting. This comment is beyond the authority contained in HB 3287 and the Department declines to modify the rule in response to this comment.



One comment suggests that the rule be restricted to armed forces personnel only. Another comment suggests the rule be applied to only persons with health-related causes for extended late renewal. HB 3287 does not contain these limitations. Therefore, the rule has not been modified in response to these comments.

One comment suggests that licensees will game the process by allowing the license to expire for up to three years and save the renewal fees. Another comment suggests that persons seeking extended late renewal be required to pay all past renewal fees plus a one-year penalty. The Department notes that should a person attempt to game the process in this manner, that person has a period of unlicensed activity and is subject to administrative penalties. Since the three-year late renewal period is statutory, the rule has not been modified in response to the comments.

One comment suggests that during periods of unemployment a licensee generally allows licenses to lapse. The Department agrees with this comment and the statute and rules address this situation. Since this comment tends to support the proposed rule, no change is necessary.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 754 (Elevators and Escalators) and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 802 (Dog or Cat Breeders), 953 (For Profit Legal Service Contract Companies), 1151 (Property Tax Professionals), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1306 (Identity Recovery Service Contract Providers and Administrators), 1601 (Barbers), 1602 (Cosmetology), 1603 (Barbers and Cosmetology), 1703 (Polygraph Examiners), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Vehicle Towing and Booting), and 2309 (Used Automotive Parts Recyclers). No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 27, 2011.

TRD-201105823

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: January 16, 2012

Proposal publication date: November 11, 2011

For further information, please call: (512) 463-7348



## CHAPTER 85. VEHICLE STORAGE FACILITIES

### **16 TAC §§85.650, 85.703 - 85.706, 85.708, 85.710, 85.720, 85.722, 85.725, 85.1003, 85.1004**

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) §§85.650, 85.703 - 85.706, 85.708, 85.710, 85.720, 85.722, 85.725, and 85.1003 and adopts new §85.1004 regarding the Vehicle Storage Facilities program. The amendments to §§85.703, 85.704, 85.720 and 85.725 are adopted with changes to the proposed text as published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7637) and will be republished. The amendments to §§85.650, 85.705, 85.706, 85.708, 85.710, 85.722, and 85.1003 and new §85.1004 are adopted without changes and will not be republished. The adoption takes effect January 16, 2012.

The amendments and new rule are necessary to implement House Bill (HB) 3510, 82nd Legislature, Regular Session (2011) and changes recommended by the Towing, Storage, and Booting Advisory Board. A summary of amendments and new rule was included in the notice of proposed rules published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7637).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments and new rule were published in the *Texas Register* on November 11, 2011. The 30-day public comment period closed on December 12, 2011. The Department received public comments from seven interested parties: Yoakum Police Department; Automobile Recovery Bureau, Inc.; Quik Tow Wrecker; I-Car Platinum; Harris County Sheriff's Office; Towing Experts; and AA Wrecker Service. On December 12, 2011, the Towing, Storage and Booting Advisory Board met and reviewed the public comments received and recommend changes to the proposed rules in response to these comments. The public comments are summarized below, followed by the Department's responses.

One comment suggested the proposed amendment to §85.704 "is far too vague and open for individual interpretation which can lead to enforcement issues". The Department noted that the proposed amendment merely changes the number of days for the second notice from 41 days to 15 days in accordance with HB 3510. Therefore, the Commission directed staff to address this concern by posting a frequently asked question on the Department's website. No changes were made in response to these comments.

One public comment noted an inconsistency between §85.710(a)(1)(B) because that subsection requires "the name, address and telephone number of the person that authorized the tow" and other sections only require the name of the company. The Commission declined to make this change because the

published rule does not affect §85.710(a)(1)(B) and is therefore outside the scope of this rulemaking.

Two comments object to the proposed amendment to §85.710 which provides that identification issued by a foreign government is an acceptable form of identification for purposes of obtaining the release of a vehicle stored at a VSF. One comment suggested that the identification required for release of a stored vehicle mirror the requirements of the Department of Motor Vehicles. Several comments opposed the use of foreign identification to obtain release of a vehicle at a storage facility. Since the use of foreign identification to obtain release of a vehicle at a storage facility is allowed by statute, the Commission made no changes to the published rule.

Other comments suggest that the written consent provision in §85.720 is too restrictive and not necessary in every instance. The Commission agreed with these comments and deleted the requirement for written consent.

Several comments suggest that the drug testing requirements in §85.725(a)(6)(C)(iii) creates a smaller pool of licensees subject to the 25% random drug testing requirement. The Commission agreed with these comments and changed the requirement to allow the testing of 25% of the licensed VSF employees tested by the drug consortium.

One comment requested the creation of a form to require the signature of the vehicle owner or operator to obtain release of a vehicle from a storage facility. Since rulemaking is not the appropriate forum for creation of forms, the Commission declined to do so and noted that the creation and approval of forms is within the statutory authority of the executive director.

Finally, one comment asked the Commission to address the notice to law enforcement required by Texas Occupations Code, Chapter 2303 and this chapter. The Commission believes this request is outside the scope of the rulemaking. Nonetheless, the Commission directed staff to address this concern by posting a frequently asked question on the department's website.

The amendments and new rule are adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

*§85.703. Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.*

(a) Applicability. If a vehicle is removed by the vehicle owner within 24 hours after the VSF receives the vehicle, notification as described in subsections (b) - (h) does not apply.

(b) Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.

(1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF shall notify the vehicle's current registered owner and primary lien holder by certified, electronic certified, or registered mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) Vehicles not registered in Texas. After accepting for storage a vehicle not registered in Texas, the VSF shall notify the vehicle's current registered owner and all recorded lien holders within 14

days, but in no event sooner than within 24 hours of receipt of the vehicle.

(c) It is a defense to an action initiated by the department for violation of this section that the facility has attempted unsuccessfully and in writing or electronically to obtain information from the governmental entity with which the vehicle is registered by requesting the names and addresses of registered owners and lien holders based on the license plate number and vehicle identification number.

(d) Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark and to be timely filed if:

(1) the postmark indicates that the notice was mailed within the period described by subsection (a) or (b); or

(2) the notice was published as provided for by subsection (e).

(e) Notice by publication. Notice to the registered owner and the primary lienholder of a vehicle towed to a VSF may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle is registered in another state;

(2) the operator of the storage facility submits to the governmental entity with which the vehicle is registered a written request for information relating to the identity of the registered owner and any lienholder of record;

(3) the identity of the registered owner cannot be determined;

(4) the registration does not contain an address for the registered owner; or

(5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(f) Notice by publication is not required if each notice sent in accordance with subsection (b) is returned because:

(1) the notice was unclaimed or refused; or

(2) the person to whom the notice was sent moved without leaving a forwarding address.

(g) Only one notice is required to be published for an abandoned nuisance vehicle.

(h) Form of notifications. All mailed notifications must be correctly addressed; mailed with sufficient postage; and sent by certified mail, return receipt requested, or electronic certified mail.

(1) All mailed notifications shall state:

(A) the full licensed name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(B) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released";

(C) the first date for which a storage fee is assessed;

(D) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred if the operator will be transferring a vehicle to a second lot because the vehicle has not been claimed within a certain time;

(E) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(F) the VSF license number preceded by the words "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No.";

(G) a notice of the towed vehicle owner's right under Texas Occupations Code, Chapter 2308, to challenge the legality of the tow involved; and

(H) the name, mailing address, and toll-free telephone number of the department for purposes of directing questions or complaints.

(2) All published notifications shall state:

(A) the full name, street address, telephone number, and VSF license number of the VSF;

(B) a description of the vehicle; and

(C) the total amount of charges assessed against the vehicle.

(3) Notices published in a newspaper may contain information for more than one towed vehicle.

(i) If authorized, a notification fee may not be charged unless the notification is actually sent or performed before the vehicle is released.

*§85.704. Responsibilities of Licensee--Second Notice; Consent to Sale.*

(a) If a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under Chapter 683, Transportation Code, before the 15th day after the date notice is mailed or published under §85.703, the operator of the VSF shall send a second notice to the registered owner and the primary lienholder of the vehicle.

(b) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under §85.703, the operator of the VSF shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.

(c) Notice under this section must include:

(1) the information listed in §85.703(h);

(2) a statement of the right of the facility to dispose of the vehicle under subsections (a) and (b);

(3) a statement that the failure of the owner or lienholder to claim the vehicle and personal property before the 30th day after the date the notice is provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle and personal property; and

(B) a consent to the sale of the vehicle at a public sale.

(d) Notwithstanding subsection (b), if publication is required for notice under this section, the notice must include:

(1) the information listed in §85.703(h)(2); and

(2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:

(A) a waiver of all right, title, and interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(e) The operator shall pay any excess proceeds to the person entitled to those proceeds.

*§85.720. Responsibilities of Licensee--Repair; Alteration of Stored Vehicles Prohibited.*

A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without consent of the vehicle owner or owner's authorized representative.

*§85.725. Responsibilities of Licensee--Drug Testing Policy.*

(a) A VSF adopting paragraphs (1) - (12) will comply with Texas Occupations Code, §2303.160.

(1) Purpose and Scope. This drug testing policy provides guidance to supervisors and VSF employees about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all VSF employees and all VSF job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2303 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug test is administered, VSF employees and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.

(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's and applicant's system.

(4) Compliance with Drug Testing Policy. The failure or refusal by a VSF employee or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug testing policy is governed by these general rules:

(A) VSF employees shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) VSF employees are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) All VSF property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such

property. VSF property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) Any VSF employee convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The VSF will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).

#### (6) Types of Tests.

(A) Pre-employment. All applicants for positions requiring a VSF employee license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All VSF employees employed by a VSF must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.

(C) Random Testing. In addition to annual testing, VSF employees are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of VSF employees is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a VSF employee for random urine drug testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(iii) Each licensed VSF participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed VSF employees participating in and tested by the consortium employed by or under contract with the VSF.

#### (D) Return-to-Duty and Follow-Up.

(i) Any VSF employee who has violated this drug testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a VSF employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The VSF employee will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

#### (8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the federal Department of Health and Human Services (DHHS).

(B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs, the VSF employee has 72 hours to request sending the split specimen to another federal DHHS certified laboratory for analysis. The VSF employee will be required to pay for his or her split specimen test(s).

(D) For the VSF employee's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the VSF employee will be notified, and the MRO will notify the company.

(E) The VSF will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:

- (i) VSF employee's name;
- (ii) VSF employee license number;
- (iii) date of the positive test;
- (iv) substance detected by the drug test; and
- (v) disciplinary action imposed for violation of the drug testing policy.

#### (9) Reporting and Reviewing of Drug Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the VSF employee by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the VSF employee, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to VSF Employee. The minimal distribution of information for all VSF employees will include the display and distribution of:

- (A) informational material on the physical and mental effects of drugs;
- (B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;
- (C) the company's policy regarding the use of prohibited drugs and/or alcohol; and
- (D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug policy.

#### (11) Consequences of a Confirmed Positive Drug Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a VSF employee's positive drug test result has been confirmed, the VSF employee will stand down from VSF duties

and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary response: the VSF employee's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug policy against VSF employees who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.

(12) Exceptions.

(A) VSF employees subject to random drug testing under Title 49 Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the annual test requirement, provided that the VSF employee tested negative and the negative test results are submitted to and verified by the MRO.

(B) VSF employees holding a valid towing operator license issued by the department who are tested for drugs in accordance with 16 Texas Administrative Code Chapter 86 are exempt from this section.

(b) Independent drug testing policy.

(1) A VSF may file an independent drug testing policy.

(2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).

(c) Compliance. A VSF must adopt and implement a drug testing policy compliant with subsection (a) or (b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 27, 2011.

TRD-201105824

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: January 16, 2012

Proposal publication date: November 11, 2011

For further information, please call: (512) 463-7348



## CHAPTER 86. VEHICLE TOWING AND BOOTING

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) §§86.10, 86.212, 86.455, 86.500, 86.700, 86.705, 86.709, 86.710, 86.800, 86.1000, and 86.1001; adopts new §§86.458, 86.711, and 86.715; and adopts the repeal of §§86.600 and §86.704 regarding the Vehicle Towing and Booting program. The amendments to §86.710 and §86.1001 and new §86.715 are adopted with changes to the proposed text as published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7640) and will be republished. The amendments to §§86.10, 86.212, 86.455, 86.500, 86.700, 86.705, 86.709, 86.800, and 86.1000; new §86.458 and §86.711; and the repeal

of §§86.600 and §86.704 are adopted without changes to the proposed text and will not be republished. The adoption takes effect January 16, 2012.

The amendments, new rules, and repeals are necessary to implement House Bill 3510, 82nd Legislature, Regular Session (2011) and changes recommended by the Towing, Storage, and Booting Advisory Board. A summary of the amendments, new rules, and repeals was included in the notice of proposed rules published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7640).

The Department drafted and distributed the proposal to persons internal and external to the agency. The proposed amendments, new rules, and repeals were published in the *Texas Register* on November 11, 2011. The 30-day public comment period closed on December 12, 2011. The Department received public comments from three interested parties: I-Car Platinum; State Farm; and Fullers Towing. On December 13, 2011 the Towing, Storage, and Booting Advisory Board met and reviewed the public comments received and recommended changes to the proposed rules in response to comments. The public comments are summarized below, followed by the Department's responses.

Several comments recommend the Commission expand the refund requirements in §86.458(c) to allow an insurance company to receive the refund in cases where the insurance company paid for the tow. Since the statute fails to include or authorize the insurance company to receive a refund, the Commission believes it inappropriate to legislate by rulemaking. No changes were made to the rule in response to these comments.

Several comments suggest that the drug testing requirements in §86.710(a)(6)(C)(iii) creates a smaller pool of licensees subject to the 25% random drug testing requirement. The Commission agreed with these comments and changed the requirement to allow the testing of 25% of the licensed tow operators tested by the drug consortium.

One comment questioned the definition of "stored" as used in §86.715 and questioned the authority of a tow operator repossessing a vehicle to temporarily place a vehicle at a non-licensed location. Since a tow operator performing repossession is performing a consent tow, this comment is not applicable and therefore the Commission makes no changes in response to this comment.

One comment suggested that §86.715(k) be amended to allow an authorized representative of the vehicle owner or operator to receive a copy of the tow ticket. The Commission agrees with this comment and the rule is modified accordingly.

Several comments opposed the requirements that tow operators competently and safely perform tows (§86.715(d)) and with honesty, trustworthiness and integrity (§86.715(o)). The Commission notes that these standards are required in other regulated occupations and are not abused as suggested by the comments. Therefore, the Commission makes no changes in response to these comments.

Other comments suggest the Commission create forms to implement various provisions of the rules. The Commission notes that the Executive Director is statutorily empowered to approve forms and leaves it within the Department's discretion to determine whether forms are appropriate or necessary.

One comment states that owners of the towing company should not be subject to drug testing. The rule has not been changed in response to this comment because Texas Occupations Code,

Chapter 2308 requires the drug testing of persons working at the facility.

One comment objected to the requirement that tow operators openly display a tow operator's license and cites operator safety as an issue. The Commission responds to this comment by noting that although the requirement has been in effect for several years not a single instance of a situation compromising the safety of a tow operator has been brought to the Commission's attention. Therefore, the published rules have not been changed in response to this comment.

One comment requested that tow signs required to be posted before towing a vehicle be deleted from the rules. The Commission noted that the posting of signs is statutory; therefore, no changes have been made in response to this comment.

One comment requested clarity on when a reflective vest required by §86.1001(b) must be worn by tow operators. In response to this comment, the Commission clarifies the rule by adopting the deleted portion of the published rules referring to "related area."

**16 TAC §§86.10, 86.212, 86.455, 86.458, 86.500, 86.700, 86.705, 86.709 - 86.711, 86.715, 86.800, 86.1000, 86.1001**

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

**§86.710. Responsibilities of Towing Company--Drug and Alcohol Testing Policy.**

(a) A towing company adopting paragraphs (1) - (12) of this subsection will comply with Texas Occupations Code, §2308.158.

(1) Purpose and Scope. This drug and alcohol testing policy provides guidance to supervisors and towing operators about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all towing operators and all towing operator job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2308 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug or alcohol test is administered, towing operators and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug and alcohol testing policy.

(B) The consent form shall set forth the following information:

- (i) the procedure for confirming and verifying an initial positive test result;
- (ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug or alcohol test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's or applicant's system.

(4) Compliance with Drug and Alcohol Testing Policy. The failure or refusal by a towing operator or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug and alcohol testing policy is governed by these general rules:

(A) towing operators shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) towing operators are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) all towing company property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. Towing company property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) any towing operator convicted of violating a criminal drug or alcohol statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The towing company will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).

(6) Types of Tests.

(A) Pre-employment. All applicants for positions requiring a towing operator's license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All towing operators employed by a towing company must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.

(C) Random Testing. In addition to annual testing, towing operators are subject to random urine drug and alcohol testing. Under this policy, annual random test for drugs and alcohol of at least 25 percent of the total number of towing operators is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a towing operator for random urine drug and alcohol testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(iii) Each licensed towing company participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed towing operators participating in and tested by the consortium.

(D) Return-to-Duty and Follow-Up.

(i) Any towing operator who has violated this drug and alcohol testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a towing operator returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The towing operator will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the Federal Department of Health and Human Services.

(B) Drug and alcohol testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs or alcohol, the towing operator has 72 hours to request sending the split specimen to another Federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The towing operator will be required to pay for his or her split specimen test(s).

(D) For the towing operator's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the towing operator will be notified, and the MRO will notify the company.

(E) The towing company will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:

- (i) towing operator's name;
- (ii) towing operator's license number;
- (iii) date of the positive test;
- (iv) substance detected by the drug and alcohol test;

and

(v) disciplinary action imposed violation of the drug testing policy.

(9) Reporting and Reviewing of Drug and Alcohol Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the Federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the towing operator by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug or alcohol test results to any other person except under written authorization from the towing operator, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to Towing Operators. The minimal distribution of information for all towing operators will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs and alcohol;

(B) an existing community services hotline number, available drug and alcohol counseling, rehabilitation, and assistance program;

(C) the company's policy regarding the use of prohibited drugs and/or alcohol; and

(D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug and alcohol policy.

(11) Consequences of a Confirmed Positive Drug and Alcohol Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a towing operator's positive drug and alcohol test result has been confirmed, the towing operator will stand down from towing operation duties and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary action: the towing operator's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug and alcohol policy against towing operators who voluntarily identify themselves as drug or alcohol users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug and alcohol testing.

(12) Exceptions.

(A) Towing operators subject to random drug and alcohol testing under Title 49, Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the annual test requirement, provided that the towing operator's tested negative and the negative test results are submitted to and verified by the MRO.

(B) Towing operators holding a valid Towing Operator License issued by the department who are tested for drugs and alcohol in accordance with 16 Texas Administrative Code Chapter 85 are exempt from this section.

(b) Independent drug and alcohol testing policy.

(1) A towing company may file an independent drug and alcohol testing policy.

(2) The filing must describe how the independent drug and alcohol testing policy is as stringent as each provision of the model policy set forth in subsection (a).

(c) Compliance. A towing company is required to adopt and implement an alcohol and drug testing policy that complies with subsection (a) or (b).

*§86.715. Responsibilities of Towing Operators--Standards of Conduct.*

(a) A towing operator may not charge a fee for a nonconsent tow that is greater than the statewide fee or nonconsent tow fee approved by Texas Occupations Code, §2308.2065.

(b) A towing operator may not charge a fee related to a nonconsent tow unless that fee is authorized by the statewide fee or nonconsent tow fees approved by Texas Occupations Code, §2308.2065.

(c) A towing operator must allow department personnel and law enforcement to inspect a tow truck permitted under this chapter.

(d) A towing operator must perform each tow in a safe and competent manner based on the circumstances and type of vehicle under tow.

(e) During the term of the towing operator license, a towing operator must maintain a current valid driver's license. An occupational driver's license does not meet the requirements of this chapter.

(f) A towing operator may not tow a vehicle to a vehicle storage facility unless the vehicle storage facility displays a TDLR license number.

(g) A towing operator may not remove and store an unauthorized vehicle unless authorized by Texas Occupations Code, §2308.255.

(h) A towing operator may not perform a nonconsent tow unless the property from which the vehicle is towed is in compliance with Texas Occupations Code, §§2308.301 - 2308.305.

(i) Except as authorized by Texas Occupations Code, §§2308.351 - 2308.354, a towing operator may not perform a nonconsent tow from:

- (1) a leased right-of-way;
- (2) an area between a parking facility and a public right-of-way;
- (3) a public right-of-way; or
- (4) a public roadway.

(j) A towing operator must prepare and issue a tow ticket for each nonconsent tow.

(k) towing operator must provide a copy of the tow ticket to the vehicle owner or representative, if the owner or representative, or operator is present and available at the time of the tow, and a copy delivered to the vehicle storage facility, or place agreed upon by the towing operator and vehicle owner.

(l) The tow ticket provided by the towing operator shall only authorize charges directly related to towing the vehicle to a designated location authorized by subsection (k).

(m) The tow ticket provided by the towing operator must itemize each charge and must characterize the fees using the identical fee structure stated in the towing company's nonconsent towing fee schedule on file with the VSF.

(n) The towing operator must include on the tow ticket the licensed name of the towing company, publicly listed telephone number, towing company TDLR license number, and the TDLR license number of the towing operator.

(o) A towing operator must perform each towing operation with honesty, trustworthiness, and integrity.

(p) When performing towing operations, all towing operators must carry and openly display the appropriate TDLR issued original towing operator license.

*§86.1001. Technical Requirements--Towing Operator Safety Clothing and Identification.*

(a) Towing operators, as a condition of their license must comply with the protective clothing policy.

(b) Towing operators must wear a reflective vest, shirt, or reflective jacket at all times while working outside the tow truck; the reflective vest, shirt, or reflective jacket must meet the ANSI/ISEA requirements for high visibility safety apparel at all times when using or assisting in the use or operation of a licensed tow truck on a road or road related area.

(c) When performing towing operations, all tow truck operators must carry and openly display the appropriate TDLR issued original towing operator license.

(d) Towing operators permitted under §86.211 are exempt from the requirements of subsection (b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 27, 2011.

TRD-201105825

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: January 16, 2012

Proposal publication date: November 11, 2011

For further information, please call: (512) 463-7348



**16 TAC §86.600, §86.704**

The repeals are adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 27, 2011.

TRD-201105826

William H. Kuntz, Jr.

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Texas Department of Licensing and Regulation

Effective date: January 16, 2012

Proposal publication date: November 11, 2011

For further information, please call: (512) 463-7348





## **TITLE 22. EXAMINING BOARDS**

### **PART 11. TEXAS BOARD OF NURSING**

#### **CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE**

##### **22 TAC §217.6**

**Introduction.** The Texas Board of Nursing (Board) adopts amendments to §217.6 (relating to Failure to Renew License) without changes to the proposed text as published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7957) and will not be republished.

**Reasoned Justification.** The amendments are adopted under the authority of the Occupations Code §§51.404, 55.004, 301.155, 301.251, 301.2511, 301.252, 301.259, 301.260, 301.303, and 301.151 and are necessary to implement the requirements of Senate Bill (SB) 1733, enacted by the 82nd Legislature, Regular Session, effective June 17, 2011.

##### **SB 1733**

Military spouses (spouses of members of the United States' armed forces serving on active duty) face a variety of unique challenges. One such challenge is obtaining occupational licensure following relocation to a new state. SB 1733 was enacted to simplify the occupational licensure process in this state for military spouses. (See Bill Analysis, Enrolled Version, July 22, 2011.) SB 1733 requires state agencies to adopt rules regarding the licensure process for: (i) military spouses holding a current license from another state; and (ii) military spouses holding an expired Texas license. Further, SB 1733 requires state agencies to allow for alternative demonstrations of competency for occupational licensure. Finally, SB 1733 authorizes the executive directors of state agencies to issue military spouses an occupational license by endorsement.

Board Rule 217.5 sets forth the Board's current requirements for licensure by endorsement. Under the Board's current requirements, an individual seeking licensure by endorsement must complete an endorsement application; submit a processing fee; submit fingerprints for a criminal background check, as authorized by the Occupations Code §301.2511; submit proof of graduation from an approved nursing education program; submit proof of successfully passing the NCLEX licensing examination; submit proof of licensure by another United States jurisdiction; and submit proof of successfully passing the Texas Jurisprudence Exam, as authorized by the Occupations Code §301.252. In the event that an individual has not practiced nursing within the four years immediately preceding the request for licensure by endorsement, the individual must also complete a refresher course, extensive orientation to the practice of nursing, or a nursing program of study and a jurisprudence prep course, a jurisprudence and ethics workshop, or an approved jurisprudence and ethics course.

The Board has reviewed its current requirements for issuing a license by endorsement and has determined that each of its current requirements are necessary to ensure that its licensees are safe and competent to practice nursing in this state. For example, under the Board's current requirements, an applicant must submit proof of graduating from an approved nursing education program and successfully passing the NCLEX licensing examination. Such requirements are necessary to ensure that an applicant possesses the minimum amount of knowledge and

skill to practice nursing safely. Further, successful completion of the Texas Jurisprudence Exam is necessary to test an applicant's knowledge of the statutes, regulations, and practice requirements that apply to nursing practice in this state. The remainder of the requirements are necessary to ensure that applicants do not have a criminal history that may disqualify them from licensure and to ensure the efficient and orderly processing of the application. As a result, the Board has determined that none of its current endorsement requirements should be modified or waived for military spouse applicants.

Board Rule 217.6 sets forth the Board's current requirements for reactivating an expired or delinquent license. Under the Board's current requirements, an individual who fails to maintain his/her license for a period of less than four years may reactivate his/her license by completing 20 contact hours of continuing education, submitting a reactivation application to the Board, and paying the current licensure fee, plus a late fee and fine. An individual who has failed to maintain his/her license for a period of four or more years, but has practiced nursing in another jurisdiction within that time period, must also complete a jurisprudence prep course, jurisprudence and ethics workshop, or an approved jurisprudence and ethics course and successfully complete the Texas Jurisprudence Exam, as authorized by the Occupations Code §301.252. An individual who has failed to maintain his/her license for a period of four or more years and has not practiced nursing within that time period must also complete a refresher course, extensive orientation to the practice of nursing, or a nursing program of study. Much like the Board's requirements for licensure by endorsement, the majority of these requirements are also necessary to ensure the competency and safety of licensees practicing in this state. However, the Board has determined that two of its current requirements could be modified to simplify the licensure process for military spouse applicants without compromising the safety of the public.

First, the Board has determined that military spouse applicants should not be required to pay the late fees and fines normally required for reactivating an expired or delinquent license. Because military spouses are often transferred from state to state with little notice, the Board has determined that the purpose of the late fees and fines, which is to encourage a licensee's timely renewal, is not applicable in such situations. As such, the adopted amendments exempt military spouse applicants from paying these late fees and fines. However, only those military spouse applicants who submit a reactivation application to the Board in paper form will be exempt from paying these late fees and fines. This is because the Board's online system is unable to process applications that are not accompanied by full payment of the late fees and fines normally required for the reactivation of an expired or delinquent license. Because the Board is unable to alter its online system at this time, the adopted amendments specifically require the reactivation application to be submitted in paper form in order for a military spouse applicant to receive this exemption.

Second, in compliance with the provisions of SB 1733, the Board has determined that military spouse applicants who have practiced nursing in another jurisdiction within the four years immediately preceding a reactivation application are exempt from completing 20 contact hours of continuing education. This exemption not only allows these applicants to demonstrate their competency to practice through alternative means, as mandated by SB 1733, but it also protects the health and safety of the public by ensuring that an applicant has recently practiced nursing in another jurisdiction and is a safe and competent practitioner.

How the Sections Will Function. Adopted §217.6(j) establishes two exemptions for military spouse applicants. First, adopted §217.6(j)(1) exempts military spouse applicants from paying the late fees and fines required by §217.6 if the applicant submits the following information to the Board: (i) a completed reactivation application, in paper form, that meets the requirements of §217.6; and (ii) documentation showing that the applicant is the spouse of an individual serving on active duty as a member of the armed forces of the United States. Second, adopted §217.6(j)(2) exempts military spouse applicants from completing the continuing education contact hours required by §217.6 if an applicant has practiced nursing in any jurisdiction within the four years immediately preceding the submission of a reactivation application. Finally, adopted §217.6(j)(3) makes clear that all other requirements of §217.6 apply to military spouse applicants.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§51.404, 55.004, 301.155, 301.251, 301.2511, 301.252, 301.259, 301.260, 301.303, and 301.151.

Section 51.404(a) states that the Texas Commission of Licensing and Regulation may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Section 51.404(b) states that the Texas Commission of Licensing and Regulation may waive any prerequisite to obtaining a license for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. Further, the Commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Section 55.004(a) provides that a state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license or within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

Section 55.004(b) states that the rules adopted under §55.004 must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.

Section 55.004(c) states that the executive director of a state agency may issue a license by endorsement in the same manner as the Texas Commission of Licensing and Regulation under §51.404 to an applicant described by §55.004(a).

Section 301.155(a) states that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301. The Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 301.155(b) states that the Board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required §301.158.

Section 301.155(c) states that the Board shall assess a surcharge of not less than \$3 or more than \$5 for a registered

nurse and a surcharge of not less than \$2 or more than \$3 for a vocational nurse to the fee established by the Board under §301.155(a) for a license holder to renew a license under Chapter 301. The Board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. Further, the Board shall quarterly transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under §105.002, Health and Safety Code. The Board is not required to collect the surcharge if the Board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

Section 301.251(a) states that a person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by Chapter 301.

Section 301.251(b) states that, unless the person holds a license under Chapter 301, a person may not use, in connection with the person's name: (i) the title "Registered Nurse," "Professional Nurse," "Licensed Vocational Nurse," "Vocational Nurse," "Licensed Practical Nurse," "Practical Nurse," or "Graduate Nurse"; (ii) the abbreviation "R.N.," "L.V.N.," "V.N.," "L.P.N.," or "P.N."; or (iii) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.

Section 301.251(c) states that §301.251 does not apply to a person entitled to practice nursing in this state under Chapter 304.

Section 301.251(d) states that, unless the person holds a license under Chapter 301, a person may not use, in connection with the person's name: (i) the title "nurse"; or (ii) any other designation tending to imply that the person is licensed to provide nursing care.

Section 301.2511(a) states that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of Subchapter F, Chapter 301, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

Section 301.2511(b) states that the Board may deny a license to an applicant who does not comply with the requirement of §301.2511(a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under §301.2511.

Section 301.2511(c) states that the Board by rule may develop a system for initiating the process of obtaining criminal history record information for applicants for a license under Chapter 301 by requiring persons who enroll or plan to enroll in an educational program that prepares a person for a license as a registered nurse to submit to the Board a set of fingerprints that meets the requirements of §301.2511(a). The Board may require payment of a fee by a person who is required to submit a set of fingerprints under §301.2511(c).

Section 301.252(a) states that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under Chapter 301, accompanied by evidence that the applicant: (i) has good professional character; (ii) has successfully completed a program of professional or vocational nursing education approved under §301.157(d); and (iii) has

passed the jurisprudence examination approved by the Board as provided by §301.252(a-1).

Section 301.252(a-1) states that the jurisprudence examination shall be conducted on the licensing requirements under Chapter 301 and Board rules and other laws, rules, or regulations applicable to the nursing profession in this state. The Board shall adopt rules for the jurisprudence examination under §301.252(a)(3) regarding: (i) the development of the examination; (ii) applicable fees; (iii) administration of the examination; (iv) reexamination procedures; (v) grading procedures; and (vi) notice of results.

Section 301.252(b) provides that the Board may waive the requirement of §301.252(a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in: (i) a professional nursing school approved under §301.157(d); or (ii) a school of professional nurse education located in another state or a foreign country.

Section 301.252(c) states that the Board by rule shall determine acceptable levels of education under §301.252(b).

Section 301.259 states that, on payment of a fee established by the Board, the Board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the Board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

Section 301.260(a) provides that an applicant for a license under Chapter 301 who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the Board: (i) an endorsement fee as determined by the Board and a completed sworn application in the form prescribed by the Board; (ii) evidence that the person possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and (iii) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

Section 301.260(b) states that a holder of a temporary license under §301.260 is entitled to receive a permanent license if the applicant: (i) verifies the applicant's academic and professional credentials; and (ii) satisfies any other requirement established by statute.

Section 301.260(c) states that the Board shall grant or deny an application for a permanent license not later than the 180th day after the date the Board receives all required forms or information. The Board may extend that deadline to allow for the receipt and tabulation of examination results.

Section 301.303(a) states that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. Further, the programs may allow a license holder to demonstrate competency through various methods, including: (i) completion of targeted continuing education programs; and

(ii) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(b) provides that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

Section 301.303(c) states that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) states that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(f) states that the Board may assess each program and provider under §301.303 a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

Section 301.303(g) provides that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the Board.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 December 28, 2011.

TRD-201105835

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: January 17, 2012

Proposal publication date: November 25, 2011

For further information, please call: (512) 305-6822



## 22 TAC §217.9

**Introduction.** The Texas Board of Nursing (Board) adopts amendments to §217.9 (relating to Inactive Status) without changes to the proposed text published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7961) and will not be republished.

**Reasoned Justification.** The amendments are adopted under the authority of the Occupations Code §301.261 and §301.151 and are necessary to implement the requirements of Senate Bill (SB) 193, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011.

Prior to the enactment of SB 193, the Nursing Practice Act (NPA) required an individual to be 65 years or older in order to place his/her nursing license in retired status. SB 193 eliminates this age restriction and permits an individual of any age to place his/her nursing license in retired status, so long as the individual is in good standing with the Board on the date the license is inactivated and placed in retired status. Further, SB 193 authorizes the Board to approve additional titles that a retired nurse may use in connection with his/her retired status.

The adopted amendments to §217.9 are necessary to: (i) eliminate the current age requirement for placing a nursing license in retired status; (ii) implement the requirements of SB 193 relating to "good standing"; (iii) clarify the Board's existing procedures and requirements for placing a license in inactive, retired, or volunteer retired status; (iv) prescribe additional titles that an individual may use in connection with a retired license; (v) eliminate redundancy within the section; (vi) update the Board's website address; (vii) add clarifying language regarding the Board's existing reactivation requirements; (viii) update references to Board rules within the section; and (ix) renumber the section appropriately.

First, in compliance with the mandates of SB 193, the adopted amendments eliminate the current age restriction associated with placing a license in retired or volunteer retired status. However, the adopted amendments do not alter the remaining existing requirements for placing a license in retired or volunteer retired status. Under the adopted amendments, an individual of any age may place his/her license in retired or volunteer retired status, so long as the individual meets the remaining requirements of §217.9. For example, an individual wishing to place his/her license in retired status must submit a written request to use one of the specified retired licensure titles, along with the required fee, which is currently set at \$10, to the Board. Likewise, an individual requesting volunteer retired authorization must complete an application, claim Texas as his/her primary state of residence, and complete ten contact hours of continuing education. Further, the individual must not receive compensation for his/her services and must practice only within his/her recognized scope of practice.

Second, under the adopted amendments, only an individual who is in good standing with the Board may place his/her license in retired or volunteer retired status. Although the existing provisions of §217.9 require an individual to be in good standing with the Board in order to request volunteer retired authorization, the adopted amendments clarify that this requirement also applies to a request for retired status. The amendments also clarify the definition of "good standing" by synthesizing the existing provisions of the section into adopted §217.9(b). Under adopted §217.9(b), "good standing" means that a nurse's license is not in delinquent status and that there is no current disciplinary action, disciplinary probation, or pending investigations on his/her nursing license(s) or authorization(s).

The NPA enumerates several titles that may be used in connection with a retired or volunteer retired license. Section 217.9 incorporates these titles into its existing provisions. SB 193 specifically authorizes the Board to approve additional titles that may be used in connection with a retired or volunteer retired license. Pursuant to this authority, the adopted amendments include four new titles that may be used by advanced practiced registered nurses in connection with their retired or volunteer retired nursing licensure status. These titles reflect, and are consistent with,

the four categories of advanced practice authorization already recognized in Board Rule 221.2.

The remaining portions of the adopted amendments eliminate redundant provisions from the section, update references to Board rules in the section, clarify the intent of existing requirements within the section, and renumber the section accordingly. These amendments should result in clearer and better organized regulations.

**How the Sections Will Function.** First, the adopted amendments change the title of the section from "Inactive Status" to "Inactive and Retired Status".

Adopted §217.9(a) provides that a nurse may change his/her licensure status from active to inactive by submitting a written request to the Board prior to the expiration of his/her license or, if at the time of renewal, by designating "inactive" on the renewal form.

Adopted §217.9(b) states that a nurse may change his/her licensure status from active or inactive to retired or volunteer retired status only if he/she is in good standing with the Board. Further, for purposes of §217.9, adopted §217.9(b) defines the term "good standing" to mean that the nurse's license is not in delinquent status and that there is no current disciplinary action, disciplinary probation, or pending investigations on the nurse's nursing license(s) or authorization(s). Further, a nurse will be not eligible for retired or volunteer retired status until all outstanding disciplinary issues have been resolved. Additionally, a nurse who wishes to change his/her licensure status from inactive to retired or volunteer retired status may do so only if his/her license was in good standing with the Board on the date his/her license became inactive.

Adopted §217.9(c) requires a nurse who is eligible under §217.9(b) to change his/her licensure status to retired status and who wishes to do so to submit the following information to the Board: (i) a written request to use one of the following titles: "Licensed Vocational Nurse, Retired"; "LVN, Retired"; "Vocational Nurse, Retired"; or "VN, Retired"; "Registered Nurse, Retired" or "RN, Retired"; or "RN, Nurse Anesthetist, Retired"; "RN, Nurse-Midwife, Retired"; "RN, Nurse Practitioner, Retired"; or "RN, Clinical Nurse Specialist, Retired"; and (ii) the required, non-refundable fee.

Adopted §217.9(d) states that a nurse whose license is in retired status may not practice as a nurse for compensation, which includes both monetary and non-monetary benefits.

Adopted §217.9(e) sets forth the requirements related to volunteer retired status and authorization, including requirements for reduced fees, continuing education, and voluntary charity care.

Adopted §217.9(e)(1) states that a nurse who is eligible under §217.9(b) to change his/her licensure status to volunteer retired status and who wishes to do so must request authorization from the Board. The nurse must meet the following criteria: (i) must claim Texas as the nurse's primary state of residence in accordance with the Occupations Code Chapter 304 and 22 TAC Chapter 220; (ii) if applying as a vocational or registered nurse, must have completed at least 10 contact hours of continuing education as required by 22 TAC Chapter 216 during the previous biennium; and (iii) if applying as a registered nurse with advanced practice recognition, must meet the continuing education requirements of Board Rule 216.3(c).

Adopted §217.9(e)(2) states that an applicant for volunteer retired authorization must complete and submit to the Board an

application requesting volunteer retired authorization as a vocational nurse, registered nurse, or registered nurse with advanced practice authorization in a given role and population focus area.

Adopted §217.9(e)(3) states that a nurse holding volunteer retired authorization may only practice nursing at the level for which he/she formerly held an active/unencumbered license to practice nursing. Further, to qualify as volunteer practice, such practice must be without compensation or expectation of compensation as a direct service volunteer of a charitable organization. Finally, when engaging in practice as a volunteer retired nurse, the nurse must comply with the Nursing Practice Act (NPA) and Board rules in their entirety.

Adopted §217.9(e)(4) provides that a nurse who has authorization in an advanced practice role and population focus area at the time of application for volunteer retired authorization must continue to practice in collaboration/supervision with a physician qualified in the APRN's role and population focus area, as well as in compliance with all other laws applicable to the APRN's practice setting, both within the NPA and Board rules, as well as other applicable laws.

Adopted §217.9(e)(5) defines a "charitable organization" as any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization promoting the common good and general welfare for the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

Adopted §217.9(e)(6) states that a nurse's volunteer retired authorization expires on the same date as the nurse's regular license previously expired. Further, each volunteer retired nurse seeking to renew his/her volunteer retired authorization must meet all of the requirements of §217.9, including the continuing education requirements set forth in §217.9 for the applicable renewal period.

Adopted §217.9(e)(7) states that a nurse whose license is in volunteer retired status shall not receive compensation (monetary or non-monetary benefits) for the practice of nursing. To do so would constitute the practice of vocational, professional, or advanced practice nursing (as applicable) without a license and will subject the volunteer retired nurse to the penalties imposed for this violation.

Adopted §217.9(e)(8) states that a nurse holding volunteer retired authorization may hold him/herself out as and may use one of the titles specified in §217.9(c) to reflect the individual nurse's volunteer retired authorization. However, titles representing to the public that a nurse holds volunteer retired authorization are protected in the same manner as titles listed in the Occupations Code §301.351 and Board Rule 217.10.

Adopted §217.9(e)(9) states that authorization verification may be accomplished by accessing the Board's web page at <http://www.bon.texas.gov/>.

Adopted §217.9(f) states that a nurse who has not practiced nursing in Texas and whose license has been in an inactive status for less than four years may reactivate the license by completing the reactivation application form, paying the required reactivation fee and the current licensure fee, which are non-refundable, and submitting verification of completion of 20 contact

hours of continuing education that meets the requirements of 22 TAC Chapter 216 within the two years immediately preceding the application for reactivation.

Adopted §217.9(g) states that a nurse who has not practiced nursing and whose license has been in an inactive status for four or more years must submit to the Board: (i) a completed reactivation application; (ii) verification of successful completion of a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The nurse must submit an application to the Board for a temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or a nursing program of study; (iii) evidence of completion of 20 contact hours of acceptable continuing education for the two years immediately preceding the application for reactivation that meets the requirements of 22 TAC Chapter 216; (iv) a successful course completion form from one of the following: the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course; (v) a certificate of successful completion from the Texas Nursing Jurisprudence Exam; and (vi) the required reactivation fee, plus the current licensure fee, which are non-refundable.

Adopted §217.9(h) states that the Board has adopted by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by §217.9, and which are available at <http://www.bon.state.tx.us/olv/forms.html>: (i) Application for Six Month Temporary Permit (RN); and (ii) Application for Six Month Temporary Permit (LVN).

Adopted §217.9(i) states that a nurse whose license has been in an inactive status for four years or more and who is licensed and has practiced in another state during the previous four years preceding the application for reactivation in Texas must comply with the requirements of §217.9(g)(1) and (3) - (6).

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.261 and §301.151.

Section 301.261(a) provides that the Board may place on inactive status the license of a person under Chapter 301 who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the Board in the form and manner determined by the Board. Further, the inactive status begins on the expiration date of the person's license.

Section 301.261(b) states that the Board shall maintain a list of each person whose license is on inactive status.

Section 301.261(c) provides that a person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.

Section 301.261(d) states that the Board shall remove a person's license from inactive status if the person requests that the Board remove the person's license from inactive status; pays each appropriate fee; and meets the requirements determined by the Board.

Section 301.261(e) provides that the Board by rule shall permit a person whose license is on inactive status and who was in good standing with the Board on the date the license became inactive to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired" or another appropriate title approved by the Board.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 December 28, 2011.

TRD-201105834

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: January 17, 2012

Proposal publication date: November 25, 2011

For further information, please call: (512) 305-6822



## **TITLE 28. INSURANCE**

### **PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL**

#### **CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS**

##### **28 TAC §276.6**

The Public Counsel of the Office of Injured Employee Counsel (OIEC) adopts amendments to §276.6, concerning the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice). The amendments to §276.6 are adopted without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7271).

The amendments to §276.6(c) are adopted to reflect OIEC's and the Texas Department of Insurance, Division of Workers' Compensation new website addresses and the physical location of both agencies. The Notice was amended to reflect changes in the workers' compensation system as a result of the Sunset Advisory Commission's comprehensive review of the workers' compensation system and changes in the Workers' Compensation Act as a result of the 82nd Texas Legislature, Regular Session, 2011.

Section 276.6 adopts by reference the amended version of the Notice of Rights and Responsibilities in the Texas Workers' Compensation System, which reflects statutory changes made during the 82nd Texas Legislature, Regular Session, 2011. The

sequence of the Rights and Responsibilities listed on the Notice has been adjusted to more accurately reflect the sequence of events in a workers' compensation claim. Two items were added to the section titled "Your Rights in the Texas Workers' Compensation System": an injured employee must sign a written authorization before an OIEC employee can access information on the workers' compensation claim and the law provides that dispute proceedings will be held within 75 miles from the injured employee's residence. Two items were added to the section titled "Your Responsibilities in the Texas Workers' Compensation System": eligible beneficiaries or persons seeking burial or death benefits have the responsibility to send the completed Beneficiary Claim Form for Benefits (DWC-042) to DWC within one year following the employee's date of death, and injured employees are prohibited from making frivolous or fraudulent claims or demands. The effective date of the amended Notice is June 1, 2012. This timeframe provides system participants adequate time to prepare for changes resulting from the amended Notice and will coincide with the effective date of key Sunset Advisory Commission's legislation.

OIEC received no public comment on this rulemaking initiative either in writing or at the public hearing scheduled on November 30, 2011.

For: None.

Against: None.

The amendment is adopted pursuant to Texas Labor Code §§404.006, 404.109, and 409.005. Section 404.006 provides the Public Counsel rulemaking authority to adopt rules. Section 404.109 provides for the Public Counsel to adopt and provide the Commissioner of Workers' Compensation a notice of injured employee rights and responsibilities for distribution by the Texas Department of Insurance, Division of Workers' Compensation. Section 409.005 establishes the procedure for filing a report of injury, the format to be used, and authorizes the adoption of rules that must be included in the report and implementation of electronic filing of reports.

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 December 28, 2011.

TRD-201105830

Brian White

Deputy Public Counsel/Chief of Staff

Office of Injured Employee Counsel

Effective date: June 1, 2012

Proposal publication date: October 28, 2011

For further information, please call: (512) 804-4182



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

## CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

### SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

#### 40 TAC §19.214

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.214, concerning criteria for denying a license or renewal of a license, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6876).

The amendment is adopted to implement Senate Bill 78, 82nd Legislature, Regular Session, 2011, authorizing DADS to deny or refuse to renew a license if an applicant or certain persons associated with an applicant are listed in a health and human service agency's record of adverse licensing action maintained in accordance with Texas Government Code §531.952.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted 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; 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; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

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 December 29, 2011.

TRD-201105856

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: January 18, 2012

Proposal publication date: October 14, 2011

For further information, please call: (512) 438-3734



## CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

### SUBCHAPTER B. APPLICATION PROCEDURES

#### 40 TAC §90.17

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §90.17, concerning criteria for denying a license or renewal of a license, in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6878).

The amendment is adopted to implement Senate Bill 78, 82nd Legislature, Regular Session, 2011, authorizing DADS to deny or refuse to renew a license if an applicant or certain persons associated with an applicant are listed in a health and human service agency's record of adverse licensing action maintained in accordance with Texas Government Code §531.952.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted 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; 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; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities.

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 December 29, 2011.

TRD-201105857

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: January 18, 2012

Proposal publication date: October 14, 2011

For further information, please call: (512) 438-3734



## CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

### SUBCHAPTER B. APPLICATION PROCEDURES

#### 40 TAC §92.11

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §92.11, concerning criteria for licensing, in Chapter 92, Licensing Standards for Assisted Living Facilities, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6879).

The amendment is adopted to implement Senate Bill 78, 82nd Legislature, Regular Session, 2011, authorizing DADS to deny or refuse to renew a license if an applicant or certain persons associated with an applicant are listed in a health and human service agency's record of adverse licensing action maintained in accordance with Texas Government Code §531.952.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted 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; 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; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

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 December 29, 2011.

TRD-201105858  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: January 18, 2012  
Proposal publication date: October 14, 2011  
For further information, please call: (512) 438-3734



## CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

### SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

#### 40 TAC §97.11

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §97.11, concerning criteria and eligibility for licensing, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6882).

The amendment is adopted to implement Senate Bill 78, 82nd Legislature, Regular Session, 2011, authorizing DADS to deny or refuse to renew a license if an applicant or certain persons associated with an applicant are listed in a health and human service agency's record of adverse licensing action maintained in accordance with Texas Government Code §531.952.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted 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; 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; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for the licensing and regulation of home and community support 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 December 29, 2011.

TRD-201105859  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: January 18, 2012  
Proposal publication date: October 14, 2011  
For further information, please call: (512) 438-3734



## CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

### SUBCHAPTER B. APPLICATION PROCEDURES

#### 40 TAC §98.19

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §98.19, concerning criteria for denying a license or renewal of a license, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6883).

The amendment is adopted to implement Senate Bill 78, 82nd Legislature, Regular Session, 2011, authorizing DADS to deny or refuse to renew a license if an applicant or certain persons associated with an applicant are listed in a health and human service agency's record of adverse licensing action maintained in accordance with Texas Government Code §531.952.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted 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; 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; and Texas Human Resources Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

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 December 29, 2011.

TRD-201105860

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: January 18, 2012

Proposal publication date: October 14, 2011

For further information, please call: (512) 438-3734



## CHAPTER 99. DENIAL OR REFUSAL OF LICENSE

### 40 TAC §99.3

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §99.3, concerning adverse licensing record, in Chapter 99, Criminal Convictions Barring Facility Licensure, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6885).

The new section is adopted to implement Senate Bill 78, 82nd Legislature, Regular Session, 2011, authorizing DADS to deny or refuse to renew a license if an applicant or certain persons associated with an applicant are listed in a health and human

service agency's record of adverse licensing action maintained in accordance with Texas Government Code §531.952. In addition, the title of Chapter 99 is changed to Denial or Refusal of License.

DADS received no comments regarding adoption of the new section.

The new section is adopted 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; 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; and Texas Health and Safety Code Chapters 142, 242, 247, 252, and Texas Human Resources Code Chapter 103, which authorize DADS to license and regulate nursing facilities, intermediate care facilities, assisted living facilities, home and community support service agencies, and adult day care facilities respectively.

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 December 29, 2011.

TRD-201105861

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: January 18, 2012

Proposal publication date: October 14, 2011

For further information, please call: (512) 438-3734



# 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, Part 2, in its entirety:

Chapter 35 (Check Verification Entities), comprised of Subchapter A (§35.1); Subchapter B (§§35.11 - 35.17); Subchapter C (§35.31); Subchapter D (§§35.51 - 35.59); and Subchapter E (§35.71 and §35.72).

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](mailto: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-201105851

A. Kaylene Ray  
General Counsel

Texas Department of Banking

Filed: December 29, 2011

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Texas Medical Board

### Title 22, Part 9

The Texas Medical Board proposes to review Chapter 185, Physician Assistants, §§185.1 - 185.27, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §185.4.

Comments on the proposed review may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-201200008

Mari Robinson, J.D.  
Executive Director

Texas Medical Board

Filed: January 2, 2012

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# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings 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.

## Coastal Bend Workforce Development Board

### Request for Proposals

The Coastal Bend Workforce Development Board is soliciting proposals from qualified individuals or firms for the Management and Operations of the Workforce Solutions of the Coastal Bend Career Center System and also for Direct Child Care Management for Fiscal Year 2013.

**The Workforce Service Delivery System** incorporates at a minimum, general workforce information and referral; customer, employer, and job seeker services; customer intake, program eligibility and assessment; case management; enrollment into education and training programs; job placement; career counseling; support services; follow-up and retention services as funded by the Workforce investment Act (WIA), Temporary Assistance to Needy Families (TANF)/Choices, Supplemental Nutrition Assistance Program (SNAP) Employment and Training, and Wagner-Peyser for the 12-county Coastal Bend area.

**The Direct Child Care Services** provides child care services to eligible families in need of child care for their children. The provision of child care services will be delivered by the Contractor co-located at the workforce centers. Management of services will include, at a minimum, management of funds; intake, eligibility and management of services for parents and self-arranged providers; assessment and referral to other related services; provision for resources for consumer education information; and coordination of services to families and children. This procurement may include provider management functions, but does not include provider Quality Improvement programs.

A Pre-Proposal Conference will be held for both contract services on **Wednesday, January 18, 2012**. The Pre-Proposal Conference will be held at the Staples Workforce Center of the Coastal Bend, 520 North Staples Street, Corpus Christi, Texas 78401, Conference Room 1. The conference meeting times are as follows:

\* **RFP for Management and Operations of Career Centers - 10:00 a.m. (CST)**

\* **RFP for Direct Child Care Services - 1:30 p.m. (CST)**

**Attendance at this conference is not mandatory, but it is strongly recommended.** However, for those individuals that are unable to attend the conference, you may participate via tele-conference. To receive information on tele-conferencing, call (361) 885-3013 or e-mail robert.ramirez@workforcesolutionscb.org. Notes from this conference will be provided to entities that have requested the RFP and will be posted on the Board's webpage.

Interested parties may obtain a copy of the RFP by either calling or e-mailing Robert Ramirez, Contracts and Procurement Officer at (361) 885-3013 or robert.ramirez@workforcesolutionscb.org. Interested parties may also obtain a copy of the RFP by visiting our website at [www.workforcesolutionscb.org](http://www.workforcesolutionscb.org). The RFPs are to be published and released on **Tuesday, January 10, 2012, 1:00 p.m. (CST)**.

The process consists of the submission of both an application and proposal. The deadline for receipt of **Applications** is **Monday, February 6, 2012, 4:00 p.m. (CST)** and **Proposals** is **Monday, March 12,**

**2012, 4:00 p.m. (CST)**. Applications and Proposals submitted without the proper forms or after the deadline will not be considered. Mailed or hand delivered responses are acceptable. Faxed or e-mailed copies will not be accepted. **Applications must be timely and approved for proposals to be responsive.**

Workforce Solutions is an Equal Opportunity Employer/Program. Historically Underutilized Businesses (HUB's) are encouraged to apply. Auxiliary aid and services are available upon request to individuals with disabilities. Deaf, hard-of-hearing or speech impaired customers may contact **Relay Texas:** 1-800-735-2989 (TDD) and 1-800-735-2988 or 7-1-1 (Voice).

TRD-201200036

Hazel Sasine

Administrative Assistant to the Board

Coastal Bend Workforce Development Board

Filed: January 3, 2012

## Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 14, 2011, through December 20, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office's web site. The notice was published on the web site on December 28, 2011. The public comment period for this project will close at 5:00 p.m. on January 27, 2012.

### FEDERAL AGENCY ACTIONS:

**Applicant: Larry Kelly (Port of Port Arthur);** Location: The project site is located in the Sabine Neches Waterway north of State Highway 82, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. NAD 83, Latitude: 29.857015 North; Longitude: -93.943591 West. Project Description: The applicant proposes to place articulated concrete matting and riprap along 1,677 linear feet of shoreline for erosion control. In addition, the applicant proposes to fill a 1.24 acre canal with 12,077 cubic yards of fill material. The canal is described as an abandoned storm water discharge canal. The purpose of the proposed project is to protect property and infrastructure from erosion, and to establish a berthing area for shipping vessels. The applicant has not proposed to mitigate. CMP Project No.: 12-0557-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00303 is being eval-

uated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Cimarex Energy Company;** Location: The project site is located within a 97-square-mile (sq mi) area that includes wetlands, uplands, and open water habitat within and adjacent to waters of the U.S., including rivers, canals, lakes, and sloughs associated with the Lower Neches watershed and the Big Thicket National Preserve (BTNP), in Hardin, Jasper, Jefferson, and Orange Counties, Texas. The project center of the project area can be located on the U.S.G.S. quadrangle map entitled: Silsbee, Texas. Project Description: The applicant proposes to conduct work within Section 404 and Section 10 waters of the United States utilizing vibroseis, a process where a land-vibrating truck propagates signals into the earth, and shothole operational methodology as a source of energy for a three-dimensional (3-D) seismic survey. Once the project begins, it is estimated that approximately six months will be required to complete operations within the entire project area. However, there will not be a constant presence in any one area for the duration of the project. The project area encompasses approximately 17,375 acres, or 27 sq mi of the BTNP. The applicant is working closely with National Park Service (NPS) personnel to prepare a Plan of Operations and Environmental Assessment to minimize impacts within this sensitive area, while allowing the applicant to accomplish objectives. The project area also encompasses a portion of Village Creek State Park, and we have initiated coordination with Texas Parks and Wildlife Department (TPWD) in order to help ensure protection of resources within this area. CMP Project No.: 12-0558-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00570 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [kate.zultner@glo.texas.gov](mailto:kate.zultner@glo.texas.gov). Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201200044

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: January 4, 2012

## ◆ ◆ ◆ Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Subchapters F, G and H, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP #203a) for the purpose of obtaining investment

consulting services for the Board. The selected consultant (Consultant) will advise and assist the Board and Comptroller in administering all of the Board's investment activities related to the Texas Tomorrow Funds (Funds). The Funds include the Texas Tomorrow Fund (Prepaid Program), the Texas College Savings Plan and Lonestar 529 Plan, the Texas Tuition Promise Fund, and the Texas Save and Match Program. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP on behalf of the Board so that the Board may move forward with retaining the necessary investment consultant. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the Consultant will be expected to begin performance of the contract on or about September 1, 2012, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th Street, Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up in the Issuing Office on Friday, January 13, 2012, after 10:00 a.m. Central Time (CT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CT on Friday, January 13, 2012.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office no later than 2:00 p.m. (CT) on Friday, January 20, 2012. Prospective proposers are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-Mandatory Letters of Intent must be addressed to the attention of the Assistant General Counsel and must be signed by an official of that entity. On or about Wednesday, January 25, 2012, the Comptroller expects to post responses to questions on the ESBD. Late Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel no later than 2:00 p.m. (CT), on Wednesday, February 1, 2012. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Proposals in the Issuing Office. Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - January 13, 2012, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - January 20, 2012, 2:00 p.m. CT; Official Responses to Questions posted - January 25, 2012; Proposals Due - February 1, 2012, 2:00 p.m. CT; Contract Execution - August 31, 2012, or as soon thereafter as practical; Commencement of Work - September 1, 2012. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Notices of changes to items directly impacting the original RFP or proposal process will be posted on the ESBD. Any amendment to this solicitation will be posted on the ESBD as a RFP

Addendum. It is the responsibility of interested parties to periodically check the ESD for updates to the RFP prior to submitting a proposal.

TRD-201200042

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: January 4, 2012



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/09/12 - 01/15/12 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/09/12 - 01/15/12 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 01/01/12 - 01/31/12 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 01/01/12 - 01/31/12 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201200032

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 3, 2012



## Texas Council for Developmental Disabilities

### Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to be used to further develop the Gulf Coast of Texas African American Family Support Conference into a sustainable annual conference. Eligible applicants are limited to organizations that can provide evidence they were actively involved in the planning and implementation of the 2011 Gulf Coast of Texas African American Family Support Conference; are located in the Greater Houston area; and have a history of successful collaboration with other groups that specifically serve, or are made up of, African Americans living in the Greater Houston area.

The Council has approved funds up to \$35,000 for year 1; up to \$35,000 for year 2; and up to \$15,000 for year 3 for one project funded under this Announcement. Funds available for this project are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of an independent review process established by the Council and the availability of funds. **Continuation funding for the subsequent years will not be automatic**, but will be based on a review of the project's accomplishments and other items. Non-federal

matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP or more information about TCDD may be obtained through TCDD's website at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP should be directed to Sonya Hosey, Grants Management Director, at (512) 437-5437 or email [Sonya.Hosey@tcdd.state.tx.us](mailto:Sonya.Hosey@tcdd.state.tx.us). Application packets must be requested in writing or downloaded from the Internet.

**Deadline:** One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TCDD, not later than 4:00 p.m. Central Time, Wednesday, March 7, 2012, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Jeri Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to [Jerianne.Barnard@tcdd.state.tx.us](mailto:Jerianne.Barnard@tcdd.state.tx.us).

**Proposals will not be accepted after the due date.**

**Grant Proposers' Workshops:** The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at [http://txddc.state.tx.us/grants\\_projects/rfp\\_announcements.asp](http://txddc.state.tx.us/grants_projects/rfp_announcements.asp) for a schedule of conference calls for this RFP.

TRD-201200041

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: January 4, 2012



## 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 February 13, 2012. 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 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 February 13, 2012. 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: AASIF CORPORATION dba Delaware Food Mart; DOCKET NUMBER: 2011-1051-PST-E; IDENTIFIER: RN103011433; LOCATION: Beaumont, Jefferson 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); and 30 TAC §115.248(1) and Texas Health and Safety Code, §382.085(b), by failing to ensure that at least one station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the executive director and each current employee receives in house Stage II recovery training regarding the purpose and correct operation of the vapor recovery equipment; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Bahram Solhjou; DOCKET NUMBER: 2011-1430-MWD-E; IDENTIFIER: RN102079043; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §317.4(a)(8), by failing to annually test the reduced pressure zone backflow prevention device; 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012882001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2009 by September 1, 2009; 30 TAC §305.125(5) and §317.7(e), and TPDES Permit Number WQ0012882001, Operational Requirements (OR) Number 1, by failing to properly operate and maintain the facility and all of its systems of treatment and collection; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012882001, OR Number 1, by failing to properly operate and maintain the facility and all of its systems of treatment and collection; PENALTY: \$3,528; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: City of Kerrville; DOCKET NUMBER: 2011-1664-MWD-E; IDENTIFIER: RN100844802; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010576001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of municipal wastewater from the collection system into water in the state; PENALTY: \$15,500; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Levelland; DOCKET NUMBER: 2011-1411-MSW-E; IDENTIFIER: RN102289543; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: transfer station; RULE VIOLATED: 30 TAC §330.219(b)(2) and Municipal Solid Waste (MSW) Number 40051, Site Operating Plan (SOP) §330.219 Recordkeeping and Reporting Requirements, Page 8, by failing to properly record and maintain records of inspection and training activities as required by the SOP; 30 TAC §330.231 and MSW Registration Number 40051, SOP §330.231 Facility Sign, Page 13, by failing to display all required information on the facility sign; and 30 TAC

§330.203(b) and MSW Registration Number 40051, SOP §330.203 Waste Acceptance and Analysis, Page 7, by failing to comply with the maximum limitation on the amount of waste to be stored at the facility at any one point in time as required by the SOP; PENALTY: \$2,950; Supplemental Environmental Project offset amount of \$2,360 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Cleanup; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(5) COMPANY: City of Yorktown; DOCKET NUMBER: 2011-1610-MWD-E; IDENTIFIER: RN103025805; LOCATION: Yorktown, DeWitt County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010323001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$30,600; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2011-1691-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 1329, Special Conditions Number 1, Federal Operating Permit Number O-01974, Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an emissions event (Incident Number 154284) that was discovered on May 8, 2011; PENALTY: \$64,533; Supplemental Environmental Project offset amount of \$25,813 applied to Texas Parent Teacher Association - Texas Parent Teacher Association Clean School Buses; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: GRANDE BUTANE COMPANY, INCORPORATED; DOCKET NUMBER: 2011-1784-MSW-E; IDENTIFIER: RN106215387; LOCATION: Rio Grande, Starr County; TYPE OF FACILITY: automobile repair center; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §328.58(a), by failing to maintain a record of each individual load of used or scrap tires transported from the facility; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2545; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: J T Kennard III dba Kennard and Sons Excavating; DOCKET NUMBER: 2011-2119-MSW-E; IDENTIFIER: RN106143316; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: quarry fill site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,900; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2545; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Lone Star Ready Mix, LP; DOCKET NUMBER: 2011-1489-MLM-E; IDENTIFIER: RN104981311; LOCATION: Leander, Williamson County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §213.23(a)(1) and Contributing Zone Plan (CZP) Number 11-06080705, Standard Conditions (SC) Number 3, by failing to obtain approval of a modification to an approved CZP prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone; 30 TAC §213.24(6)(C) and CZP Number 11-06080705, SC Number 10, by failing to submit written certification

by a Texas Licensed Professional Engineer that the permanent best management practices were constructed as designed within 30 days of site completion; and 30 TAC §101.201(a)(1) and Texas Health and Safety Code, §382.085(b), by failing to determine if an emissions event was reportable and to notify the TCEQ regional office as soon as practicable, but not later than 24 hours after the discovery of a reportable emissions event; PENALTY: \$4,900; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: PALA, INCORPORATED dba EZ Mart Shell; DOCKET NUMBER: 2011-1481-PST-E; IDENTIFIER: RN101474153; LOCATION: Houston, Harris 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: \$4,600; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Texas Petroleum Group, LLC; DOCKET NUMBER: 2011-1537-PST-E; IDENTIFIER: RN101161974; LOCATION: Houston, Harris 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 per month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Raymond Marlow P.G., (409) 899-8785; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: WE2 ENTERPRISES INCORPORATED dba Super Stop; DOCKET NUMBER: 2011-1661-PST-E; IDENTIFIER: RN101444214; LOCATION: Houston, Harris 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: \$2,600; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2545; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201200040

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 4, 2012



### Notice of Water Quality Applications

The following notices were issued on December 23, 2011 through December 30, 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

PILGRIMS PRIDE CORPORATION which operates the Pilgrim's Pride Corporation Southwest Wastewater Plant, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003017000 to authorize an increase in the discharge of treated process wastewater and domestic wastewater from a daily average flow not to exceed 3,000,000 gallons per day to a daily average flow not to exceed 3,500,000 gallons per day and a 24-hour peak flow not to exceed 3,000,000 gallons to a 24-hour peak flow not to exceed 5,000,000 gallons via Outfall 001. The facility is located at 664 Farm-to-Market Road 127 West, Mt. Pleasant, Titus County, Texas 75456.

HINES REIT 2200 Ross Avenue GP LLC and Hines Interests Limited Partnership, which operates Chase Tower, has applied for a major amendment with renewal to TPDES Permit No. WQ0004161000 to authorize the removal of Other Requirement No. 5 from the permit, which requires the permittee to continuously operate an air sparging treatment system to treat effluent discharging via Outfall 001. The current permit authorizes the discharge of ground water and storm water at a daily average flow not to exceed 0.155 million gallons per day via Outfall 001. The facility is located at 2200 Ross Avenue, in the Dallas Central Business District, bounded by Ross Avenue to the north, Pearl Street to the west, San Jacinto Street to the south, and Leonard Street to the east, in the City of Dallas, Dallas County, Texas 75201.

SABINE RIVER AUTHORITY OF TEXAS SABINE RIVER AUTHORITY-STATE OF LOUISIANA AND ENTERGY TEXAS INC which operates the Toledo Bend Dam, a hydroelectric power generating station, has applied for a renewal of TPDES Permit No. WQ0004845000, which authorizes the discharge of once through non-contact cooling water at a daily maximum flow not to exceed 1,200,000 gallons per day via Outfall 001, low volume waste sources on an intermittent and flow variable basis via Outfall 002, and storm water on an intermittent and flow variable basis via Outfall 003. The facility is located at 209 Private Road 6055 off of Farm-to-Market 692, 15 miles northeast of Burkeville, Texas, approximately 1.0 mile northeast of the intersection with State Highway 255 and Farm-to-Market 692, Newton County, Texas 75932.

CITY OF MOUNT PLEASANT has applied for a renewal of TPDES Permit No. WQ0010575004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,910,000 gallons per day. The facility is located at 2561 County Road 4540, approximately 5,000 feet east of U.S. Highway 271 and approximately 11,000 feet north of the crossing of U.S. Highway 271 and Big Cypress Creek in Titus County, Texas 75455.

CITY OF JACKSONVILLE has applied for a renewal of TPDES Permit No. WQ0010693001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The applicant has also applied to the Texas Commission on Environmental Quality (TCEQ) for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located at 1302 Canada Street, southeast of the crossing of Ragsdale Creek by Canada Street, southeast of the City of Jacksonville in Cherokee County, Texas 75766.

THE SAN ANTONIO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0010749007, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility will be located at 1961 Graytown Road, approximately 0.5 mile northwest of the intersection of Graytown Road and Abbott Road in Eastern Bexar County, Texas 78152.

CITY OF HUNTSVILLE has applied for a renewal of TPDES Permit No. WQ0010781003, which authorizes the discharge of treated do-

mestic wastewater at an annual average flow not to exceed 4,150,000 gallons per day. The facility is located at 94 Parker Creek Road, approximately 0.8 miles north of the intersection of State Highway 19 and Ellisor Road and 3.5 miles northeast of the intersection of U.S. Highway 130 and U.S. Highway 190, at the north end of Ellisor Road near the City of Huntsville in Walker County, Texas 77320.

INVERNESS FOREST IMPROVEMENT DISTRICT has applied for a renewal of TPDES Permit No. WQ0010783001, 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 22602 East Hardy Road on the north side of Cypress Creek, approximately 800 feet east of Hardy Road bridge crossing Cypress Creek in Harris County, Texas 77073.

CNP UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011239001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 530 Cypress Station Drive, Houston, on the south bank of Cypress Creek, approximately 2,700 feet west of Interstate Highway 45 in Harris County, Texas 77090.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201200039

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 4, 2012



## Texas Health and Human Services Commission

### Notice of Adopted Nursing Facility Payment Rate for Tyler State Veterans Home

**Adopted Rates.** As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission has adopted a per diem payment rate for the Tyler state-owned veterans nursing facility. This payment rate was determined in accordance with the rate setting methodology listed below under "Methodology and Justification." The public hearing notice and proposed rates were published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7917). The hearing was held on December 7, 2011, and there were no comments.

The adopted payment rate, to be effective upon the effective date of the facility's Medicaid nursing facility contract, is \$237.00.

**Methodology and Justification.** The adopted rate was determined in accordance with the rate setting methodology at 1 Texas Administrative Code Chapter 355, Subchapter C, §355.311, Medicaid Reimbursement Rates for State Veterans Homes.

TRD-201105852

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: December 29, 2011



Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for an amendment to the Youth Empowerment Services (YES) waiver program, under the authority of §1915(c) of the Social Security Act. The Youth Empowerment Services waiver program is currently approved for the three-year period beginning April 1, 2010, and ending March 31, 2013. It is expected that the Centers for Medicare and Medicaid Services will approve a previous amendment submitted in November 2011, which updated one type of provider that provides out-of-home respite services. The proposed effective date for this amendment is April 1, 2012.

The program is designed to provide community-based services to children with severe emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver program serves up to an estimated 300 youth at any given time who are under age 19 and who are predicted to remain in the waiver program for 12 months. The waiver is limited to individuals residing in Bexar County and Travis County.

The purpose of this amendment is to expand the geographical area of the waiver to include Tarrant County in addition to Bexar and Travis Counties. Expanding the geographical area will allow the waiver to serve children and adolescents with severe emotional disturbance in Tarrant County in order to reduce out-of-home placements, reduce inpatient psychiatric treatment by all child-serving agencies, and to prevent relinquishment of parental custody.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning April 1, 2012, through March 31, 2013. This amendment maintains cost neutrality for waiver years 2012 through 2013.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200; telephone (512) 491-1152; fax (512) 491-1957; or by email at [Christine.Longoria@hhsc.state.tx.us](mailto:Christine.Longoria@hhsc.state.tx.us).

TRD-201105855

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: December 29, 2011



## Texas Department of Insurance

### Company Licensing

Application to do business in the State of Texas by MARCH VISION CARE OF TEXAS, INC., a domestic Health Maintenance Organization. The home office is in Austin, Texas.

Application for admission to the State of Texas by TOKIO MARINE INSURANCE COMPANY USA, a foreign fire and/or casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201105849



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**Texas Lottery Commission**

Instant Game Number 1395 "Spin 3"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1395 is "SPIN 3." The play style is "slots-straight line."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1395 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1395.

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 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: \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000, \$30,000, 7 SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, CHERRY SYMBOL, DIAMOND SYMBOL, HORSESHOE SYMBOL, LEMON SYMBOL, ORANGE SYMBOL, CROWN SYMBOL, STAR SYMBOL, RABBIT FOOT SYMBOL, CLOVER SYMBOL and 3 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. 1395 - 1.2D**

| <b>PLAY SYMBOL</b> | <b>CAPTION</b> |
|--------------------|----------------|
| \$2.00             | TWO\$          |
| \$4.00             | FOUR\$         |
| \$5.00             | FIVE\$         |
| \$10.00            | TEN\$          |
| \$20.00            | TWENTY         |
| \$50.00            | FIFTY          |
| \$100              | ONE HUND       |
| \$200              | TWO HUND       |
| \$1,000            | ONE THOU       |
| \$30,000           | 30 THOU        |
| 7 SYMBOL           | SEVEN          |
| GOLD BAR SYMBOL    | -BAR-          |
| BELL SYMBOL        | -BELL-         |
| CHERRY SYMBOL      | CHERRY         |
| DIAMOND SYMBOL     | DIAMOND        |
| HORSESHOE SYMBOL   | -SHOE-         |
| LEMON SYMBOL       | LEMON          |
| ORANGE SYMBOL      | ORANGE         |
| CROWN SYMBOL       | CROWN          |
| STAR SYMBOL        | STAR           |
| RABBIT FOOT SYMBOL | FOOT           |
| CLOVER SYMBOL      | CLOVER         |
| 3 SYMBOL           | THREE          |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. 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 \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000 or \$30,000.

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 (1395), 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: 1395-0000001-001.

K. Pack - A pack of "SPIN 3" 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 "SPIN 3" Instant Game No. 1395 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 "SPIN 3" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) play symbols. If a player reveals 3 identical play symbols within a SPIN, the player wins the PRIZE for that SPIN. If a player reveals three "3" play symbols in the same SPIN, the player wins TRIPLE the PRIZE for that SPIN. 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 40 (forty) 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 40 (forty) 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 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 40 (forty) 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. Players can win up to ten (10) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play and prize symbol patterns. Two (2) tickets have identical play or prize symbol patterns if they have the same play and prize symbols in the same positions.

C. There will be no duplicate SPINS, in any order, on a ticket, except when required/restrained by other parameters, the prize structure, or play action.

D. The use of three (3) "3" play symbols in the same SPIN will only occur as dictated by the prize structure.

E. When three (3) "3" play symbols appear in the same SPIN, the prize amount won will always be tripled as dictated by the prize structure.

F. Non-winning tickets will never contain more than four (4) identical play symbols among the thirty (30) play spots (with the exception of the "3" play symbol).

G. No ticket will ever contain more than two (2) identical non-winning prize symbols.

H. On a ticket, winning play symbols will not be used as non-winning play symbols within the non-winning SPIN(S).

I. There will never be two (2) identical play symbols and a "3" play symbol in the same SPIN.

J. There will be at least three (3) near wins (pairs in left and center positions) on non-winning tickets.

K. There will be no three (3) identical non-winning play symbols in adjacent positions in any column or diagonal line.

L. There will be at least four (4) "3" play symbols on non-winning tickets, except where restricted by the prize structure.

M. Non-winning prize symbols will never be the same as the winning prize symbol(s).

N. The top prize symbol will appear on every ticket unless otherwise restricted.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "SPIN 3" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, 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 or \$200 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 Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SPIN 3" Instant Game prize of \$1,000 or \$30,000, 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 "SPIN 3" 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 Texas Lottery is not responsible for tickets lost in the mail. 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:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family 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 under \$600 from the "SPIN 3" 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 \$600 or more from the "SPIN 3" 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 rights to a prize that is 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. 1395. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1395 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$2          | 480,000                        | 12.50                       |
| \$4          | 576,000                        | 10.42                       |
| \$5          | 144,000                        | 41.67                       |
| \$10         | 72,000                         | 83.33                       |
| \$20         | 48,000                         | 125.00                      |
| \$50         | 25,225                         | 237.86                      |
| \$200        | 2,500                          | 2,400.00                    |
| \$1,000      | 75                             | 80,000.00                   |
| \$30,000     | 10                             | 600,000.00                  |

\*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 4.45. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1395 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 will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 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. 1395, 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-201105854  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: December 29, 2011



Instant Game Number 1408 "20th Anniversary"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1408 is "20th ANNIVERSARY." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1408 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1408.

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 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: \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$1,000, \$250,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and \$\$ 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.1408 - 1.2D

| PLAY SYMBOL | CAPTION  |
|-------------|----------|
| \$5.00      | FIVE\$   |
| \$10.00     | TEN\$    |
| \$15.00     | FIFTN    |
| \$20.00     | TWENTY   |
| \$50.00     | FIFTY    |
| \$100       | ONE HUND |
| \$250       | TWO FTY  |
| \$1,000     | ONE THOU |
| \$250,000   | 250 THOU |
| 01          | ONE      |
| 02          | TWO      |
| 03          | THR      |
| 04          | FOR      |
| 05          | FIV      |
| 06          | SIX      |
| 07          | SVN      |
| 08          | EGT      |
| 09          | 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   |
| 41   | FRON   |
| 42   | FRTO   |
| 43   | FRTH   |
| 44   | FRFR   |
| 45   | FRFV   |
| 46   | FRSX   |
| 47   | FRSV   |
| 48   | FRET   |
| 49   | FRNI   |
| 50   | FFTY   |
| \$\$ | DOUBLE |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. 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, \$250 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$250,000.

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 (1408), 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: 1408-0000001-001.

K. Pack - A pack of "20th ANNIVERSARY" Instant Game tickets contains 075 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 "20th ANNIVERSARY" Instant Game No. 1408 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 "20th ANNIVERSARY" 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

"\$\$" play symbol, the player wins DOUBLE 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 within a pack will not have identical patterns of either play symbols or prize symbols.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to twenty (20) times.

D. On winning and non-winning tickets, the top cash prizes of \$250,000 and \$1,000 will each appear at least once, except on tickets winning twenty (20) times.

E. On winning tickets, a non-winning prize amount will not match a winning prize amount.

F. On all tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.

G. This ticket consists of twenty (20) YOUR NUMBERS, twenty (20) Prize symbols and five (5) WINNING NUMBERS.

H. All WINNING NUMBERS on a ticket will be different from each other.

I. All YOUR NUMBERS on a ticket will be different from each other, except as required by the prize structure to create multiple wins.

J. Tickets winning more than one (1) time will use as many WINNING NUMBERS as possible to create matches.

K. On non-winning tickets, a WINNING NUMBER will never match a YOUR NUMBER.

L. The \$\$ (double) symbol will never appear as a WINNING NUMBER.

M. The \$\$ (double) symbol will never appear on non-winning tickets.

N. The \$\$ (double) symbol will win double the prize amount shown as per the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "20th ANNIVERSARY" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250 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, \$250 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 Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "20th ANNIVERSARY" Instant Game prize of \$1,000 or \$250,000, 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 "20th ANNIVERSARY" 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 Texas Lottery is not responsible for tickets lost in the mail. 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:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family 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 "20th ANNIVERSARY" 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 \$600 or more from the "20th ANNIVERSARY" 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 rights to a prize that is not claimed within that period, and in the manner speci-

fied 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. 1408. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1408 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$5          | 800,000                        | 7.50                        |
| \$10         | 600,000                        | 10.00                       |
| \$15         | 160,000                        | 37.50                       |
| \$20         | 80,000                         | 75.00                       |
| \$50         | 45,000                         | 133.33                      |
| \$100        | 16,500                         | 363.64                      |
| \$250        | 1,200                          | 5,000.00                    |
| \$500        | 900                            | 6,666.67                    |
| \$1,000      | 100                            | 60,000.00                   |
| \$250,000    | 9                              | 666,666.67                  |

\*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 3.52. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1408 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 will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 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. 1408, 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-201200037  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: January 3, 2012

## 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 December 29, 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 Windjammer Communications, LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 40061.

The requested amendment is to expand the service area footprint to include the municipality of Palestine, 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 40061.

TRD-201200033  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 3, 2012

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 29, 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 US Cable of Coastal-Texas, L.P. to Amend its State-Issued Certificate of Franchise Authority; Name Change and Transfer in Ownership/Control, Project Number 40067.

The requested amendment is to reflect the name change to Baja Broadband, LLC d/b/a Baja Broadband and a transfer of ownership/control.

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 40067.

TRD-201200034

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 3, 2012

### Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on December 27, 2011, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Application of Uptain Group, Inc. for a Waiver to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 40057.

The Application: Uptain Group, Inc. (Uptain) filed a request for a waiver of the registration number requirement, in the Public Utility Commission of Texas prescribed application for a permit to operate automatic dial announcing devices (ADAD). Specifically, question 11(e) of the application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA).

Uptain stated that it uses an in-house software-based dialing platform using Voice over Internet Protocol (VoIP) and does not have an FRN.

Persons wishing to comment on the action sought or intervene 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. 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 40057.

TRD-201200035  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 3, 2012

## Texas Veterans Commission

### Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible applicants are units of local government, IRS Code §501(c)(19) Posts or Organizations of Past or Present Members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this solicitation is to receive applications proposing projects that meet the needs of veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; family and/or individual counseling

for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI); employment, training/job placement assistance; housing assistance; family and child services; non-criminal legal services; development of professional services networks; and enhancement or improvement of veterans' assistance programs, including veterans' representation and counseling. Grant funds must be used to supplement, not supplant, existing funds and/or services.

**Dates of Project.** The projected start date for these grants is Sunday, July 1, 2012, or the date that the grant agreement is executed, whichever is later, with an ending date of Sunday, June 30, 2013. TVC will require periodic performance and expenditure reports.

**Project Amount.** For this solicitation, the minimum grant award will be \$10,000. The maximum grant award will be \$1,000,000. This project is funded 100% from state funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the solicitation. Reviewers from the TVC Fund for Veterans' Assistance Advisory Committee will evaluate applications and make award recommendations to the Commission based on the overall quality of the proposed project and the extent to which the project addresses the needs of veterans and their families. Applications must address all requirements of the application to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. This solicitation does not commit TVC to pay any costs before an application is approved and a grant agreement is signed. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

**Requesting the Materials Needed to Complete an Application.** All information needed to respond to this solicitation will be posted to the TVC website at <http://www.tvc.state.tx.us> on or about Friday, January 13, 2012.

**Further Information.** In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via email to [grants@tvc.state.tx.us](mailto:grants@tvc.state.tx.us). All questions

and the written answers will be posted on the TVC website in the format of Frequently Asked Questions (FAQs).

**Deadline for Receipt of an Application.** Applications must be received by TVC no later than 5:00 p.m. (Central Time), Tuesday, February 7, 2012, to be considered eligible for funding.

TRD-201200045

Bill Wilson

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: January 4, 2012

## ◆ ◆ ◆ **Workforce Solutions Capital Area**

### **Request for Quotation - Marketing Services**

Workforce Solutions Capital Area Workforce Board is soliciting proposals for Marketing Services.

The purpose of this Request for Quotation (RFQ) is to solicit quotations from qualified vendors to provide marketing services. RFQ packages may be obtained from Workforce Solutions Capital Area, 6505 Airport Blvd., Suite 101E, Austin, Texas, beginning Thursday, December 29, 2011, at 1:00 p.m., and thereafter, weekdays from 8:00 a.m. to 5:00 p.m. RFQ packages may be downloaded from the Board's website at [www.wfscapitalarea.com](http://www.wfscapitalarea.com). All responses to the RFQ must be received by Workforce Solutions Capital Area by Tuesday, January 17, 2012, 4:00 p.m.--absolutely no exceptions.

All inquiries regarding this solicitation must be in writing and should be submitted to Weston Sythoff at [weston.sythoff@wfscapitalarea.com](mailto:weston.sythoff@wfscapitalarea.com) by the close of business at 5:00 p.m. on January 9, 2012.

TRD-201105848

Alan D. Miller

Executive Director

Workforce Solutions Capital Area

Filed: December 28, 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)