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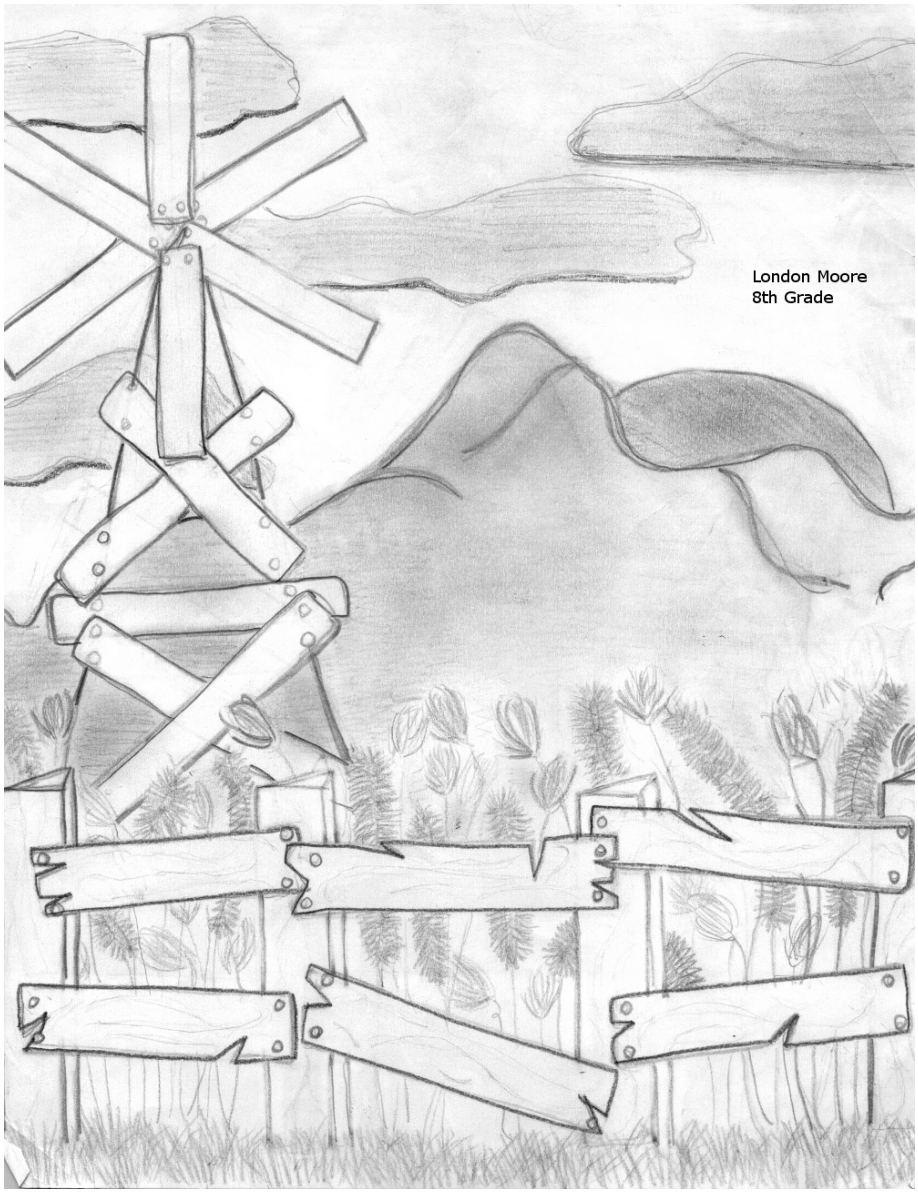

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

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

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

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Opinions

Opinion No. GA-0915

The Honorable Lucinda A. Vickers

Atascosa County Attorney

#1 Courthouse Circle Drive #3-B

Jourdanton, Texas 78026

Re: Whether a county clerk must allow the public to copy records with a sheet-feed scanner (RQ-0916-GA)

S U M M A R Y

Under Texas law, the public has a right to access and copy records maintained by county clerks. Texas courts have held that this right is subject to a county clerk's reasonable rules and regulations. A county clerk's rules regarding the public's access to and copying of records would be valid if the rules did not go beyond the statutes providing for access to and copying of records.

Opinion No. GA-0916

Ms. Jeanna Willhelm

Winkler County Auditor

Post Office Drawer O

Kermit, Texas 79745

Re: Whether a county treasurer, county auditor, or a county human resources officer is responsible for the performance of various duties involving disbursement and endorsement (RQ-0998-GA)

S U M M A R Y

By enactment of Local Government Code sections 113.041 and 113.042, the Legislature has designated the county treasurer as the official to perform the disbursement of county funds and to endorse payments to county payees, and the commissioners court may not reassign those duties elsewhere.

Pursuant to Local Government Code subsection 113.008(d), the county treasurer must reconcile all balances and transactions for each treasury account. No exception is made for those accounts where the county treasurer has signed the signature card.

Nothing in Senate Bill 373 or Code of Criminal Procedure article 103.004 requires that the county treasurer issue a receipt for funds deposited by other county officers on the same day they are taken to the bank.

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

TRD-201201603
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: March 27, 2012

♦ ♦ ♦

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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.9, 3.14, 3.46, 3.79, 3.81, 3.95 - 3.97, 3.99, 3.100

The Railroad Commission of Texas (Commission) proposes amendments to §§3.9, 3.14, 3.46, 3.79, 3.81, 3.95 - 3.97, 3.99, and 3.100, relating to Disposal Wells; Plugging; Fluid Injection into Productive Reservoirs; Definitions; Brine Mining Injection Wells; Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations; Underground Storage of Gas in Productive or Depleted Reservoirs; Underground Storage of Gas in Salt Formations; Cathodic Protection Wells; and Seismic Holes and Core Holes. In a separate rulemaking, the Commission proposes similar amendments to two rules in Chapter 5 of this title, relating to Carbon Dioxide (CO_2).

The Commission recently adopted similar amendments to §3.30 of this title, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), in a separate rulemaking. The Commission also recently adopted, with an effective date of May 1, 2012, amendments to §3.78 of this title, relating to Fees and Financial Security Requirements, to implement new Texas Natural Resources Code, §91.0115, relating to Casing; Letter of Determination, as added by House Bill (HB) 2694 (82nd Legislature, Regular Session, 2011), regarding fees for a request from an applicant for a permit to drill an oil or gas well for a letter of determination stating the total depth of surface casing required for the well. In addition, the Commission will propose similar amendments to §3.13 of this title, relating to Casing, Cementing, Drilling, and Completion Requirements, in a future rulemaking.

The Commission proposes these amendments to implement Article 2 of HB 2694, which transferred from the Texas Commission on Environmental Quality (TCEQ) to the Railroad Commission of Texas (Commission) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, the law transfers from the TCEQ to the Commission, effective September 1, 2011, duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. After the transfer, the Commission will be responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the Commission.

The TCEQ's Surface Casing Program and staff transferred to the Commission effective September 1, 2011. The Surface Casing Program has been renamed the Groundwater Advisory Unit and is now located in the William B. Travis Building, 1701 North Congress, Austin, Texas.

The Commission proposes amendments to §3.9(2); §3.14(a)(1)(I), (d)(2), (e)(4), (f)(3), and (g)(4); §3.46(k)(1)(B); §3.81(d)(4)(I) and (g)(4)(B); §3.95(d)(2); §3.96(c)(4); §3.97(d)(2); §3.99(a)(3), (c), and (g); and §3.100(a)(4), (c), and (g)(1), to replace the phrases "TCEQ" and "Texas Commission on Environmental Quality (TCEQ) or its successor agencies" with the phrase "Groundwater Advisory Unit of the Oil and Gas Division."

The Commission also proposes new §3.79(27), relating to Definitions, to add a definition for "underground source of drinking water." The term is used for recommendations related to the Commission's federally-approved Underground Injection Control Program under the Safe Drinking Water Act.

The Commission proposes these amendments to reflect the transfer from the TCEQ to the Commission required under HB 2694 of the duties relating to groundwater protection letters. No other changes, including how the Commission makes determinations regarding groundwater protection, are proposed. For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the Commission (as did the TCEQ) will provide geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the Commission. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water. For recommendations related to injection in a non-producing zone, the Commission (as did the TCEQ) will provide geologic interpretation of the base of the underground source of drinking water as defined in 30 TAC §3.30 (relating to Memorandum of Understanding between the Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RRC)), which is the same definition in TCEQ's 30 TAC §331.2 (relating to Definitions).

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable implications relating to cost or revenues of state or local governments as a result of enforcing or administering the amendments. The proposed amendments update Commission rules to implement HB 2694 and reflect only a change in jurisdiction. Specifically, the law transfers from the TCEQ to the Commission, effective September 1, 2011, duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. The change makes the Commission responsible

for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the Commission. The Commission accounted for the fiscal impacts related to HB 2694 in the proposed amendments to §3.78, published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5771). The proposed amendments to §§3.9, 3.14, 3.46, 3.79, 3.81, 3.95 - 3.97, 3.99, and 3.100 do not impose any additional requirements, but merely delineate the regulatory authority of each agency. There is no cost of compliance to affected persons.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect, the public benefit will be clarification and consolidation of duties related to the protection of groundwater resources from oil and gas associated activities in the agency that also is responsible for regulation of oil and gas activities. There is no economic cost to persons required to comply with the amendments as proposed.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed amendments will have an adverse economic effect on small businesses or micro-businesses. The Commission has determined that because there is no cost of compliance for any affected person, the proposed rule will not have an adverse economic impact on small businesses or micro-businesses. Accordingly, the Commission has not prepared either an Economic Impact Statement or a Regulatory Flexibility Analysis for this proposal.

Pursuant to Texas Government Code, §2001.022, the Commission has determined that the proposed amendments will not have an adverse impact on local employment; therefore, the Commission has not prepared a local employment impact statement.

The Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis pursuant to section is not required.

The Commission reviewed the proposed amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0275039 and will be accepted until 12:00 p.m. (noon) on May 7, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes amendments to §§3.9, 3.14, 3.46, 3.79, 3.81, 3.95 - 3.97, 3.99, and 3.100 under Texas Water Code, §26.131, which gives the Commission jurisdiction over pollution of surface or subsurface waters from oil and gas exploration, development, and production activities; Texas Water Code, Chapter 27, which authorizes the Commission to adopt and enforce rules relating to injection wells; Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission under Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.201, which authorizes the Commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; Texas Natural Resources Code, §85.202, which authorizes the Commission to adopt rules to prevent waste of oil and gas in producing operations; Texas Natural Resources Code, §91.101, which authorizes the Commission to adopt rules relating to the various oilfield operations, including the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste; and Texas Natural Resources Code §91.602, which authorizes the Commission to adopt and enforce rules relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

Texas Water Code, §26.131, Chapter 27, and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602 are affected by the proposed amendments.

Statutory authority: Texas Water Code, §26.131, Chapter 27, and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Cross-reference to statute: Texas Water Code, §26.131, Chapter 27, and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Issued in Austin, Texas on March 20, 2012.

§3.9. Disposal Wells.

Any person who disposes of saltwater or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources shall be responsible for complying with this section, Texas Water Code, Chapter 27, and Title 3 of the Natural Resources Code.

(1) (No change.)

(2) Geological requirements. Before such formations are approved for disposal use, the applicant shall show that the formations are separated from freshwater formations by impervious beds which will give adequate protection to such freshwater formations. The applicant must submit a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~] stating that the use of such formation will not endanger the freshwater strata in that area and that the formations to be used for disposal are not freshwater-bearing.

(3) - (14) (No change.)

§3.14. Plugging.

(a) Definitions and application to plug.

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

(A) - (H) (No change.)

(I) Usable quality water strata--All strata determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~] to contain usable quality water.

(J) (No change.)

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

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

(d) General plugging requirements.

(1) (No change.)

(2) Cement plugs shall be set to isolate each productive horizon and usable quality water strata. Plugs shall be set as necessary to separate multiple usable quality water strata by placing the required plug at each depth as determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~]. The operator shall verify the placement of the plug required at the base of the deepest usable quality water stratum by tagging with tubing or drill pipe or by an alternate method approved by the district director or the district director's delegate.

(3) - (12) (No change.)

(e) Plugging requirements for wells with surface casing.

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

(4) Plugs shall be set as necessary to separate multiple usable quality water strata by placing the required plug at each depth as determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~].

(5) (No change.)

(f) Plugging requirements for wells with intermediate casing.

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

(3) Additionally, plugs shall be set as necessary to separate multiple usable quality water strata by placing the required plug at each depth as determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~].

(g) Plugging requirements for wells with production casing.

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

(4) Additionally, plugs shall be set as necessary to separate multiple usable quality water strata by placing the required plug at each depth as determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~].

(h) - (k) (No change.)

§3.46. Fluid Injection into Productive Reservoirs.

(a) - (j) (No change.)

(k) Area Permits. A person may apply for an area permit that authorizes injection into new or converted wells located within the area specified in the area permit. For purposes of this subsection, the term "permit area" shall mean the area covered or proposed to be covered by an area permit. Except as specifically provided in this subsection, the provisions of subsections (a) - (j) of this section shall apply in the case of an area permit and all injection wells converted, completed, operated, or maintained in accordance with that permit. Except as otherwise specified in the area permit, once an area permit has been issued, the operator may apply to operate individual wells within the permit area as injection wells as specified in paragraph (3) of this subsection.

(1) An application for an area permit must be accompanied by an application for at least one injection well. The applicant must:

(A) (No change.)

(B) identify the depth(s) of usable-quality water within the permit area, as determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~];

(C) - (J) (No change.)

(2) - (6) (No change.)

(l) - (n) (No change.)

§3.79. Definitions.

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

(1) - (26) (No change.)

(27) Underground source of drinking water--An aquifer or its portion which is not an exempt aquifer as defined in 40 Code of Federal Regulations §146.4 and which:

(A) supplies any public water system; or

(B) contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 milligrams per liter (mg/l) total dissolved solids.

§3.81. Brine Mining Injection Wells.

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

(d) Permit application.

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

(4) Application requirements for all applicants. All applicants shall submit the following information, using application forms supplied by the commission:

(A) - (H) (No change.)

(I) a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality~~] stating the depth to which fresh water strata should be protected;

(J) - (Q) (No change.)

(5) (No change.)

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

(g) Other permit conditions. In addition to the conditions required in all permits, the commission will establish conditions, as required on a case-by-case basis, to provide for and assure compliance with the requirements specified in this subsection.

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

(4) Construction requirements. Permits will specify construction requirements to assure that the injection operations will not

endanger fresh water. Changes in construction requirements during construction may be approved by the director as minor modifications of the permit. No such changes may be physically incorporated into the construction of the well prior to approval of the modifications by the director.

(A) (No change.)

(B) A new brine mining injection well must be cased and cemented in accordance with §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements), (Rule 13), provided, however, that the operator shall set and cement surface casing in accordance with the letter obtained from the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality~~] pursuant to subsection (d)(4)(I) of this section regardless of the total depth of the well. No alternative program for setting less surface casing will be authorized.

(C) (No change.)

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

(h) - (l) (No change.)

§3.95. Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations.

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

(d) Standards for underground storage zone.

(1) (No change.)

(2) Fresh water strata. The applicant must submit with the application a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~] stating the depth to which fresh water strata occur at each storage facility.

(e) - (r) (No change.)

§3.96. Underground Storage of Gas in Productive or Depleted Reservoirs.

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

(c) Application. An application to operate a gas storage project shall be filed with the commission by the owner or operator or proposed owner or operator. The application shall include the following:

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

(4) water protection letter--a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~] stating the depth to which fresh water strata occur in the project area;

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

(d) - (r) (No change.)

§3.97. Underground Storage of Gas in Salt Formations.

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

(d) Standards for underground storage zone.

(1) (No change.)

(2) Fresh water strata. The applicant must submit with the application a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality or its successor agencies~~] stating the depth to which fresh water strata occur at each storage facility.

(e) - (r) (No change.)

§3.99. Cathodic Protection Wells.

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

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

(3) Protection depth--Depth or depths at which usable quality water must be protected or isolated, as determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality (TCEQ) or its successor agencies~~].

(4) (No change.)

(b) (No change.)

(c) Determination of protection depth. Before drilling any cathodic protection well, an operator shall obtain a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~TCEQ~~] stating the protection depth or depths.

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

(g) Reporting. Within 30 days of completion of the last well in a project area, the operator shall submit a letter to the commission stating that each cathodic protection well in the project area has been completed in accordance with subsection (e) of this section. The letter must include the completion date for each well, the name and address of the operator, and the drilling permit and API numbers of the well, if applicable. A plat of the project area identifying cathodic protection well locations, counties, survey lines, scale, and northerly direction must be attached. In addition, a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~TCEQ~~] stating the protection depth or depths must be attached.

(h) (No change.)

§3.100. Seismic Holes and Core Holes.

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

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

(4) Protection depth--Depth or depths at which usable quality water must be protected or isolated, as determined by the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality (TCEQ) or its successor agencies~~].

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

(b) (No change.)

(c) Determination of protection depth. Before drilling any seismic hole or core hole in a project area, an operator shall obtain a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~TCEQ~~] stating the protection depth or depths in the project area.

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

(g) Reporting.

(1) Holes that do not penetrate any protection depth. Within 30 days of plugging the last hole in the project area, the operator shall submit a letter to the commission stating that each seismic hole or core hole in the project area has been plugged in accordance with subsection (e)(1) of this section. The letter must include the plugging date for each hole and the name and address of the operator. A plat of the project area identifying seismic or core hole locations, counties, survey lines, scale, and northerly direction must be attached. A United

States Geological Survey map of the project area with hole locations marked will satisfy the plat requirement. In addition, a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~TCEQ~~] stating the protection depth or depths must be attached.

(2) (No change.)

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

Filed with the Office of the Secretary of State on March 20, 2012.

TRD-201201466
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

16 TAC §3.15

The Railroad Commission of Texas proposes amendments to §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells. House Bill (HB) 3134 (82nd Legislature, Regular Session, 2011) took effect June 17, 2011, and amended Texas Natural Resources Code, §89.022 and §89.023, concerning plugging extensions for inactive wells.

Currently, §3.15(g) authorizes the Commission or its delegate to administratively deny an application for a plugging extension for an inactive well if it determines that the application does not meet the requirements of §3.15. Consistent with the statutory changes to Texas Natural Resources Code, §89.022, the proposed amendments only authorize administrative denial when an applicant has failed to maintain its organization report, to pay statutorily required organization report filing fees, or to provide statutorily required financial assurance. Where the Commission or its delegate determines that an applicant for a plugging extension has failed to comply with the substantive requirements for a plugging extension, the proposed amendments implement the statutory mandate that the applicant be given notice of the deficiency and 90 days to cure any defects in its application. If, after the 90-day period, the Commission determines that the application remains deficient, the applicant will be given notice of this determination and will have 30 days to request a hearing and pay the hearing fee. If a hearing is not timely requested or the hearing fee is not timely submitted, the plugging extension and associated organization report are subject to denial by Commission Order without further notice or opportunity for hearing. Under the proposed amendments, where an organization report cannot be renewed solely because of an administrative determination that the applicant has not complied with the substantive requirements for a plugging extension, the applicant's organization report remains in effect until the Commission approves its extension application or enters a final order denying the application.

HB 3134 mandates that the Commission set a hearing fee sufficient to cover the actual costs of hearings concerning Commission determinations that an application for a plugging extension is deficient. The Commission has determined that the hearing fee should be set at $4,500 per hearing to recover its reasonably anticipated costs based on an estimate of 100 hearings on applications to contest administrative determinations that an operator is not in compliance with the inactive well requirements of Chapter 89 of the Texas Natural Resources Code and §3.15. The Commission finds that the estimate of 100 hearings is conservative and more hearings may actually be required. There are currently more than 1,600 operators that Commission records indicate have not yet achieved compliance with the applicable inactive well requirements. The estimate of 100 hearings assumes that nearly 95% of the currently out of compliance operators will not find it necessary to request a hearing. The Commission estimates that six additional full-time employees ("FTEs") will be necessary to implement the process mandated by HB 3134 and to ensure that those operators whom the Commission staff has determined to be out of compliance will have a reasonable opportunity to achieve compliance and contest an administrative determination of continued non-compliance. Three of the FTEs will be in the P-5 section of the Oil and Gas Division and will be responsible for reviewing P-5 filings that are initially determined to be out of compliance with the inactive well requirements and for preparing and mailing statutorily required notices informing the operators of the identified deficiencies, the additional 90-day compliance period and, if necessary, the right to request a hearing if the Commission's delegate concludes non-compliance continues after the 90-day period. Three of the FTEs will be in the Commission's Office of General Counsel where two additional hearings examiners and one additional administrative assistant will be necessary to set the hearing, preside over, and timely render recommendations on the estimated 100 additional hearings. The cost of these six additional FTEs, including salary, benefits, office equipment, and related Commission costs is estimated to be $450,000. The hearing fee of $4,500 is derived by dividing this total cost by the 100 hearings estimated to be required.

Colin Lineberry, an attorney in the Office of General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be fiscal implications for state government. Based on the estimated 100 annual hearings, the Commission will take in $450,000 in filing fees and will have additional personnel expenses for six new FTEs of approximately $450,000.

There are no fiscal implications for local governments.

The Commission estimates that the cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses will be minor in comparison to the potential savings if the businesses prevail at the hearing. Individuals, small businesses, and micro-businesses that do not have any inactive oil and gas wells will not be affected by the rule at all. Those that do have inactive wells and prevail in the appeal will likely have a net savings as the average cost for state-funded plugging of inactive wells in the state is $14,694 to date for fiscal year 2012.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore,

the Commission has no factual bases for determining whether any persons who are the designated operators of inactive wells will be classified as small businesses or micro-businesses, as those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees.

Based on the information available to the Commission regarding oil and gas operators, Mr. Lineberry concludes that, of the businesses that could be affected by the proposed amendments, it is likely that many would be classified as small businesses, and possible that some could be classified as micro-businesses, as those terms are defined in Texas Government Code, §2006.001.

The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas wells fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.002.

The Commission anticipates that the proposed amendments will have negligible adverse economic impact on those entities engaged in oil and gas well operations in Texas. While the statutorily mandated filing fee is significant, it is relatively minor compared to operational costs for well operators and to the current average cost of state-funded plugging a single well of $14,694.

It is not possible to provide a general estimate of the cost of the proposed amendments because the cost will depend upon numerous variables that cannot be quantified, including whether the operator has any inactive wells, the length of time those wells have been inactive, the extent to which the operator has already complied with the inactive well requirements of Texas Natural Resources Code, Chapter 89, and whether the Commission's delegate concludes that compliance has been achieved.

The economic impact of the cost of compliance with the proposed amendments will be the same for small businesses and micro-businesses as for larger businesses. Every operator, whether it is a small business or micro-business or not, must comply with the same provisions of Texas Natural Resources Code, §89.023, if it holds inactive wells. Because the cost of compliance is not dependent on the size of the company, but is based on the costs of compliance associated with each individual inactive well, there will be no difference in the cost of compliance between operators that are larger companies and operators that are small businesses or micro-businesses.

The Commission also has determined that a regulatory flexibility analysis is not required because including any additional alternative regulatory methods that will achieve the purpose of the proposed amendments while minimizing the adverse impacts on small businesses and micro-businesses is not consistent with the terms of Texas Natural Resources Code, §89.023, or with the legislative and Commission policies of assuring that inactive wells are maintained safely and plugged when necessary. Wells that are not maintained in accordance with §89.023 would pose a potential risk of causing fires and of adversely impacting usable quality water. There are no additional alternative regulatory methods that will achieve the purpose of the proposed amendments while minimizing the adverse impacts on small businesses and micro-businesses; exempting small businesses and micro-businesses from the requirements of the rules would not be consistent with the economic or environmental welfare of the state.

The Commission finds that the proposed amendments likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed amendments are not major environmental rules as defined in Texas Government Code, §2001.0225(a).

Mr. Lineberry has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to ensure that inactive wells are safely maintained and, when necessary, plugged, while affording operators a reasonable opportunity to contest any erroneous administrative determination that the operator has not complied with the requirements for maintaining its inactive wells.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0274975, and will be accepted until 12:00 p.m. (noon) on May 7, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons more than two additional weeks to review and analyze the proposal and to draft and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Lineberry at (512) 463-7051. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 89, Subchapter B-1, §89.022 and §89.023, as amended by HB 3134, which give the Commission authority over the maintenance of inactive wells and plugging extensions for inactive wells; and Texas Natural Resources Code, §91.101, which gives the Railroad Commission authority to adopt rules and orders governing the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission.

Texas Natural Resources Code, §§81.051, 81.052, 89.022, 89.023, and 91.101 are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, Chapters 81, 89, and 91.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81, 89, and 91.

Issued in Austin, Texas on March 20, 2012.

§3.15. Surface Equipment Removal Requirements and Inactive Wells.

(a) - (f) (No change.)

(g) Commission action on application for plugging extension.

(1) The Commission or its delegate shall administratively grant all applications for plugging extensions that meet the requirements of Commission rules.

(2) The Commission or its delegate may administratively deny an application for a plugging extension for an inactive well if the Commission or its delegate determines that:

(A) the applicant does not have an active organization report at the time the plugging extension application is filed;

(B) the applicant has not submitted all required filing fees and financial assurance for the requested plugging extension and for renewal of its organization report; or

(C) the applicant has not submitted a signed organization report for the applied-for extension year that qualifies for approval regardless of whether the applicant has complied with the inactive well requirements of this section.

(3) Except as provided in paragraph (2) of this subsection, if the Commission or its delegate determines that an organization report should be denied renewal solely because it does not meet the inactive well requirements of this section, a Commission delegate shall, within a reasonable time of not more than 14 days:

(A) notify the operator of the determination;

(B) provide the operator with a written statement of the reasons for the determination; and

(C) notify the operator that it has 90 days from the expiration of its most recently approved organization report to comply with the requirements of this section.

(4) If, after the expiration of the 90-day period specified in paragraph (3)(C) of this subsection, the Commission or its delegate determines that the operator remains out of compliance with the requirements of this section, the Commission delegate shall mail the operator a second written notice of this determination. The operator may request a hearing. The operator must file a written request for hearing and the hearing fee of $4,500 with the Office of General Counsel, Hearings Section, Docket Services, no later than 30 days from the date the second written notice was mailed to the operator. In the request for hearing, the operator must identify each well by its assigned American Petroleum Institute (API) number. If the operator fails to timely file a request for hearing and the required hearing fee, the Commission shall enter an order denying the plugging extension request and denying renewal of the operator's organization report without further notice or opportunity for hearing.

(5) At the time an operator files a request for hearing under this subsection, the operator shall provide a list of affected persons to be given notice of the hearing. Affected persons shall include the owners of the surface estate of each tract on which a well that is the subject of the application is located, the director of the Commission's Enforcement Section, and the district director of each Commission district in which the wells are located. The applicant's failure to diligently prosecute a hearing requested under this subsection may result in the application being involuntarily dismissed for want of prosecution on the motion of any affected person or on the Commission's own motion.

(6) If an operator files a timely plugging extension application that is not properly administratively denied for the reasons specified in paragraph (2) of this subsection, then the operator's previously approved organization report shall remain in effect until the Commission approves its plugging extension application or enters a final order denying the application.

[~~(g) Administrative denial of extension. The Commission or its delegate may administratively deny an application for a plugging extension for an inactive well if it does not meet the requirements of this section. In the event of an administrative denial, an operator may request a hearing. The operator must file the request for hearing with the Office of General Counsel, Hearings Section, Docket Services, no later than 30 days from the date of the administrative denial of the application. In the request for hearing, the operator must identify each well by its assigned American Petroleum Institute (API) number.~~]

(h) - (p) (No change.)

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

Filed with the Office of the Secretary of State on March 20, 2012.

TRD-201201465
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 475-1295

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CHAPTER 5. CARBON DIOXIDE (CO_2)

SUBCHAPTER B. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE (CO_2)

16 TAC §5.203, §5.206

The Railroad Commission of Texas (Commission) proposes amendments to §5.203 and §5.206, relating to Application Requirements; and Permit Standards.

The Commission recently adopted similar amendments to §3.30 of this title, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), in a separate rulemaking. The Commission also recently adopted, with an effective date of May 1, 2012, amendments to §3.78 of this title, relating to Fees and Financial Security Requirements, to implement new Texas Natural Resources Code, §91.0115, relating to Casing; Letter of Determination, as added by House Bill (HB) 2694 (82nd Legislature, Regular Session, 2011), regarding fees for a request from an applicant for a permit to drill an oil or gas well for a letter of determination stating the total depth of surface casing required for the well. In addition, the Commission will propose similar amendments to §3.13 of this title, relating to Casing, Cementing, Drilling, and Completion Requirements, in a future rulemaking.

The Commission proposes these amendments to implement Article 2 of HB 2694, which transferred from the Texas Com-

mission on Environmental Quality (TCEQ) to the Commission duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, the law transfers from the TCEQ to the Commission, effective September 1, 2011, duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. After the transfer, the Commission will be responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the Commission.

In addition, Article 2 of HB 2694 amended Texas Water Code, §27.046, and transferred from the TCEQ to the Commission the responsibility of issuing to permit applicants for geologic storage of anthropogenic carbon dioxide a letter of determination stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

The TCEQ's Surface Casing Program and staff transferred to the Commission effective September 1, 2011. The Surface Casing Program has been renamed the Groundwater Advisory Unit and is now located in the William B. Travis Building, 1701 North Congress, Austin, Texas.

The Commission proposes to amend §5.203(o) and §5.206(a)(7) to replace the phrases "Texas Commission on Environmental Quality" and "Executive Director of the Texas Commission on Environmental Quality" with the phrase "Groundwater Advisory Unit of the Oil and Gas Division."

The Commission proposes these amendments to reflect the transfer from the TCEQ to the Commission required under HB 2694 of the duties relating to groundwater protection letters. No other changes, including how the Commission makes determinations regarding groundwater protection, are proposed. For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the Commission (as did the TCEQ) will provide geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the Commission. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water. For recommendations related to injection in a non-producing zone, the Commission (as did the TCEQ) will provide geologic interpretation of the base of the underground source of drinking water as defined in 30 TAC §3.30 (relating to Memorandum of Understanding between the Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RRC)), which is the same definition in TCEQ's 30 TAC §331.2 (relating to Definitions).

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable implications relating to cost or revenues of state or local governments as a result of enforcing or administering the amendments. The proposed amendments update Commission rules to implement HB 2694 and reflect only a change in jurisdiction. Specifically, the law transfers from the TCEQ to the Commission, effective September 1, 2011, duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. The change makes the Commission responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the Commission. The Commission accounted for the fiscal impacts of HB 2694 in the proposed amendments to §3.78, published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5771). The proposed amendments to §5.203 and §5.206 do not impose any additional requirements, but merely delineate the regulatory authority of each agency. There is no cost of compliance to affected persons.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect, the public benefit will be consolidation of duties related to the protection of groundwater resources from oil and gas associated activities in the agency that also is responsible for regulation of oil and gas activities. There is no economic cost to persons required to comply with the amendments as proposed.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses. The Commission has determined that because there is no cost of compliance for any affected person, the proposed amendments will not have an adverse economic impact on small businesses or micro-businesses. Accordingly, the Commission has not prepared either an Economic Impact Statement or a Regulatory Flexibility Analysis for this proposal.

Pursuant to Texas Government Code, §2001.022, the Commission has determined that the proposed rulemaking will not have an adverse impact on local employment; therefore, the Commission has not prepared a local employment impact statement.

The Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis pursuant to section is not required.

The Commission reviewed the proposed amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0275039 and will be accepted until 12:00 p.m. (noon) on May 7, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later

than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes amendments to §5.203 and §5.206 under Texas Water Code, Chapter 27, which authorizes the Commission to adopt and enforce rules relating to injection wells; Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission under Texas Natural Resources Code, §81.051; and Texas Natural Resources Code, §91.101, which authorizes the Commission to adopt rules relating to the various oilfield operations, including the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste.

Texas Water Code, Chapter 27; and Texas Natural Resources Code, §81.052 and §91.101 are affected by the proposed amendments.

Statutory authority: Texas Water Code, Chapter 27; and Texas Natural Resources Code, §81.052 and §91.101.

Cross-reference to statute: Texas Water Code, Chapter 27; and Texas Natural Resources Code, §81.052 and §91.101.

Issued in Austin, Texas on March 20, 2012.

§5.203. Application Requirements.

(a) - (n) (No change.)

(o) Letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Texas Commission on Environmental Quality~~]. The applicant must submit a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Executive Director of the Texas Commission on Environmental Quality~~] in accordance with Texas Water Code, §27.046.

(p) (No change.)

§5.206. Permit Standards.

(a) General criteria. The director may issue a permit under this subchapter if the applicant demonstrates and the director finds that:

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

(7) the applicant has provided a letter from the Groundwater Advisory Unit of the Oil and Gas Division [~~Executive Director of the Texas Commission on Environmental Quality~~] in accordance with §5.203(o) of this title (relating to Application Requirements);

(8) - (11) (No change.)

(b) - (n) (No change.)

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

Filed with the Office of the Secretary of State on March 20, 2012.

TRD-201201467
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.43, relating to Provider of Last Resort (POLR); §25.478, relating to Credit Requirements and Deposits; and §25.498, relating to Prepaid Service. Public Utility Regulatory Act (PURA) §39.107(g) prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR. The amendments to §25.478 and §25.498 will be for the limited purpose of specifying criteria for determining if prepaid service sold to residential customers is less than the price charged by the POLR as required by PURA §39.107(g). The amendments to §25.43 will change rule language regarding POLR pricing to reflect current practices and changes in terminology resulting from the shift from an Electric Reliability Council of Texas (ERCOT) zonal market to an ERCOT nodal market. These amendments constitute competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 39969 is assigned to this proceeding.

Cliff Crouch, Retail Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Crouch has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be the specification of criteria for determining the POLR rate in order to ensure that a prepaid rate is not priced above the POLR rate as required by PURA, and clarity of the terminology used in the current nodal market regarding POLR pricing. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Mr. Crouch has also determined that for each year of the first five years the proposed amendments are in effect, there should be no effect on local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029, in the Commissioners' Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, May 15, 2012, at 9:30 a.m. The request for a public hearing must be received by Wednesday, May 9, 2012.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Monday, May 7, 2012. Reply comments may be submitted by Monday, May 21, 2012. Sixteen copies of comments and reply comments on the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Comments and reply comments should be organized in a manner consistent with the

organization of the amendments. All comments should refer to Project Number 39969.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.43

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101, which requires the Commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; §39.106, which requires that the Commission designate providers of last resort; and §39.107(g), which prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.106, and 39.107(g).

§25.43. Provider of Last Resort (POLR).

(a) - (k) (No change.)

(l) Rates applicable to POLR service.

(1) (No change.)

(2) Subparagraphs (A) - (C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) Residential customers. The LSP rate for the residential customer class shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used Where:

(i) - (ii) (No change.)

(iii) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) [~~MCPEs~~] for the customer's load zone [~~customer~~] multiplied by the level of kWh used multiplied by 120%.

(iv) "Actual hourly RTSPP [~~MCPE~~]" is an hourly rate based on a simple average of the actual interval RTSPPs [~~MCPE prices~~] over the hour.

(v) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

(vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP [~~MCPEs~~] for a customer multiplied by the level of kWh used falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price [~~zonal MCPE prices~~] over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average [~~zonal MCPE prices~~] over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) - (iii) (No change.)

(iv) LSP energy charge shall be the sum over the billing period of the actual hourly RTSPPs [~~MCPEs~~], for the customer's load zone [~~customer~~] multiplied by the level of kWh used, multiplied by 125%.

(v) "Actual hourly RTSPP [~~MCPE~~]" is an hourly rate based on a simple average of the actual interval RTSPPs [~~MCPE prices~~] over the hour.

(vi) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

(vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP [~~MCPEs~~] for a customer multiplied by the level of kWh used falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average [~~zonal MCPE prices~~] over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price [~~zonal MCPE prices~~] over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(C) Large non-residential customers. The LSP rate for the large non-residential customer class shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) - (iii) (No change.)

(iv) LSP energy charge shall be the appropriate RTSPP [~~MCPE~~], determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of $7.25 per MWh.

(3) - (5) (No change.)

(m) - (v) (No change.)

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201502
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 936-7223

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.478, §25.498

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101, which requires the Commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; §39.106, which requires that the Commission designate providers of last resort; and §39.107(g), which prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.106, and 39.107(g).

§25.478. Credit Requirements and Deposits.

(a) Credit requirements for residential customers. A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

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

~~[(5) Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre-payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.]~~

(5) [~~(6)~~] The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.

(b) - (l) (No change.)

§25.498. Prepaid Service.

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

(c) Requirements for prepaid service.

(1) - (14) (No change.)

(15) A REP that provides prepaid service to a residential customer shall not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A) - (E) of this title shall be equal to or lower than at least one of the tests described in subparagraphs (A) - (C) of this paragraph:

(A) The minimum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted.

(B) The maximum POLR rate for the residential customer class calculated pursuant to §25.43(l) of this title (relating to Provider of Last Resort (POLR)).

(C) The average POLR rate for the residential customer class at the 500 kWh, 1,000 kWh, and 2,000 kWh usage levels using the formula described in §25.43(l) of this title for the applicable TDU service territory, with the LSP energy charge calculated as the simple average of the RTSPPs over the prior month for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price. For prepaid service prices charged by a REP on one of the first ten business days of a month, the test may be met by using the average POLR rate calculation for the month preceding the prior month.

(d) - (j) (No change.)

(k) Service to Critical Care Residential Customers and Chronic Condition Residential Customers. A REP shall not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP shall not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.

(1) (No change.)

(2) If the customer is unresponsive, the REP shall transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(l)(2)(A) of this title [~~(relating to Provider of Last Resort (POLR))~~]. The REP shall provide the customer notice that the customer has been transferred to a new product and shall provide the customer the new product's Terms of Service and Electricity Facts Label.

(l) - (m) (No change.)

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201503
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.415

The Public Utility Commission of Texas (commission) proposes amendments to §26.415, relating to Specialized Telecommunications Assistance Program (STAP). The amendments delete the paragraph related to the responsibilities of the Texas Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services, the Office for Deaf and Hard of Hearing Services (DHHS) and other DHHS references; amend the description of who can sign for proof of delivery of equipment or services to allow spouses to sign; amend the description of how vendors can obtain reimbursement to specify that the STAP administrator will not authorize reimbursement of any voucher more than 120 days after the exchange date or the proof of delivery; and make other non-substantive changes. Project Number 40176 is assigned to this proceeding.

Eileen Alter, Relay Texas Administrator, Operations Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Alter has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be the simplification of the rule by deleting unnecessary references to DHHS; updating of the rule; and allowing vendors to deliver equipment to the spouse of a recipient instead of limiting delivery directly to the recipient, parent, or guardian should the recipient not be available to receive a delivery due to the recipient's absence, age, health, or other reasons. The amendments will also benefit the public because they will enable the commission to more effectively manage and account for the disbursement of funds under the STAP program by specifying that the STAP administrator will not authorize reimbursement of any voucher more than 120 days after the exchange date or the proof of delivery.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who will be required to comply with the proposed amendments.

Ms. Alter has also determined that for each year of the first five years the proposed amendments are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on the proposed amendments if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received Monday, May 7, 2012. If requested the public hearing will be held on Tuesday, June 5, 2012, at 9:30 a.m.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, May 7, 2012. Reply comments may be submitted by Monday, May 21, 2012. Sixteen copies of comments on the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of §26.415. All comments should refer to Project Number 40176.

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §56.151, which requires the commission and the Texas Commission for the Deaf and Hard of Hearing (now DHHS) to establish the STAP; §56.154(a), which requires the commission to pay the vendor or service provider, using monies from the universal service fund, within 45 days after receiving a voucher issued pursuant to the STAP and §56.154(b), which authorizes the commission to investigate whether a voucher represents a valid transaction.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.151, and 56.154.

§26.415. Specialized Telecommunications Assistance Program (STAP).

(a) (No change.)

(b) Program responsibilities.

~~[(1) Texas Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services, Office for Deaf and Hard of Hearing Services (DHHS) responsibilities. DHHS is responsible for:]~~

~~[(A) Adopting rules and procedures regarding the issuance of STAP vouchers to eligible individuals;]~~

~~[(B) Establishing a database containing sufficient information to enable the commission to verify the issuance of a particular STAP voucher; and]~~

~~[(C) Promoting the STAP program by means or efforts that provide contact information for persons interested in the voucher program.]~~

(1) [~~(2)~~] Commission responsibilities. The commission is responsible for:

(A) Adopting rules and procedures regarding the reimbursement to vendors for properly redeemed STAP vouchers;

(B) Administering the TUSF to ensure adequate funding of the specialized telecommunications assistance program;

(C) Appointing and providing administrative support for the Relay Texas Advisory Committee (RTAC), in accordance with the Public Utility Regulatory Act (PURA), §56.110 and §56.112 if funding is available; and

(D) Resolving disputes regarding the amount or propriety of the payment for a device or service or whether the device or service is appropriate or adequate to meet the need of the person to whom the [~~DHHS issued a~~] voucher was issued.

(2) [~~(3)~~] Vendor and service provider responsibilities. Vendors and service providers are responsible for adhering to the requirements set forth in this section and [~~commission's STAP administration requirements as provided in subsection (c) of this section and with~~] the commission's STAP procedures as posted [~~and periodically updated~~] on the commission's web site (www.puc.state.tx.us).

(c) Program administration.

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

(3) Vendor or service provider adherence to commission STAP procedures. Any vendor or service provider not in compliance with the commission's STAP procedures as posted [~~and periodically updated~~] on the commission's web site, within 30 days of [~~from the date~~] the commission's posting of any new or amended procedures [~~or changes thereto are posted~~], is not eligible to receive voucher reimbursements under the STAP. The STAP administrator may permanently bar, or suspend for a specified period of time, any vendor or service provider that the STAP administrator identifies as having billed the STAP for devices or services not provided to eligible customers.

(4) Vendor or service provider reimbursement. A vendor or service provider who exchanges a STAP voucher for the purchase of approved equipment or services in accordance with the requirements of the STAP may request reimbursement by the commission. If all reimbursement requirements are met, the STAP administrator shall approve reimburse to the vendor or service provider in an amount that is the lesser of: the face value of the STAP voucher, the actual retail price of the equipment or service as charged by the vendor or service provider to all STAP and non-STAP customers for the same equipment or service, or 125% of the manufacturer's suggested retail price for the device actually provided to the STAP customer as posted on the manufacturer's web site or provided by the manufacturer upon request.

(A) TUSF disbursements shall be made only upon receipt from the vendor or service provider of:

(i) The vendor's copy of the [~~DHHS~~] voucher signed by the vendor, or an authorized representative, in the space provided thereon. By signing the voucher, the vendor is certifying that the device or service has been delivered to the voucher recipient, and that the device was new when delivered and was not used or re-conditioned.

(ii) The vendor's proof of delivery of the device or service to the voucher recipient. For proof of delivery, the vendor should seek the voucher recipient's signature on the voucher in the space provided thereon. If the vendor is unable to obtain the recipient's signature on the voucher, other evidence of delivery, such as a postal or private delivery service receipt, may be used for proof of delivery to the recipient. However, evidence of delivery to the voucher recipient must include the signature of the voucher recipient, the signature of the recipient's parent, [~~or~~] guardian, spouse, or the signature of a person receiving the delivery at the delivery address who is at least 18 years of age.

(iii) (No change.)

(B) - (G) (No change.)

(H) A STAP vendor or service provider must submit voucher reimbursement requests, along with sufficient and accurate supporting documentation, by the deadline specified in the commission's STAP procedures. The deadline specified in the commission's STAP procedures shall be no later than 120 days after the exchange date on the voucher or on the proof of delivery. The STAP administrator shall not authorize reimbursement of any voucher if the voucher or its sufficient and accurate supporting documentation is submitted after the deadline specified in the commission's STAP procedures [~~will not be reimbursed for a voucher that is submitted to the STAP administrator more than six months after the voucher's expiration date~~].

(I) (No change.)

(J) Any request for reimbursement pending on the effective date of this subparagraph shall be denied by the STAP administrator if the vendor fails to submit the requisite voucher or sufficient and accurate supporting documentation that is sufficient and accurate within 120 days after the effective date of this subparagraph.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201549
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

22 TAC §1.191, §1.192

The Texas Board of Architectural Examiners proposes amendments to §1.191, concerning Description of Experience Required for Registration by Examination, and §1.192, concerning Additional Criteria. The amendments concern the Intern Development Training Requirements and criteria for earning training hours in order to become registered as an architect by examination.

The Intern Development Training Program is administered by the National Council of Architectural Registration Boards (NCARB). The amendments to §1.191 and §1.192 conform the rules to revisions NCARB is making to the Intern Development Program. The amendments to §1.191 revise the categories in which an intern must gain experience and reallocate the number of hours each intern must work within each category. As amended, interns must earn a total of 3,740 core minimum training hours in pre-design, design, project management and practice management plus 1,860 elective training hours in these subjects or in various work and education settings. As amended, §1.191 will allow credit for work under the direct supervision of architects licensed in other jurisdictions and, under certain experience settings, for work under the direct supervision of an engineer, landscape architect, or other person who is not licensed as an architect. The total number of hours to complete the Intern Development Training Program remains at 5,600 hours.

The amendments to §1.192 would allow a person to earn experience credit immediately upon enrolling in an accredited architectural education program. The rule as amended would also allow credit for work performed before enrolling in an architectural education program and after receiving a high school diploma, General Education Degree equivalent, or a comparable foreign degree, if the work was performed under the supervision and control of an architect licensed in Texas or another jurisdiction with substantially similar licensing requirements for architects.

Cathy L. Hendricks, Executive Director for the Board, has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated will be to permit a larger class of architectural candidates who have experience working under architects in other jurisdictions to gain architectural licensure in Texas. The proposed rules are also anticipated to accelerate the time it takes to meet the experience requirements for licensure as an architect by allowing credit for experience gained before and during enrollment in architectural education programs. Also, by adopting the national model established by NCARB, it is anticipated that the proposed rules will assist Texas architects in gaining licensure in other jurisdictions through reciprocity.

Ms. Hendricks has also determined that for the first five-year period the amended sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no fiscal impact to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §1051.202 and §1051.705(a)(2), which provides authority for the Board to adopt rules as necessary to regulate the practice of architecture and to prescribe by rule standards for satisfactory experience to take the architectural registration examination, respectively.

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

§1.191. Description of Experience Required for Registration by Examination.

(a) Pursuant to §1.21 of this title (relating to Registration by Examination), an Applicant must successfully demonstrate completion of the Intern Development Training Requirement by earning credit for at least 5,600 Training Hours as described in this subchapter.

(b) An Applicant must earn credit for at least 260 Core Minimum [2,800] Training Hours in the area of pre-design [areas of design and construction documents] in accordance with the following chart:
Figure: 22 TAC §1.191(b)

(c) An Applicant must earn credit for at least 2,600 Core Minimum [five hundred and sixty (560)] Training Hours in the area [areas] of design [construction administration] in accordance with the following chart:
Figure: 22 TAC §1.191(c)

(d) An Applicant must earn credit for at least 720 Core Minimum [two hundred and eighty (280)] Training Hours in the area of project management in accordance with the following chart:
Figure: 22 TAC §1.191(d)

(e) An Applicant must earn credit for at least 160 Core Minimum [eighty (80)] Training Hours in the area [areas] of practice management in accordance with the following chart: [professional and community service.]
Figure: 22 TAC §1.191(e)

(f) An Applicant must earn credit for at least 1,860 [1,880] elective Training Hours. Credit for elective Training Hours may be earned in any of the categories described in subsections (b) [(a)] - (e) of this section and/or in [teaching, research, a post-professional degree, or] other approved [related] activities described in subsection (g) of this section.

(g) An Applicant shall receive credit for Training Hours in accordance with the following chart:
Figure: 22 TAC §1.191(g)

§1.192. Additional Criteria.

(a) One Training Hour shall equal one hour of acceptable experience. Training Hours may be reported in increments of not less than .25 of an hour.

(b) An Applicant may earn credit for Training Hours upon enrollment in a NAAB/CACB-accredited degree program; upon enrollment in a pre-professional architecture degree program at a school that offers a NAAB/CACB-accredited degree program; or employment in Experience Setting A described in §1.191 of this subchapter (relating to Description of Experience Required for Registration by Examination) after obtaining a high school diploma, General Education Degree (GED) equivalent, or a comparable foreign degree. [only after satisfactory completion of any one of the following:]

[(1) three (3) years in a professional program accredited by the National Architectural Accreditation Board (NAAB) or in an architectural education program outside the United States where an evaluation by NAAB or another organization acceptable to the Board has concluded that the program is substantially equivalent to an NAAB-accredited professional program;]

[(2) the third year of a four-year pre-professional degree program in architecture accepted for direct entry to a two-year NAAB-accredited professional master's degree program; or]

[(3) one (1) year in an NAAB-accredited professional master's degree program following receipt of a non-professional degree.]

(c) In order to earn credit for Training Hours in any work setting other than a post-professional degree or teaching or research, an Applicant must[:]

[(1) work at least thirty-two (32) hours per week for a minimum period of eight (8) consecutive weeks; or]

[(2)] work at least fifteen (15) hours per week for a minimum period of eight (8) consecutive weeks.

[(d) To earn credit for Training Hours for teaching or research, an Applicant must be employed in the teaching or research position on a full-time basis.]

[(e) One year in an architectural education program shall equal thirty-two (32) semester credit hours or forty-eight (48) quarter credit hours. An Applicant may not earn credit for Training Hours for experience that was counted toward the educational requirements for architectural registration by examination.]

(d) [(f)] Every training activity, the setting in which it took place, and the time devoted to the activity must be verified by the person who supervised the activity.

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

Filed with the Office of the Secretary of State on March 26, 2012.

TRD-201201580
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-9040

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PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 79. LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §79.3

The Texas Board of Chiropractic Examiners (Board) proposes new §79.3, concerning General Requirements for Licensure of Certain Military Spouses. The proposed new rule is in compliance with Texas Occupations Code, §55.004, which directed state agencies that issue licenses to adopt rules for the issuance of a license to a person who is the spouse of an active duty member of the US Armed Forces, is licensed in another jurisdiction, and meets certain conditions.

The proposed new rule will allow a spouse of an active duty military member who holds a chiropractic license in another jurisdiction and who meets the criteria outlined in the rule to obtain a Texas chiropractic license. The rule also affords some discretion to the Board and the Executive Director to allow certain applicants to demonstrate competency by alternative methods in order to meet the requirements for obtaining a license.

Yvette Yarbrough, Executive Director, has determined that, for each year of the first five years this new rule will be in effect, there will be no additional cost to state or local governments.

Ms. Yarbrough has also determined that, for each year of the first five years this new rule will be in effect, the public benefit of this new rule will be greater opportunity for spouses of active duty military members to obtain licensure in Texas, despite the frequent moves that most active duty military members and their families must endure. Ms. Yarbrough has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this new rule will be in effect.

Comments on the proposed new rule and/or a request for a public hearing on the proposed new rule may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701; fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register.*

This new rule is proposed under Texas Occupations Code, §55.004, relating to Alternative License Procedure for Military Spouse, and §201.152, relating to rules. Section 55.004 directs state agencies who issue licenses to 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: (1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or (2) 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 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

§79.3. General Requirements for Licensure of Certain Military Spouses.

(a) This section applies 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.

(b) The Board may issue a license to an applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a license; or

(2) within the five years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six months.

(c) For the purposes of this section, the term "substantially equivalent" means that the jurisdiction where the applicant described under subsection (b) of this section is currently licensed has, or had at the time of licensure, equivalent practices and requirements in the following areas:

(1) scope of practice;

(2) continuing education;

(3) license renewal;

(4) enforcement practices;

(5) examination requirements;

(6) undergraduate education requirements; and

(7) chiropractic education requirements.

(d) The Board may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a license. The standard method of demonstrating competency is described in Chapter 71 of this title (relating to Applications and Applicants). In lieu of the standard method of demonstrating competency for a license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

(1) education;

(2) continuing education;

(3) examinations (including the National Board of Chiropractic Examiners Parts I - IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the executive director.

(e) The executive director may issue a license by endorsement to an applicant described under subsection (b) of this section in the same manner as the Texas Department of Licensing and Regulation under §51.404 of the Texas Occupations Code.

(f) The applicant described under subsection (b) of this section shall submit an application for licensure and proof of the requirements under this section on a form and in a manner prescribed by the Board.

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for a license.

(h) The applicant described under subsection (b) of this section shall undergo a criminal history background check.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201559
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-6705

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.9, concerning Order of Business.

The amendment to §505.9 will clarify the circumstances in which a person may request an appearance before the Board.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarifying the process and eligibility for the public to appear before the Board and offer public comment.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.9. Order of Business.

(a) The executive director, in conjunction with the presiding officer, shall prepare a written agenda for each board meeting and distribute a copy of the agenda to each board member.

(b) Any board member may place an item on the board's agenda by written request to the presiding officer at least 20 days before the next board meeting.

(c) Conduct of board meetings shall be guided by Roberts' Rules of Order, except that no board action shall be invalidated by reason of failure to comply with those rules.

(d) Except for board enforcement actions, disciplinary actions and investigations, any [~~Any~~] person may request an appearance before the board for the purpose of making a presentation on a matter under the board's jurisdiction, provided that at least 20 days' advance written request to appear is made to the presiding officer; however, the presiding officer may waive the 20-day notice requirement if such action would best serve the public interest. The presiding officer may deny a request to appear based on time constraints or other reasons which, in the presiding officer's opinion, warrant such denial. When practicable, a specific date and time to appear shall be set by the presiding officer, and a time limit may also be imposed. The person requesting the appearance should state in writing in reasonable detail the request to be made of the board and the estimated time needed.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.1, concerning Executive Director.

The amendment to §507.1 will clarify that the executive director is the custodian of the Board's records.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better understanding that the executive director is officially the Board's custodian of the records.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§507.1. Executive Director.

The board shall employ an executive director who will serve at the will of the board. The executive director shall be the administrator of the board office and shall employ the staff necessary to conduct the activities of the board. The executive director shall also be responsible for the operation of the agency in accordance with board policy, state and federal law, and duties established by the board. The executive director is empowered to make preliminary interpretations of the Act or of this title [~~these sections~~], except that any interpretation by the executive director shall not be binding upon the board. The executive director is the custodian of the board's records.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §507.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.2, concerning Staff.

The amendment to §507.2 will replace the word "its" with "the board's" and break subsection (a) into paragraphs to make it easier to read.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding that there are limitations to who is eligible to be employed by the Board.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because

the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§507.2. Staff.

(a) The executive director shall employ such staff as is authorized and necessary for the conduct of the board's [~~its~~] affairs. Applications for employment by the board shall notify prospective employees that no employee of the board may be employed in an executive, administrative or professional capacity, as that phrase is used for purposes of establishing an exemption to the overtime provisions of the Fair Labor Standards Act, and its subsequent amendments, if: [~~the prospective employee is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy or the prospective employee's spouse is acting in the capacity of an officer, executive board or executive committee member, manager or paid consultant of a Texas trade association or be related within the second degree of affinity or within the second degree of consanguinity to a person who is an officer, employee, or paid consultant of a trade association of the profession of public accountancy.~~]

(1) the prospective employee is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy; or

(2) the prospective employee's spouse is acting in the capacity of an officer, executive board or executive committee member, manager or paid consultant of a Texas trade association; or

(3) be related within the second degree of affinity or within the second degree of consanguinity to a person who is an officer, employee, or paid consultant of a trade association of the profession of public accountancy.

(b) Each employee shall be hired without regard to race, color, handicap, sex, religion, age, or national origin. The executive director shall report at least annually to the board on compliance with this policy.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

22 TAC §507.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.5, concerning Duties of the Executive Director.

The amendment to §507.5 will delete language in subsection (c) and relocate it to new subsection (d) and clarify that the executive director may act on behalf of the Board in contested and litigated matters.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule and a clarification on the additional duties of the executive director.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§507.5. Duties of the Executive Director.

(a) The board shall determine the qualifications for and employ an executive director who shall be the chief administrative officer of the agency.

(b) The duties of the executive director shall be to administer and enforce the applicable law, to assist in conducting meetings of the board, and to carry out other responsibilities as assigned by the board.

(c) The executive director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the board. [~~As chief administrative officer of the agency, the executive director shall be responsible for the management of all aspects of administration of the agency to include personnel, financial and other resources in support of the applicable law, rules, policies, mission and strategic plan of the agency.~~]

(d) As chief administrative officer of the agency, the executive director shall be responsible for the management of all aspects of administration of the agency to include personnel, financial and other resources in support of the applicable law, rules, policies, mission and strategic plan of the agency and may act on behalf of the board as needed to manage contested and litigated cases.

(e) [~~(d)~~] The duties imposed on the executive director under this section may be discharged through board staff.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §507.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.6, concerning Employee Training and Education Assistance Program.

The amendment to §507.6 will increase the amount of financial assistance for education and training employees from $1,200 to $3,600, per year per employee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better trained staff to serve the public.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§507.6. Employee Training and Education Assistance Program.

(a) Pursuant to the State Employees Training Act, Chapter 656, Subchapter C [~~Section 656~~] of the Texas Government Code, it is the policy and practice of the board to encourage an employee's professional development through training and education programs.

(b) The board may provide assistance for education and training for an employee if the executive director determines that the education or training will enhance the employee's ability to perform current or prospective job duties and will benefit both the board and the employee.

(c) Financial assistance may be awarded for some or all of the following expenses:

(1) tuition, including correspondence courses that fulfill degree, professional or General Equivalence Diploma (GED) program plan requirements;

(2) degree plan pertinent College Level Equivalency Program examinations if the employee receives college credit or waiver of course requirements;

(3) degree plan pertinent Life Experience Assessments if the employee receives college credit; and

(4) required fees, including lab fees, and books.

(d) Financial assistance granted under this program shall not exceed $3,600 [~~$1,200~~] per year per employee.

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

Filed with the Office of the Secretary of State on March 22, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 509. RULEMAKING PROCEDURES

22 TAC §509.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §509.6, concerning Rulemaking Procedures.

The amendment to §509.6 will correct terms that should be lowercase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§509.6. Rulemaking Procedures.

(a) Notice of a proposed new rule or amendment of any existing rule shall be made in accordance with the provisions of §2001.023 and §2001.024 of the Administrative Procedure Act.

(b) A request for a public hearing to provide [~~receive~~] comments on a proposed new rule or amendment to an existing rule must be received in the offices of the board no later than 5:00 p.m. of the thirtieth calendar day prior to the board meeting scheduled to consider the adoption of the proposed rule unless the board announces a different filing date.

(c) A person wishing to testify at a public hearing to provide [~~receive~~] comments on a proposed new rule or amendment to an existing rule must file a written copy of the proposed testimony in the offices of the board by no later than 5:00 p.m. of the fifth calendar day prior to the public hearing unless the board announces a different filing date.

(d) It is the board's policy to utilize negotiated rulemaking [~~rule making~~] when appropriate.

(e) The executive director shall designate a board employee as the board's negotiated rulemaking director [~~Negotiated Rulemaking Director~~] to implement the provisions of the Negotiated Rulemaking Act, Chapter [~~chapter~~] 2008 of the Texas Government Code, and perform the following functions:

(1) maintain necessary agency records of negotiated rulemaking procedures while maintaining the confidentiality of participants;

(2) establish a method of choosing conveners and facilitators as defined by the Negotiated Rulemaking Act, Chapter [~~chapter~~] 2008 of the Texas Government Code;

(3) establish a method of convening negotiated rules committees;

(4) provide information about the negotiated rulemaking process to agency employees, potential users, and users of the negotiated rulemaking program;

(5) arrange training or education necessary to implement the negotiated rulemaking process; and

(6) establish a system to evaluate the negotiated rulemaking program, conveners, facilitators, and committees.

(f) The board or the rules committee [~~Rules Committee~~] may request the negotiated rulemaking director [~~Negotiated Rulemaking Director~~] to institute negotiated rulemaking proceedings on a specified subject. Upon receipt of such a request, the negotiated rulemaking director [~~Negotiated Rulemaking Director~~] shall institute the negotiated rulemaking process pursuant to Chapter [~~chapter~~] 2008 of the Texas 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.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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CHAPTER 511. ELIGIBILITY
SUBCHAPTER A. GENERAL INFORMATION

22 TAC §511.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.11, concerning Definitions.

The amendment to §511.11 will add acronyms that are commonly used in Chapter 511.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.11. Definitions.

(a) Wherever the term "examination" or "exam" appears in this chapter [~~these rules~~], reference is made to the Uniform Certified Public Accountant Examination (UCPAE) prepared and graded by the American Institute of Certified Public Accountants (AICPA), to include, but not limited to the UCPAE.

(b) An [~~Wherever the term~~] "applicant" means an individual [~~or "candidate" appears in these rules, reference is made to any person~~]

attempting to complete an [any] examination prepared and graded by the AICPA, including [to include], but not limited to, the UCPAE.

(c) The following acronyms, when used in this chapter, shall have the following meanings:

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "NASBA" means the National Association of State Boards of Public Accountancy.

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

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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SUBCHAPTER B. CERTIFICATION BY EXAMINATION

22 TAC §511.21

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.21, concerning Examination Application.

The amendment to §511.21 will replace terms with acronyms that have been defined in §501.55 and corrects a rule reference.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.21. Examination Application.

(a) An application [All applications] to take the UCPAE [Uniform CPA Examination] shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws.

(b) Each applicant [Applicants] shall submit their social security numbers [number] on the application form. Such information shall be considered confidential and can only be disclosed under the provisions of the Act.

(c) An applicant [Applicants] must sign a statement on the application that states that if the applicant's examination is lost, the limit of liability for which the board may be held responsible will be the amount of the exam fee collected by NASBA [the National Association of State Boards of Accountancy].

(d) Each applicant for the UCPAE [Uniform CPA Examination] must pay an eligibility fee to the board for each section for which the applicant requests to take. The actual fee set by the board is identified in §521.14 of this title (relating to Eligibility Fee [Fees]). Application forms not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(e) Each application must be verified to show that the applicant remains qualified in all respects to take the examination.

(f) The board shall evaluate each [all] examination application [applications] and establish dates of eligibility for each approved application, which will be used by the testing vendor or other organization to schedule and test an applicant.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §511.26

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.26, concerning Applications under Prior Acts.

The amendment to §511.26 will delete the term "public accountancy", as the term "Act" has been defined in §501.52.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.26. Applications under Prior Acts.

An applicant who applies and is approved for the examination under a prior [~~Public Accountancy~~] Act shall continue to be eligible to take the examination. The applicant may re-qualify to another education requirement of the Act under which the applicant qualified, or may re-qualify to the education of the current Act, but the applicant shall not rescind this action.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201535
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §511.29

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.29, concerning Examination Candidate Data.

The amendment to §511.29 deletes unnecessary terms and replaces some terms with acronyms that have been defined in §501.55. The amendment also adds a reference to the Act and corrects a term that should be lowercase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.29. Examination Applicant [~~Candidate~~] Data.

(a) The board shall provide applicant [~~candidate~~] data to [~~the National Association of State Boards of Accountancy (~~]NASBA[~~)~~] for the sole and specific purpose of maintaining the national applicant [~~candidate~~] database of individuals eligible for the UCPAE [~~Uniform CPA Examination~~].

(b) In compliance with §901.160(c)(1) of the [~~Public Accountancy~~] Act (relating to Availability and Confidentiality of Certain Board Files) [~~(Chapter 901 of the Occupations Code - Vernon's 2003)~~], the board [~~Board~~] shall obtain authorization from the applicant [~~candidate~~] for the sharing of data with NASBA.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201536

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.121

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.121, concerning Application for Approval of Experience.

The amendment to §511.121 will add references to the Rules and the Act and replaces terms with acronyms that have been defined in §501.55.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic im-

pact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.121. Application for Approval of Experience.

(a) The board, through an applicant's [a ~~candidate's~~] submission of qualifying supervised work experience, shall insure that the applicant [~~candidate~~] applying for the CPA certificate has demonstrated high standards of professional competence, integrity, independence, and learning.

(b) Acceptable work experience shall be gained in at least one of the following areas:

(1) attest services as defined in §501.52(4) of this title (relating to Definitions);[,]

(2) professional accounting services or professional accounting work as defined in §501.52(21) of this title.

(c) The board, on a case-by-case basis, may approve other areas of work experience which are recognized as non-routine accounting work.

(d) An applicant [~~A candidate~~] for certification as a CPA [~~certified public accountant~~] shall submit application for approval of work experience. The application shall be made on a form prescribed by the board and submitted after completion of the examination requirement.

(e) Acceptable work experience shall be commensurate with the provision of §901.256 of the Act (relating to Work Experience Requirements).

(f) No advance rulings on the acceptance of work experience will be given.

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

Filed with the Office of the Secretary of State on March 22, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122, concerning Acceptable Work Experience.

The amendment to §511.122 corrects references to the rules, deletes an acronym and replaces it with the full term, and corrects terms that should be lowercase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.122. Acceptable Work Experience.

(a) Work experience shall be under the supervision of a CPA experienced in the non-routine accounting area assigned to the applicant [~~candidate~~] and who holds a current license issued by this board or by another state board of accountancy as defined in §511.124 of this chapter [~~title~~] (relating to Acceptable Supervision).

(b) Non-routine accounting involves attest services as defined in §501.52(4) of this title (relating to Definitions), or professional accounting services or professional accounting work as defined in §501.52(21) of this title, and the use of independent judgment, applying entry level or higher professional accounting knowledge and skills to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance, and control situations.

(c) All work experience, to be acceptable, shall be gained in the following categories or in any combination of these:[-]

(1) Client practice of public accountancy. All work experience gained in a firm in the client practice of public accountancy must be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. If such firm is a CPA firm it shall be in good standing with the board, or, if the experience is gained in another state or territory, the firm shall be in good standing and in compliance with all laws applicable to CPA firms of that state or territory.

(2) Industry. All work experience gained in industry shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Acceptable industry work experience includes:

(A) internal auditor;

(B) staff, fund or tax accountant;

(C) accounting, financial or accounting systems analyst; and

(D) controller.

(3) Government. All work experience gained in government shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs (A) - (E) of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs (A) - (E) of this paragraph. Acceptable government work experience includes but is not limited to:

(A) employment in state government as an accountant or auditor at Salary Classification B6 or above, or a comparable rating;

(B) employment in federal government as an accountant or auditor at a GS Level 7 or above;

(C) employment as a special agent accountant with the Federal Bureau of Investigation [~~FBI~~];

(D) military service, as an accountant or auditor as a Second Lieutenant or above; and

(E) employment with other governmental entities as an accountant or auditor.

(4) Law firm. All work experience gained in a law firm shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a CPA firm, shall be under the supervision of a CPA or an attorney, and shall be in one or more of the following areas:

(A) tax-[-]planning, compliance and litigation; and[;]

(B) estate planning.

(5) Education. Work experience gained as an instructor at a college or university will qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses on a full time basis may be considered. All experience shall be supervised by the department chair or a faculty member who is a CPA.

(6) Internship. The board [~~Board~~] will consider, on a case-by-case basis, experience acquired through an approved [~~the~~] accounting internship program, provided that the experience was non-routine accounting as defined by subsection (b) of this section [~~this title~~]. If an accounting internship course is counted toward fulfilling the education requirement, the internship may not be used to fulfill the work experience requirement.

(7) Other. Work experience gained in other positions may be approved by the board as experience comparable to that gained in the practice of public accountancy under the supervision of a CPA upon certification by the person or persons supervising the applicant [~~candidate~~] that the experience was of a non-routine accounting nature which continually required independent thought and judgment on important accounting matters.

(8) Self employment may not be used to satisfy the work experience requirement unless approved by the board [~~Board~~].

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201538
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §511.123

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.123, concerning Reporting Work Experience.

The amendment to §511.123 adds a reference to a rule and deletes the term "section" and replaces it with the section symbol.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of

adoption of the proposed amendment will be a more streamlined rule

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.123. Reporting Work Experience.

(a) One year of experience shall consist of full or part-time employment that extends over a period of not less than one year and not more than three years and includes not fewer than 2000 hours of performance of services described in §511.122 of this chapter (relating to Acceptable Work Experience) [~~Section 511.122~~].

(b) Work experience must be reported in years and months.

(c) All work experience presented to the board for consideration shall be accompanied by the following items:

(1) the applicant's [~~candidate's~~] detailed job description;

(2) a statement from the supervising CPA describing the non-routine work performed by the applicant [~~candidate~~] and a description of the important accounting matters requiring the applicant's [~~candidate's~~] independent thought and judgment; and

(3) a statement from the supervising CPA describing the type of experience that the CPA possesses which qualifies the CPA to supervise the applicant [~~candidate~~].

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201539
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.1, concerning Definitions.

The amendment to §518.1 will add a reference to a chapter in the rules and capitalize the term Chapter.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.1. Definitions.

The definitions contained in Chapter [~~chapter~~] 519 of this title (relating to Practice and Procedure) apply to this chapter.

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

Filed with the Office of the Secretary of State on March 22, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §518.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.2, concerning Cease and Desist Orders.

The amendment to §518.2 will correct terms that should be lowercase and replace an acronym with its definition.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.2. Cease and Desist Orders.

(a) Whenever the board, through its executive director [~~Executive Director~~], determines that a person is engaging in an act or practice that constitutes the practice of public accountancy without a license issued under the Act, the board, through its executive director [~~Executive Director~~], after notice and an opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity. The executive director [~~Executive Director~~] and the person under investigation may agree to a cease and desist order at any time; however, such an agreed cease and desist order must be ratified by the board.

(1) The executive director [~~Executive Director~~] may refer an investigation to the Constructive Enforcement Committee for its consideration before taking any action. In such cases, the Constructive Enforcement Committee may recommend that staff dismiss the matter without further action, instruct staff to investigate the matter further or recommend [~~recommends~~] that staff offer the person under investigation a cease and desist order.

(2) The executive director [~~Executive Director~~] may enlist the aid of the members of the Constructive Enforcement Advisory Committee in gathering evidence during investigations of the unauthorized practice of public accountancy.

(b) A hearing under this rule shall be conducted in the manner of a contested case pursuant to the Act, the Administrative Procedure Act [~~APA~~], the board's rules and SOAH's rules.

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

Filed with the Office of the Secretary of State on March 22, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §518.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.3, concerning Violation of a Cease and Desist Order.

The amendment to §518.3 will correct terms that should be lowercase, delete unnecessary terms and add references to the Act.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.3. Violation of a Cease and Desist Order.

(a) Whenever the board, through its executive director [~~Executive Director~~], determines that a person subject to a cease and desist order issued by the board has violated that order, the board, through its executive director [~~Executive Director~~], after notice and an opportunity for a hearing, may assess an administrative penalty, after consulting with the board's presiding officer, against the person in violation in accordance with the guidelines contained in §518.4 of this chapter [~~title~~] (relating to Administrative Penalty Guidelines for Violations of Cease and Desist Orders) and Subchapter L of the [~~Texas Public Accountancy~~] Act, as amended.

(b) The board staff acting through the executive director [~~Executive Director~~] will offer the person found in violation of a cease and desist order an agreed consent order.

(1) The agreed consent order will act as the preliminary report as required by §901.553 of the Act (relating to Report and Notice of Violation and Penalty), including findings of fact to support the administrative penalty as well as the amount of the penalty to be imposed.

(2) Board staff will advise the person found in violation of a cease and desist order that he has 20 days to either sign the agreed consent order or to request a hearing in writing, as required by §901.554 of the Act (relating to Penalty to be Paid or Hearing Requested).

(3) If the person found to be in violation of a cease and desist order signs the agreed consent order, then the agreed consent order will be presented to the board for its consideration. If the board ratifies the agreed consent order, then it will issue a board order.

(c) If the board, through its executive director [~~Executive Director~~], determines that a person subject to a cease and desist order issued by the board has violated that order, the board, through its executive director [~~Executive Director~~] and after consulting with the board's presiding officer, may seek to enjoin the person in violation in state district court.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 305-7842

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22 TAC §518.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.4, concerning Administrative Penalty Guidelines for Violations of Cease and Desist Orders.

The amendment to §518.4 will replace terms with acronyms that have been defined in §501.55 and add references to the Act.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.4. Administrative Penalty Guidelines for Violations of Cease and Desist Orders.

The amount of the administrative penalty assessed under this chapter will be in accordance with the following guidelines:

(1) an unlicensed individual who uses terms restricted for use by CPAs [~~certified public accountants~~] only in violation of §§901.451, 901.452 and 901.453 of the Act (relating to Use of Title or Abbreviation for "Certified Public Accountant"; Use of Title or Abbreviation for "Public Accountant"; and Use of Other Titles or Abbreviations) shall pay a penalty of no less than $1,000.00 and no more than $5,000.00;

(2) an unlicensed entity that uses terms restricted for use by licensed firms only in violation of §901.351(a) of the Act (relating to Firm License Required) shall pay a penalty of no less than $5,000.00 and no more than $10,000.00;

(3) an unlicensed individual who asserts an expertise in accounting through use of the term "accounting service" or any variation of that term shall pay a penalty of no less than $1,000.00 and no more than $5,000.00;

(4) an unlicensed entity that asserts an expertise in accounting through use of the term "accounting service" or any variation of that term shall pay a penalty of no less than $5,000.00 and no more than $10,000.00;

(5) an unlicensed individual who claims to provide attest services shall pay a penalty of no less than $5,000.00 and no more than $25,000.00;

(6) an unlicensed entity that claims to provide attest services shall pay a penalty of no less than $5,000.00 and no more than $25,000.00;

(7) an unlicensed individual who claims to be a CPA [~~certified public accountant~~] shall pay a penalty of no less than $5,000.00 and no more than $25,000.00; and

(8) an unlicensed entity that claims to be a certified public accounting firm shall pay a penalty of no less than $5,000.00 and no more than $25,000.00.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §518.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.5, concerning Unlicensed Entities.

The amendment to §518.5 will add a reference to the Act.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.5. Unlicensed Entities.

(a) An unlicensed entity is permitted to state that it has an ownership interest and a business affiliation with a registered CPA firm provided each such statement complies with subsection (b) of this section [~~the following~~ ~~rules~~].

(b) In any letterhead, or in any advertising or promotional statements by an unlicensed entity that refers to accounting, auditing or attest services or any derivative terms associated with those services, there must be a statement that such services are only performed by the affiliated registered CPA firm. This statement must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the letterhead, advertisement or promotional statement. If the advertisement is in audio format, the statement must be clearly declared in each such presentation.

(c) An unlicensed entity performing attest services is in the unauthorized practice of public accountancy and in violation of the Act and the board's rules.

(d) Interpretative Comment: This section clarifies that the mere mention of a business and ownership affiliation with a registered CPA firm on the letterhead, or in advertising or promotional statements, of an unlicensed entity does not violate the Act when done in compliance with the provisions of this section. This section also clarifies that the letterhead, advertising or promotional statements of the unlicensed entity may not refer to accounting, auditing or attest services, or any derivative terms associated with those services, without violating §901.453 of the Act (relating to Use of Other Titles or Abbreviations). It also clarifies that all attest services must still be performed exclusively by registered CPA firms in accordance with the Act and all board rules. The definition of "attest services" is set forth in §501.52 of this title (relating to Definitions).

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

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CHAPTER 526. BOARD OPINIONS

22 TAC §526.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §526.2, concerning Procedure.

The amendment to §526.2 will delete unnecessary terms and clarify that the Board may decline requests for opinions from any requestor, not just those involved in litigation.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify that the Board may decline to opine for reasons other than litigation.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 7, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§526.2. Procedure.

(a) The appropriate board committee will review requests for opinions and determine if the opinion request is appropriate for board consideration and if so submit a recommended action to the board. The board may decline to consider requests for opinions on interpretations of the [~~Public Accountancy~~] Act or board rules [~~from persons involved in litigation~~]. All recommendations will be submitted for consideration by the board at a regularly scheduled meeting.

(b) The board will consider the recommendation of the committee and will:

(1) decline to ratify the recommendation of the committee;

(2) approve or amend the recommendation of the committee and issue an opinion; or

(3) take such other action as the board may deem appropriate.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 73. LABORATORIES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §73.31 and §73.41, the repeal of §§73.51 and 73.53 - 73.55, and new §§73.51, 73.54 and 73.55, concerning fees for laboratory services and fee schedules for clinical testing, newborn screening, and chemical analysis.

BACKGROUND AND PURPOSE

Texas Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 73.31, 73.41, 73.51, 73.54, and 73.55 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed, although amendments are needed as detailed as follows. This rulemaking package updates a variety of rules related to the department's Laboratory Services Section (LSS) which includes the Austin Laboratory, the Women's Health Laboratory, and the South Texas Laboratory. Section 73.53 has also been reviewed and the department has determined that the repeal of §73.53 is necessary because the department no longer offers training

of laboratorians on a fee-for-service basis. Wholesale changes to §§73.51, 73.54, and 73.55 are necessary because the fee schedules need to be updated to incorporate additional new laboratory tests, update test method references and fees, and to delete laboratory tests that are no longer performed by the department. These extensive substantive changes are why the three rule sections are being repealed and reproposed. All of these proposed revisions comply with Texas Health and Safety Code, §§12.031, 12.032, and 12.0122 that allow the department to charge fees to a person who receives public health services from the department (which explicitly includes laboratory services), in an amount up to the cost to the department for providing that service. Since the last rules revision in 2007, the department has experienced a variety of increased costs associated with providing laboratory services, including technology for laboratory testing, supplies and test kits, shipping of specimens and, additionally, LSS ancillary services required to support testing and meet regulatory requirements. Senate Bill (SB) 80, 82nd Legislature, Regular Session, 2011, requires that the department: (1) develop, document and implement procedures for setting fees for laboratory services, including updating and implementing a documented cost allocation methodology that determines reasonable costs for the provision of laboratory tests; and (2) analyze the department's costs and update the fee schedule as needed in accordance with Texas Health and Safety Code, §12.032(c). LSS has developed and documented a cost accounting methodology and determined the costs for each test performed. The methodology for developing cost per test included calculating the specific costs of performing the test or analysis and the administrative and overhead cost necessary to operate the state laboratories in question. It is these figures together which determined the revised fee amount for each of the tests in these fee schedules. In order to determine the specific cost for each test or analysis, LSS performed a work load unit study for every procedure or test offered by the laboratory. A work load unit was defined as a measurement of staff time, consumables and equipment required to perform each procedure from the time the sample enters the laboratory until the time the results are reported. More than 3,000 procedures performed by the department's laboratory were included in this analysis. These procedures translate to approximately 700 different tests listed in these proposed rule amendments. These figures, along with those which represent the administrative cost of running the laboratories, were reviewed by an independent cost accountant and the department's Chief Financial Officer to establish a final cost per test for these proposed amendments. These proposed fee changes reflect the department's current costs for providing these services.

SECTION-BY-SECTION SUMMARY

Section 73.31(a) is proposed to be amended to improve readability and more clearly state that specimens submitted must meet the requirements of the DSHS Laboratory Manual of Reference Services (manual) in order to be accepted by the department for testing. An amendment to the subsection is also proposed which would state that the department's manual is posted on the LSS website. The proposed amendment to subsection (b) reflects the actual practice of the department to reject specimens that do not meet the requirements outlined in the manual referenced previously. LSS is certified to perform testing on humans (e.g., specimens taken from humans) under the federal Centers for Medicare and Medicaid Service's Clinical Laboratory Improvement Amendments (CLIA). To maintain this certification, LSS must meet certain CLIA operational standards. Similarly, for testing LSS performs on other types of samples, there are other operational standards which must be met: (e.g., Environmental Protection Agency (EPA) and The National Environmental Laboratory Accreditation Conference (NELAC) Institute (TNI) standards for analysis of environmental samples; and the Food and Drug Administration's standards for the analysis of food, shellfish and milk). The acceptance criteria in the department's manual were written to be consistent with the operational standards discussed previously.

Section 73.41(a) is proposed to be amended to explain that fees for some services are established by rule while others (i.e., services not listed in the rule fee schedules) may be established by contract between the department and the submitter. These changes are proposed to better reflect the underlying statutory authority for services sold under this section, which is found at Texas Health and Safety Code, §§12.0122, 12.031, and 12.032, to clarify associated processes related to the logistics of such sales, and also to improve the clarity and readability of the rule language.

Section §73.41(b) is proposed to be amended by updating the definition of laboratory services, deleting the definition of special projects and reformatting and renumbering the section accordingly. These changes are proposed to better match the underlying statutory authority, to provide greater clarity and to improve readability. The definition of "special projects" has been proposed for deletion because it is unnecessary and also to avoid confusion with activities the department may conduct under separate statutory authority.

Section 73.41(c) is proposed to be amended by including language to more clearly state that charges for laboratory services were calculated to recover the department's costs associated with such activities and that the fees and any contract executed for the sale of laboratory services reflect the department's costs.

Existing language in §73.41(e) is proposed for deletion because it is redundant and unnecessary, given the proposed reorganization of this section. Further, the amended language proposes to move matters relating to the logistics of charges for the sale of laboratory services (e.g., payment; obtaining copies of fee schedules) to this subsection and to new subsection (f) from its existing location in §73.51, to reflect the proposed reorganization of both sections. Changes to this language are proposed to avoid redundancy, given the proposed reorganization of both rule sections and the wording of the underlying statutes, and to improve clarity and readability.

Proposed amendments to §73.51 reflect the proposed reorganization of §73.41 and §73.51. The proposed changes to the title of this section reflect the revised contents of the section, and incorporates wording from subsection (b), where the existing language is proposed for deletion. Formatting throughout this section has been updated to accomplish the proposed reorganization.

Section 73.51(a) is proposed to be deleted as redundant and unnecessary, given the proposed reorganization of this section and of §73.41.

Section 73.51(b) is proposed for deletion because of the proposed reorganization of the section and because the wording "unless the context clearly indicates otherwise" created an ambiguity to the definitions. Existing §73.51(b)(1) is proposed to be renumbered as §73.51(a). Existing §73.51(b)(2) is proposed to be renumbering as §73.51(b) and amended by deleting the names of specific chlorinated pesticides and polychlori-

nated biphenyls (PCBs) in drinking water. These chemicals are proposed to be divided into two groups, "regulated and non-regulated" in new §73.51(b)(1) and (2), improving clarity and readability. Existing §73.51(b)(3) is proposed for deletion because this analysis was performed only for a special project that has been completed since the last rulemaking process.

Under the proposed reorganization, §73.51(3) would now contain the definition of gamma emitting isotopes, with revisions, currently listed at §73.51(b)(4). This proposed definition identifies isotopes within a specific range of electron energies rather than listing the individual isotopes, which improves clarity, user-friendliness and readability. Existing §73.51(b)(5) is proposed to be renumbered as §73.51(d). Existing §73.51(b)(6) is proposed to be renumbered as §73.51(e). Existing §73.51(b)(7) is proposed to be renumbered as §73.51(f). Existing §73.51(b)(8) is proposed for deletion because this analysis was performed only for a special project that has been completed since the last rulemaking process. Existing §73.51(c) is proposed to be deleted as redundant and unnecessary, given the proposed reorganization of this section and of §73.41, and also based on the wording of the underlying enabling statutory provisions. Existing §73.51(d), (e), and (f) are proposed for deletion, because language regarding these subjects is moved to rule §73.41 as part of the proposed reorganization of both sections. Existing §73.51(g) and (h) is proposed for deletion given the reorganization of this section and of §73.41 and also because the language is merely duplicative of the underlying statutory language.

Existing §73.51(b)(9) is proposed to be renumbered as §73.51(g). Existing §73.51(b)(9)(A) is proposed to be renumbered as §73.51(g)(1) and includes minor edits to the names of chemical compounds which will be identified in air samples. Organic compounds typically have several correct names. These changes are proposed to ensure that the same chemical names are used consistently for all volatile organic compound test methods performed by the LSS. Existing §73.51(b)(9)(B) is proposed to be renumbered as §73.51(g)(2). Existing §73.51(b)(9)(B)(i) and (ii) are proposed to be renumbered as §73.51(g)(2)(A) and (B) respectively. These subparagraphs are also proposed to be amended by updating the list of compounds specified under each definition, in order to reflect changes to EPA regulations pursuant to the federal Safe Drinking Water Act that have been introduced since the last rules revision. Existing §73.51(b)(9)(B)(iii) is proposed for deletion because this analysis was performed only for a special project that has been completed since the last rulemaking process. Existing §73.51(b)(9)(B)(iv) is proposed to be renumbered as §73.51(g)(2)(C).

Proposed new §73.51(h) - (n) would add definitions for chemical analyses being added into the rules as part of this update. New laboratory tests or changes to test methods have been added for a variety of reasons including changes in state and federal regulatory requirements, and the availability of new technology and/or instrumentation which makes older methods obsolete.

The repeal of existing §73.54 is proposed, along with proposed new language for that section. Existing language in §73.54 is proposed to be reorganized by listing tests performed at each of the three department laboratories separately; and by reorganizing the tests listed for each laboratory to mirror the organization of the fee schedule in the department's manual. These changes are proposed to improve clarity, readability and user-friendliness of the rule. Throughout this section certain new tests are proposed to be added or deleted for a variety of reasons, including the availability of new technology and/or instrumentation which makes older methods obsolete. Other proposed new tests were added or deleted in §73.54(a)(2) as the result of the cost analysis process. For example, there may have been a single fee for the analysis of similar bacteria. However, when costs were calculated for each different bacterium commonly tested it was determined that the cost for the identification varied with the organism. Therefore, a price for the identification of each bacterium is listed in the proposed language and the single, undifferentiated price for the analysis is proposed for deletion. These extensive changes will be reflected in new §73.54. Fees in this section were calculated, as part of these proposed amendments, to recover the department's costs associated with providing these laboratory services, per Texas Health and Safety Code, §12.0032 (see full discussion herein).

Section 73.55 is proposed to be amended by deleting the opening statement, "Fees for chemical analyses and physical testing shall not exceed the following amounts." This deletion is necessary to reflect the fee calculation methodology in SB 80 (as discussed herein). Throughout this section, some existing laboratory tests are proposed to be deleted and proposed new laboratory tests or new test methods and their accompanying fees have been inserted, as indicated. The majority of the chemical analyses performed by the LSS are to determine compliance with federal and state Safe Drinking Water regulations. Most of the methods proposed for deletion are non-drinking water methods that have not been requested since the last rule making process. New laboratory tests or changes to test methods have been added for a variety of reasons including changes in state or federal regulatory requirements, and the availability of new technology and/or instrumentation which makes older methods obsolete. The new fee amounts are consistent with the SB 80 calculation methodology, and with underlying statutory authority, all as discussed herein. Section 73.55(1) is proposed to be amended to update name of the test from "analysis of organic compounds in air" to "analysis of volatile organic compounds in air" which is consistent with nomenclature used in other laboratory methods. This proposed language would replace existing §73.55(1) and subparagraphs (A) - (C), making that existing language redundant.

Existing §73.55(2)(A)(i)(I) is proposed to be amended by updating the reference to the edition of Standard Methods currently used for this analysis. Existing §73.55(2)(A)(i)(III) and (IV) are proposed for deletion because these contaminants are determined as part of §73.55(2)(A)(i)(I) therefore these subsections are redundant. Existing §73.55(2)(A)(i)(V) - (XII) are proposed to be renumbered as (III) - (X) respectively. Existing subclauses (VII), (X), (XI) are also proposed to be amended by updating the edition of Standard Methods currently used for these analyses. What would become §73.55(2)(A)(i)(XI) is proposed to be added as a new method for the analysis of chlorite. Existing §73.55(2)(A)(i)(XIII) - (XXII) are proposed to be renumbered as (XII) - (XXI) respectively. In addition existing subclauses (XIII), (XVI) are proposed to be amended by updating the reference to the edition of Standard Methods currently used for these analyses. Existing (XXI) is also proposed to be amended by changing the method used for this analysis to reflect current LSS practice. Existing §73.55(2)(A)(i)(XV) is proposed to be amended by changing the name of the analysis from "conductivity" to "specific conductance" because "specific conductance" is used by The NELAC Institute on the LSS certificate of accreditation. Existing §73.55(2)(A)(i)(XXIII) is proposed for deletion because this testing was performed

for the EPA Unregulated Contaminate Monitoring Rule. The monitoring period for this rule ended in 2010 so this testing is no longer required by the EPA. Existing §73.55(2)(A)(i)(XXIV), (XXV), and (XXVI) are proposed to be amended because the methods used to perform these analyses has changed since the last rulemaking process. Existing §73.55(2)(A)(i)(XXVII) is proposed for deletion because the department no longer performs this analysis. This is a non-drinking water analysis that has not been requested since the last rulemaking process. Existing §73.55(2)(A)(i)(XXVIII) is proposed to be amended by updating the reference to the edition of Standard Methods currently used for this analysis. Existing §73.55(2)(A)(i)(XXIX) is proposed for deletion because the department no longer receives requests for this analysis. Existing §73.55(2)(A)(i)(XXX) and (XXXI) are proposed to be renumbered as (XXVI) and (XXVII) respectively. Existing §73.55(2)(A)(ii) is proposed to be amended by updating the EPA method and the reference to the edition of Standard Methods currently used for this analysis.

Existing §73.55(2)(B)(iii)(III) is proposed for deletion because this analysis was performed specifically for the Texas Commission on Environmental Quality (TCEQ) lead copper program and TCEQ no longer sends the LSS samples for the lead copper analysis. Existing §73.55(2)(B)(iii)(IV) and (V) are proposed to be renumbered as (III) and (IV) respectively. Section 73.55(2)(B)(iii)(IV) is also proposed to be amended by changing the name of the analysis to match the name in Standard Methods.

Existing §73.55(2)(C)(i) and (iii) are proposed to be amended to include the current methods used to perform these analyses, with (i) also proposed to be amended to spell out the abbreviation of "PCB." Existing §73.55(2)(C)(vii) is proposed to be amended by deleting "and dalapon" because identification of this compound is no longer required by TCEQ and this test is in the DSHS fee schedule because of previous requests for the analysis of this compound by TCEQ. Existing §73.55(2)(C)(viii) is proposed for deletion because this test is not required for drinking water compliance and has not been requested since the last rulemaking process. Existing §73.55(2)(C)(ix) is renumbered as (viii) and is proposed to be amended by replacing "methylcarbamoyloximes and n-methylcarbamates (carbamate) pesticides" with "carbamates insecticides" to more correctly identify the analysis and by updating the method used to perform this analysis. Existing §73.55(2)(C)(x) is proposed for deletion because it has been replaced by the method described in the proposed amendment to existing §73.55(2)(C)(ix). Existing §73.55(2)(C)(xi) is proposed to be renumbered as (ix) and is proposed to be amended by removing "screening by perchlorination" from the name of the analysis because it is redundant. A new §73.55(2)(C)(x) is proposed to be added to list a new method for the analysis of synthetic organic contaminants group 5 which reflects current laboratory practice. Existing §73.55(2)(C)(xi) is proposed to be amended by adding the instrument used for the analysis. Existing §73.55(2)(C)(xii) is proposed to be amended to add an additional method for this analysis. Existing §73.55(2)(C)(xiv) is proposed for deletion because it is the same test described in §73.55(2)(C)(xii) and is therefore redundant. Existing §73.55(2)(C)(xv) would be renumbered as (xiii).

Existing §73.55(2)(D)(iv) and (v) are proposed to be amended to update the method currently used for this analysis. Existing §73.55(2)(D)(vii) is proposed for deletion because thorium is not listed in the current drinking water testing requirements. Existing §73.55(2)(D)(viii) is proposed to be renumbered as (vii). Existing §73.55(2)(D)(ix) is proposed to be renumbered as (viii) and is proposed to be amended to update the method currently used for this analysis. Existing §73.55(2)(D)(x) is proposed to be renumbered as (ix).

Existing §73.55(3)(A)(i) is proposed to be amended by providing the full name of the organization in addition to the acronym used in the existing clause. New §73.55(3)(A)(ii), (iii), and (iv) are proposed to add the analysis of benzoate, BRIX and cereal respectively. Existing §73.55(3)(A)(ii) is proposed to be renumbered as (v). Existing §73.55(3)(A)(iii) is proposed to be renumbered as (vi) and to be amended by updating the method currently used for this analysis. Existing §73.55(3)(A)(iv) and (v) are proposed to be renumbered as (vii) and (viii) respectively. New §73.55(3)(A)(ix) is proposed to add a new method for the detection of food coloring. Existing §73.55(3)(A)(vi), (vii) and (viii) are proposed to be renumbered as (x), (xi) and (xii) respectively. Existing §73.55(3)(A)(ix) is proposed to be renumbered as (xiii) and to be amended by updating the method used to perform this analysis. New §73.55(3)(A)(xiv) is proposed to add a new method for phosphate determination. Existing §73.55(3)(A)(x) and (xi) are proposed to be renumbered as (xv) and (xvi) respectively and to be amended by changing the names of the methods used to perform these analyses to accurately reflect the names used by the United States Department of Agriculture. Existing §73.55(3)(A)(xii) is proposed to be renumbered as (xvii). New §73.55(3)(A)(xviii) and (xix) are proposed to add new methods for the analysis of soya and sulfite, respectively. Existing §73.55(3)(A)(xiii) is proposed to be renumbered as (xx).

Existing §73.55(3)(B) is proposed to be amended by eliminating analytical techniques that have become obsolete and are no longer used by the department and by explaining that each remaining analytical technique requires a separate sample preparation with a separate fee for each preparation. Existing §73.55(3)(B)(ii)(I) and (II) are proposed to be amended by updating the methods used for the analyses. Existing §73.55(3)(B)(ii)(III) is proposed for deletion because the techniques and methods listed are no longer performed by the department. Existing §73.55(3)(B)(ii)(IV) is proposed to be renumbered as (III).

Existing §73.55(4)(A) is proposed to be amended to explain that each analytical technique used for the analysis of a metal in soil and solids requires a separate sample preparation and each preparation has a separate fee. It further explains that the determination of leachable metals in solid samples requires a solid leachate sample preparation, as well as analysis of the leachate using non-potable water analytical methods, and the cost of the analysis will be the solid leachate sample preparation fee plus the required non-potable water preparation fee(s) and the per-element test fee(s). New §73.55(4)(A)(ii) is proposed to add a test/fee for a solid leachate for metals analysis. Existing §73.55(4)(A)(ii) is proposed to be renumbered as (iii). Existing §73.55(4)(A)(ii)(I) - (V) are proposed for deletion because these analytical techniques are obsolete and no longer used by the department. Existing §73.55(4)(A)(ii)(VI) is proposed to be renumbered as (I) and to be amended by updating the method used to perform this analysis. Existing §73.55(4)(A)(ii)(VII) is proposed for deletion because the term "non-routine" is ambiguous. The analysis of a single metal using specific analytical instrumentation is listed in existing §73.55(4)(A)(ii)(IX) and (XI). Existing §73.55(4)(A)(ii)(VIII) is proposed for deletion because the analysis for silver, is the same as any other single metal analysis described in existing §73.55(4)(A)(ii)(IX) and (XI). Existing §73.55(4)(A)(ii)(IX) is proposed to be renumbered as (II)

and to be amended by updating the method used to perform this analysis. Existing §73.55(4)(A)(ii)(X) is proposed for deletion because the technology is obsolete and the department no longer performs these methods. Existing §73.55(4)(A)(ii)(XI) is proposed to be renumbered as (III) and to be amended by updating the technology and method used to perform this analysis.

Existing §73.55(4)(B) is proposed to be amended by adding details on when a sample preparation fee applies and that the total cost of an analysis will include the cost of sample preparation (if applicable) and the analytical method fee. Some minor revisions are also proposed throughout subparagraph (B) to improve readability, achieve consistency of format, and to capitalize the names of the substances being tested.

Existing §73.55(4)(B)(i) is proposed to be amended by changing "alpha spectrometry preparation" to "sample preparation" because the procedure is not specific to alpha spectrometry, and by updating the method used for this preparation. New §73.55(4)(B)(ii) is proposed to add the analysis of americium isotopes. Existing §73.55(4)(B)(ii) - (xi) are proposed to be renumbered as (iii) - (xii), respectively, and to be amended by updating the method currently used for each respective analysis.

Existing §73.55(5) is proposed to be amended by deleting the phrase "organic compounds and/or" because the laboratory no longer performs analysis of organic compounds in fish. These analyses were performed for a specific project which has been completed since the last rule making process. Existing §73.55(5)(B)(ii)(I) and (II) are proposed to be amended by updating the methods used to perform these analyses. Existing §73.55(5)(B)(ii)(III) is proposed for deletion because the technology is obsolete and the department no longer performs these methods. Existing §73.55(5)(B)(ii)(IV) is proposed to be renumbered as (III) and amended to update the method currently in use by the laboratory. Existing §73.55(5)(B)(iii) is proposed for deletion because this analysis was for a particular project which has been completed since the last rule making process.

Existing §73.55(5)(C) and clauses (i) - (v) are proposed for deletion because the department no longer performs organic analyses on tissue and vegetation samples. Existing §73.55(5)(D) is proposed to be renumbered as (C) and is also proposed to be amended by explaining when a sample preparation fee applies and that the total cost of an analysis will include the cost of sample preparation (if applicable) and the analytical method fees. Existing §73.55(5)(C)(i) is proposed to be amended by changing "alpha spectrometry preparation" to "sample preparation" because the procedure is not specific to alpha spectrometry, and by updating the method used for this preparation. New §73.55(5)(C)(ii) is proposed to add the analysis of americium isotopes. Existing §73.55(5)(D)(ii) - (vi) are proposed to be renumbered as (iii) - (vii), respectively, and to be amended by updating the method currently used for each analysis. New §73.55(5)(C)(viii) is proposed to add the analysis for Radium-228 in tissue and vegetation. Existing §73.55(5)(D)(vii) - (x) are renumbered as (ix) - (xii), respectively. In addition, existing §73.55(5)(D)(viii) - (x) are proposed to be amended by updating the methods used for these analyses.

Existing §73.55(6) is proposed to be amended by changing the description of samples in this subsection from "water and wastewater" to "non-potable" water to match the language in the fields of accreditation offered by The NELAC Institute. Existing §73.55(6)(A)(i) and (ii) are proposed to be amended by updating the methods used for these analyses.

Existing §73.55(6)(B) is proposed to be amended by changing the description of samples in this subsection from water "and/or wastewater" samples to "non-potable" water samples to match the language in the fields of accreditation offered by The NELAC Institute, and is also proposed to be amended by adding a sentence clarifying that a sample that requires analysis by two different techniques will require two sample preparations. This proposed amendment also clarifies that the total cost of the analysis will include sample preparation fee(s) plus a per element fee of each metal analyzed. Existing §73.55(6)(B)(ii)(II) is proposed for deletion because silver is now analyzed using the "single metal, ICP" method that is described in existing §73.55(6)(B)(ii)(III). Existing §73.55(6)(B)(ii)(III) is proposed to be renumbered as (II) and to be amended by updating the method used for the analysis. Existing §73.55(6)(B)(ii)(IV) is proposed for deletion because these techniques and methods are obsolete and no longer performed by the department. Existing §73.55(6)(B)(ii)(V) is proposed to be renumbered as (III) and to be amended by updating the method used for this analysis.

Existing §73.55(6)(C) is proposed to be reformatted to improve readability. The first word in each of the clauses (i) - (xi) is proposed to be capitalized as part of the reformatting. In addition, subparagraph (C) is proposed to be amended by explaining when a sample preparation fee applies and that the total cost of an analysis will include the cost of sample preparation (if applicable) and the analytical method fee. Existing §73.55(6)(C)(i) is proposed to be amended proposed to be amended by changing "alpha spectrometry preparation" to "sample preparation" because the procedure is not specific to alpha spectrometry, and by updating the method used for this preparation. New §73.55(6)(C)(ii) is proposed to add the analysis of americium isotopes. New §73.55(6)(C)(iii) is proposed as part of the reformatting of the section. The analysis of gamma emitting isotopes has been moved to this location in the text and existing §73.55(6)(C)(iv) is proposed for deletion to improve readability. Existing §73.55(6)(C)(ii) is proposed to be renumbered as (iv). Existing §73.55(6)(C)(iii) is proposed to be renumbered as (v). Existing §73.55(6)(C)(v), (vi) and (vii) are proposed to be renumbered as (vi), (vii) and (xiii), respectively. These clauses are also proposed to be amended by updating the methods used to perform these analyses. Existing §73.55(6)(C)(viii) is proposed to be renumbered as (ix). Existing §73.55(6)(C)(ix) is proposed to be renumbered as (x) and to be amended by updating the method used for this analysis. Existing §73.55(6)(C)(x) is proposed to be renumbered as (xi). Existing §73.55(6)(C)(xi) is proposed to be renumbered as (xii) and to be amended by updating the method used for this analysis.

Existing §73.55(7) is proposed to be amended by replacing existing text "wipes/filters/cartridges" with the phrase "wipe, filter or cartridge" to provide clarity and improve readability. Existing §73.55(7)(A) is proposed for deletion because the technique listed for this analysis is obsolete and no longer performed by the department. However, the analysis of lead in a solid sample using current technology is listed in §73.55(4)(A)(iii)(III). Existing §73.55(7)(B) is proposed to be renumbered as (A) and amended by adding an explanation of when a sample preparation fee applies and how the total cost of the analysis is calculated. The addition of this statement requires that the section be reformatted to improve readability. Existing §73.55(7)(B)(i) is proposed to be amended by changing "alpha spectrometry preparation" to "sample preparation" because the procedure is

not specific to alpha spectrometry, and by updating the method used for this preparation. New §73.55(7)(B)(ii) is proposed to add the analysis of americium isotopes. Existing §73.55(7)(B)(ii) is proposed for deletion because this analysis is not required for wipe, filter or cartridge samples. New §73.55(7)(B)(iii) is proposed to add the analysis of gamma emitting isotopes. Existing §73.55(7)(B)(iii) and (iv) is proposed to be renumbered as (iv) and (v), respectively. Existing §73.55(7)(B)(vi) and (vii) is proposed to be amended by capitalizing the first word of each clause as part of the new format and updating the method used for these analyses. New §73.55(7)(B)(viii) is proposed to add the analysis of Radium-228. Existing §73.55(7)(B)(viii) - (xi) is proposed to be renumbered as (x) - (xii), respectively. Additionally these clauses are proposed to be amended by capitalizing the first words of each clause as part of the new format and by updating the methods used for these analyses.

FISCAL NOTE

Dr. Grace Kubin Director, Laboratory Services Section has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of administering the sections as proposed. It is impossible to predict the volume of testing the laboratory will receive under a revised fee schedule as well as the actual resulting revenues, but this rulemakings proposal reflects the fee calculation methodology required by SB 80. General revenue from the state for the LSS operations has been reduced by $7.9 million (roughly 10%) for fiscal years 2012 - 2013. A portion of these revenues will be used to pay the bond debt on the laboratory building at the department's Central Office main campus, as required by the General Appropriations Act (GAA). Dr. Kubin has also determined that there may be an increased financial burden placed on certain department programs, as well as on local health departments, health care providers, and others that submit specimens for testing if the fee for such testing is higher than the fee listed on the current fee schedule. Some of the impacted external submitters may be small or micro-businesses. However, the fees for some tests would go down under the proposed rule revisions, and so the fiscal impact would be determined by the combination of tests ordered by the particular submitter.

MICRO-BUSINESS AND SMALL BUSINESSES IMPACT ANALYSIS

A variety of entities, and some few persons, approach the department to purchase laboratory services. Many of those services are currently included in department rules with fee schedules which list amounts for each service. The proposed amendments in this rulemaking package would, among other things, update those listed fee amounts to reflect current costs to the department for providing those services. Some of these amendments would create increased fee amounts for specific tests (some fee amounts would be lower than what the department charges today). As mentioned previously, the department has updated, documented, and implemented a cost allocation methodology to determine reasonable fees for these services, per SB 80. Fee increases may not be offset by fee decreases, for a particular submitter, and thus may have an adverse economic impact on such a small or micro-business. Since this increase in fees will potentially impact all submitters, the department analysis under the Economic Impact Statement will also serve to satisfy the Small Business Impact Analysis required by Texas Government Code, §2006.002(a).

Texas Government Code, Chapter 2006, was amended by House Bill (HB) 3430, 80th Legislature, Regular Session, 2007, to require that, before adopting a rule that may have an adverse economic effect on small businesses, a state agency must first prepare an Economic Impact Statement and a Regulatory Flexibility Analysis.

The definition of a "small business" for purposes of this requirement was codified at Texas Government Code, §2006.001(2). Under this definition, a "small business" is an entity that is: for profit, independently owned and operated; and have fewer than 100 employees or less than $6 million in annual gross receipts. Independently owned and operated businesses are self-controlling entities that are not subsidiaries of other entities or otherwise subject to control by other entities (and are not publicly traded).

Dr. Kubin has determined that there may be an adverse economic effect on those small businesses who submit specimens or samples to the LSS for analysis. Therefore, the following two analyses have been performed:

ECONOMIC IMPACT STATEMENT

The Economic Impact Statement as follows does not explicitly cover "micro-businesses," but Texas Government Code, §2006.002(a), requires an analysis of the impacts on such businesses. The department believes that some of the health care providers impacted by this proposed rule will be "micro-businesses" as well as "small businesses," and thus the department's analyses regarding the latter will also be applicable to the former. While it is true that a micro-business may be inherently somewhat less able to absorb new increased fees than a small business, the department believes that all businesses periodically experience increases in the cost of doing business. The revised fees in this package of proposed rulemaking amendments were derived using the mandated methodology in SB 80. Some fees went up, and some fees went down. The impact on a particular submitter will vary depending on, among other things, what particular tests are ordered by that submitter.

The laboratory does not collect information on the size of a submitter's business, and so it does not have direct data at hand to definitely determine what percentage of its usual submitters are small or micro-businesses. However, the department has made an estimate, using an approach suggested in the Texas Office of the Attorney General guidance document associated with HB 3430. A review of The North American Industry Classification System (NAICS) on the U.S. Census Bureau website revealed four classifications that appear to represent all the submitter types for the LSS. Specific information on the number of small businesses listed for each of these codes in 2007 was found on the Texas Comptroller of Public Accounts Website. The NAICS codes that represent submitters to the LSS include: "6221" - General Medical and Surgical Hospitals (364 businesses listed of which 56 are defined as small businesses), "6214"- Outpatient Care Centers (578 businesses listed of which 442 are defined as small businesses), "6223" - Specialty (except Psychiatric and Substance Abuse) Hospitals (116 businesses listed of which 80 are defined as small businesses), and "2213" - Water, Sewage and Other Systems (927 businesses listed of which 852 are defined as small businesses). The total number of businesses listed for these four classification codes is 1985. Of that number, only 1439 of the businesses listed (physician, clinics, hospitals and public water systems) are small businesses that could be affected by these rule amendments. This estimate corresponds to approximately 12% of the total number of submitters who submitted specimens to the LSS from January 1, 2010 through June 30, 2011, extrapolating based on the assumptions

and data discussed previously. The department believes that most of these 1430 small or micro-businesses are contractors for department programs such as Texas Health Steps and HIV Prevention. Therefore, the economic impact would be to the department program which hires each contractor, and it is those department programs which would ultimately have to absorb the fee increases. Subtracting these contractors from the total, the department believes this leaves a much smaller number of non-department contractor small and micro-businesses that could be impacted by any fee increases.

REGULATORY FLEXIBILITY ANALYSIS

Texas Government Code, Chapter 2006, was amended by HB 3430, 80th Legislature, Regular Session, 2007, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule. The department has considered several options for minimizing the adverse impacts on small businesses.

Option 1 - Maintain fees at current levels. The department cannot implement this option because SB 80 requires the department to develop, document and implement procedures for setting fees for laboratory services, including updating and implementing a documented cost allocation methodology that determines reasonable costs for specific types of tests, as well as analyzing the department's costs and updating the fee schedule as needed in accordance with Texas Health and Safety Code, §12.032(c). The fees included in these proposed amendments to the rule were derived using that methodology required by SB 80, consistent with Texas Health and Safety Code, §12.032. Keeping the fees at current levels would not reflect the use of the required methodology. Additionally, fees have not been increased since 2007. Since that time the laboratory has experienced increases in costs of supplies and equipment necessary to perform laboratory testing. If the department does not adjust fees to cover the current costs of providing laboratory services, there will be a significant negative impact on the department's ability to maintain the current level of laboratory services.

Option 2 - Allow an exemption from fees for small and micro-businesses. Texas Health and Safety Code, §§12.031, 12.032, and 12.0122 allow the department to charge fees to a "person" who receives public health services from the department, with the fee amount reflecting that which is necessary for the department to recover costs for performing laboratory services. Public health service fees generated by laboratory testing are appropriated to the LSS and are used to purchase supplies and equipment necessary for testing and to pay salaries of laboratory personnel (as well as to service the bond debt for the main department laboratory building in Austin). If the department were to allow an exemption from fees for small and micro-businesses, the reduction in revenues generated would significantly impact the department's ability to maintain the current level of laboratory services. Such a fee structure would also not reflect the SB 80 methodology discussed at Option 1. Additionally, Texas Health and Safety Code, §12.032(e), states that the department may not fail to provide the service at issue if the submitter can demonstrate a financial inability to pay. So if a small or micro-business could demonstrate, through submission of appropriate documentation, that it truly was unable to pay for a laboratory service, that would be an option for such a business. It should be noted, though, that an inability to pay is not the same thing as not having budgeted sufficient funds to pay, for example. The submitter would have to demonstrate, to the agency's satisfaction (through submission of tax return and other documentation), that it simply did not have the funds at all to pay for the service in question.

Option 3 - Lower fees for all submitters. Texas Health and Safety Code, §§12.031, 12.032, and 12.0122 allow the department to charge fees to a person who receives public health services from the department, and those fees cannot exceed the amount which is necessary for the department to recover costs for performing laboratory services. Public health service fees generated by laboratory testing are appropriated to the LSS and are used to purchase supplies and equipment necessary for testing and to pay salaries of laboratory personnel (as well as to service the bond debt for the main department's laboratory building in Austin). If the department were to lower fees on all tests for all submitters, the reduction in revenues generated would have a significantly negative impact the department's ability to maintain the current level of laboratory services. Such a fee structure would also not reflect the SB 80 methodology discussed at Option 1.

TAKINGS IMPACT ASSESSMENT.

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

PUBLIC BENEFIT

In addition, Dr. Kubin has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be the continued operation of the department's laboratories, which perform important public health activities every day. The public would also benefit by the department adjusting its fees to recover the costs associated with providing these laboratory services, which is money for LSS operations that would then reduce the amount of funding required to come from the public's tax dollars (i.e., General Revenue). The public would also benefit from the proposed changes designed to improve clarity, readability and user-friendliness of the rules, in that there is a public benefit whenever a state agency improves the efficiency of its operations. The public will also benefit from the list of laboratory services currently available being updated for accuracy.

PUBLIC COMMENT

Comments on the proposal may be directed to Norma Vela, Laboratory Services Section, Mail Code 1947, P.O. Box 149307, Austin, Texas 78714-9347, (512) 771-6626 or by email at norma.vela@dshs.state.tx.us. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' legal authority to adopt.

25 TAC §§73.31, 73.41, 73.51, 73.54, 73.55

STATUTORY AUTHORITY

The amendments and new rules are authorized under Texas Health and Safety Code, §12.031 and §12.032, which allow the department to charge fees to a person who receives public health services from the department, §12.034, which requires

the department to establish collection procedures, §12.035, which required the department to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the department's public health service fee fund, and §12.0122, which allows the department to enter into a contract for laboratory services; and Texas Government Code, §531.0055. and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendments and new rules affect the Texas Health and Safety Code, Chapters 12 and 1001; and Texas Government Code, Chapter 531.

§73.31. Specimen Submission.

(a) Specimens submitted to the Department of State Health Services (department) shall meet the requirements specified in [~~be in compliance with~~] the department's Manual of Reference Services (manual) and other written instructions established by the department. The manual is posted on the department's website.

(b) Failure to submit a specimen as required will [~~may~~] result in the department's refusal to perform the requested services.

(c) (No change.)

§73.41. Sale of Laboratory Services.

(a) Purpose. This section details [~~implements~~] the procedures [~~provisions of the Health and Safety Code,~~ §12.0122] concerning the sale of [~~specific~~] laboratory services by the Department of State Health Services (department). Certain of these services are set out by rule with specific charges for each listed service, as found in §73.54 and §73.55 of this title (relating to Fee Schedule for Clinical Testing and Newborn Screening and Fee Schedule for Chemical Analyses). Provision of those listed services by the department may or may not involve a contract, at the department's discretion. Other services, not found in those fee schedules, that the department elects to sell will be memorialized in a contract between the department and the purchaser of such service(s). Entities which the department may contract with for the sale of laboratory services are limited to those found at Health and Safety Code, §12.0122.

(b) Definition of laboratory services. [~~Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.~~]

[~~(1)~~] Laboratory services include [~~--Include~~] the sale of the following services: the evaluation and/or testing of samples, and the subsequent reporting of test or evaluation results for samples submitted to the laboratory; [,] certification, accreditation or approval of milk and shellfish laboratories and milk analysts; [~~of laboratories, training of laboratorians~~] and special projects. Laboratory Services, as limited by Health and Safety Code, §12.0122, do [~~including special projects for which the department's bureau contracts under this section shall~~] not include services related to tissue and cytology specimens [,] except for pap smears for recipients under federally funded programs.

[~~(2) Special projects--Include but are not limited to evaluating adequacy of new test procedures, analyzing samples by methods not routinely used or for analytes not routinely tested, special surveys and preparation of data packages.~~]

(c) Charges. Fees for the sale of laboratory services found in the fee schedules at §73.54 and §73.55 of this title were calculated to recover the department's costs associated with such activities. When laboratory services outside of those fee schedules are sold under this section, the contract executed for that sale shall include charges for the services in question which recover the department's costs associated with such activities. [~~For each contract governed by Health and Safety Code, §12.0122 the charges for laboratory services shall be the reasonable charges negotiated by the department and the contracting party(s). The charges in a contract shall be sufficient to ensure the proper provision of the services to be performed and the reasonable recovery by the department of its costs relating to the contract.~~]

(d) (No change.)

(e) Fees. A schedule of all fees is available upon request from the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 776-7318. It is also available online in the Manual of Reference Services at http://www.dshs.state.tx.us/lab. [~~This section does not affect the authority of the department to establish and collect fees for laboratory services under the Health and Safety Code, Chapter 12, Subchapter D, §§12.031-12.034.~~]

(f) Payment of charges.

(1) The department will determine whether a charge must be paid with submission of the specimen or whether the department will bill later for the charge, unless otherwise stated in this section.

(2) A charge paid is non-refundable.

(3) Failure to pay a charge in a timely manner may result in the department's refusal to accept specimens or samples until all delinquent charges are paid.

§73.51. Technical Definitions Associated with the Sale of Laboratory Services.

The following words and terms, when used in this section shall have the following meaning.

(1) All metals drinking water group--Aluminum, antimony, arsenic, barium, beryllium, total hardness (calculated), cadmium, calcium, chromium, copper, iron, lead, magnesium, manganese, mercury, nickel, selenium, silver, sodium, thallium, and zinc.

(2) Chlorinated pesticides and polychlorinated biphenyls (PCBs) in drinking water.

(A) Regulated compounds--Alachlor, aroclor 1016, aroclor 1221, aroclor 1232, aroclor 1242, aroclor 1248, aroclor 1254, aroclor 1260, atrazine, chlordane, endrin, heptachlor, heptachlor epoxide, hexachlorobenzene, hexaclorocyclopentadiene, lindane, methoxychlor simazine and toxaphene.

(B) Non-Regulated compounds--Aldrin, butachlor, dieldrin, etolachlor, metribuzin, propachlor, trifluralin.

(3) Gamma emitting isotopes--Gamma emitting isotopes with energies ranging from 59 keV to 1836 keV.

(4) ICP/ICP-MS drinking water metals group--Aluminum, arsenic, barium, beryllium, calcium, total hardness (calculated), chromium, copper, iron, lead, magnesium, manganese, nickel, silver, sodium, and zinc.

(5) Reagent water metal suitability group--cadmium, chromium, copper, iron, lead, manganese, nickel and zinc.

(6) Routine water mineral group--Alkalinity, chloride, conductance, fluoride, nitrate, pH, sulfate, and total dissolved solids.

(7) Volatile organic compounds (VOC).

(A) In air--1,1,1-Trichloroethane, 1,2,4-trimethylbenzene, 1,4-dichlorobenzene, 2-ethoxy ethyl acetate, 2-heptanone, 2-propanol, acetone, alpha-pinene, benzene, butoxy ethanol, butyl

acetate, chloroform, cumene (isopropyl benzene), cyclohexane, cyclohexanone, ethanol, ethyl acetate, ethyl methacrylate, ethylbenzene, heptane, hexachloroethane, isoamyl acetate, iso-butanol, limonene, m/p-xylene, methyl ethyl ketone (MEK), methyl isobutyl ketone, methyl methacrylate, napththalene, n-propyl acetate, o-xylene, phenol, sec-butanol, styrene, tetrachloroethylene, tetrahydrofuran, toluene, trichloroethylene.

(B) In drinking water.

(i) Regulated compounds--1,1,1-Trichloroethane, 1,1,2-trichloroethane, 1,1-dichloroethylene, 1,2,4-trichlorobenzene, 1,2-dichloroethane, 1,2-dichloropropane, benzene, carbon tetrachloride, cis-1,2-dichloroethylene, dichloromethane, ethylbenzene, monochlorobenzene, o-dichlorobenzene, para-dichlorobenzene, styrene, tetrachlorethylene, toluene, trans-1,2-dichloroethylene, trichloroethylene, vinyl chloride, xylenes (total).

(ii) Monitored compounds--1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, 1,1-dichloroethane, 1,1-dichloropropene, 1,2,3-trichlorobenzene, 1,2,3-trichloropropane, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-dichlorobenzene, 1,3-dichloropropane, 2,2-dichloropropane, 2-chlorotoluene, 4-chlorotoluene, 4-isopropyltoluene, bromobenzene, bromochloromethane, bromodichloromethane, bromoform, bromomethane, chloroethane, chloroform, chloromethane, cis-1,3-dichloropropene, dibromochloromethane, dibromomethane, dichlorodifluoromethane, hexachlorobutadiene, isopropylbenzene, naphthalene, n-buthybenzene, n-propylbenzene, s-butylbenzene, t-butylbenzene, trans-1,3-dichloropropene, trichlorofluoromethane.

(iii) Other compounds--2-Butanone (MEK), 2-hexanone, 4-methyl-2-pentanone (MIBK), acetone, acrylonitrile, carbon disulfide, ethyl methacrylate, iodomethane, methyl methacrylate, methyl-t-butyl ether (MTBE), tetrahydrofuran, vinyl acetate.

(8) Trihalomethanes (THM)--Bromodichloromethane, bromoform, chloroform, dibromochloromethane, trichloromethanes, and total THM.

(9) Carbamate insecticides.

(A) Regulated compounds--Aldicarb, aldicarb sulfone, aldicarb sulfoxide, carbofuran, oxamyl.

(B) Monitored compounds--Baygon, carbaryl, 3-hydroxycarbofuran, methiocarb, methomyl.

(10) Dibromochloropropane (DBCP) and ethylene dibromide (EDB).

(A) Regulated compounds--Ethylene dibromide, dibromochloropropane.

(B) Non-regulated compound--1,2,3-Trichloropropane.

(11) Haloacetic acids.

(A) Regulated compounds--Dibromoacetic acid, dichloroacetic acid, monobromoacetic acid, monochloroacetic acid, trichloroacetic acid, total of the 5 regulated haloacetic acids (HAA5).

(B) Monitored compounds--Bromochloroacetic acid, dalapon.

(12) Chlorophenoxy herbicides.

(A) Regulated compounds--2,3-Dichloropenoxyacetic acid (2,4-D), 2(2,4,5-Trichlorophenoxy)propionic acid (2,4,5-TP)(Silvex), dalapon, dinoseb, pentachlorophenol, picloram.

(B) Non-Regulated compounds--2,4,5-Trichlorophenoxyacetic acid (2,4,5-T,), 4,(2,4-Dichlorophenoxy)butyric acid (2,4,-DB), 3,5-dichlorobenzoic acid, aciflurofen, bentazon, chloramben, dicamba, dichlorprop, quinclorac.

(13) Polycyclic Aromatic Hydrocarbon (PHA)/Phthalates, Synthetic Organic Contaminants Group 5 (SOC 5).

(A) Regulated Compounds--Alachlor, alpha-chlordane, atrazine, benzo(a)pyrene, chlordane, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, endrin, gamma-chlordane, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorocyclopentadiene, lindane, methoxychlor, pentachlorophenol, simazine, toxaphene, trans-nonachlor.

(B) Monitored Compounds--2,2',3,3',4,4',6-heptachlorobiphenyl, 2,2',3',4,6-pentachlorobiphenyl, 2,2',4,4',5,6 hexachlorobiphenyl, 2,2',3,3',4,5',6,6',-octachlorobiphenyl, 2,2',4,4'-tetrachlorobiphenyl, 2,4,5-trichlorobiphenyl, 2,3-dichlorobiphenyl, 2-chlorobiphenyl, acenaphthene, acenaphthylene, aldrin, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, bromacil, butachlor, butylbenzylphthalate, chrysene, dibenz(a,h)anthracene, dieldrin, diethylphthalate, dimethylphthalate, di-n-butylphthalate, fluorene, indeno(1,2,3-cd)pyrene, metolachlor, metribuzin, naphthalene, phenathrene, prometon, propachlor, pyrene, trifluralin.

(14) Semi-Volatile Organic Compounds.

(A) Pesticides--Alachlor, aldrin, atrazine, bromacil, butachlor, alpha-chlordane, gamma-chlordane, trans-nonachlor chlordane, dieldrin, heptachlor, hexachlorobenzene, hexachlorcyclopentadiene, lindane, methoxychlor, metolachlor, metribuzin, pentachlorophenol, promethon, propachlor, simazine, trifluralin.

(B) Polycyclic Aromatic Hydrocarbons (PAHs)--Acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluroanthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, fluorene, indeno(1,2,3,c,d,)pyrene, naphthalene, phenanthrene, pyrene.

(C) PCBs--2-Chlorobiphenyl, 2,3-dichlorobiphenyl, 2,4,5-trichlorobiphenyl, 2,2',4,4'-tetrachlorobiphenyl, 2,2',3',4,6-pentachlorobiphenyl, 2,2',4,4'5,6'-hexachlorobiphenyl, 2,2',3,3',4,4',6-heptachlorobiphenyl, 2,2',3,3',4,5',6,6'-octachlorobiphenyl.

(D) Phthalates--butylbenzylphthalate, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, diethylphthalate, dimethylphthalate, di-n-butylphthalate.

§73.54. Fee Schedule for Clinical Testing and Newborn Screening.

(a) Tests performed on clinical specimens, Austin Laboratory.

(1) Biochemistry and genetics.

(A) Newborn screening.

(i) Newborn screening panel--$33.60. (Fees are based on the newborn screening specimen collection kit which is a department approved, bar-coded, FDA approved medical specimen collection device that includes a filter paper collection device, parent information sheet, specimen storage and use information, parent disclosure request form, demographic information sheet, and specimen collection directions with protective wrap-around cover for the specimen that should be used to submit a newborn's blood specimen for the first or second screen, repeat or follow-up testing and which includes the cost of screening.)

(ii) Phenylalanine/tyrosine--$16.61.

(B) Clinical chemistry.

(i) Antibody identification--$260.70.

(ii) Antibody screen--$20.51.

(iii) Antibody titer--$46.07.

(iv) Blood typing ABO--$20.51.

(v) Cholesterol--$4.07.

(vi) Glucose:

(I) glucose fasting--$3.96;

(II) glucose post prandial (1 hour)--$3.96;

(III) glucose post prandial (2 hour)--$7.91;

(IV) glucose random--$3.96;

(V) glucose tolerance test 1 hour--$7.91;

(VI) glucose tolerance test 2 hour--$11.87; and

(VII) glucose tolerance test 3 hour--$15.82.

(vii) Hematocrit--$6.62.

(viii) Hemoglobin--$1.53.

(ix) Hemoglobin electrophoresis--$3.98.

(x) High-density lipoprotein (HDL)--$7.14.

(xi) Lead--$3.47.

(xii) Lipid panel (consists of cholesterol, triglycerides, high density lipoprotein (HDL), and low density lipoprotein (LDL))--$10.57.

(xiii) Red blood cell antigens, other than ABO or Rh(D)--$260.70.

(xiv) RH typing--$20.51.

(C) DNA Analysis.

(i) Cystic fibrosis mutation panel--$147.22.

(ii) Hemoglobin (Hb) DNA:

(I) HbS, HbC, HbE, HbD or HbO-Arab--$186.84;

(II) common beta-thalassemia mutation--$213.21; and

(III) beta-globin gene sequencing--$783.42.

(iii) Phenylketonuria (PKU) full gene sequencing--$1726.03.

(iv) Galactosemia common mutation panel--$383.21.

(v) Medium chain acyl-CoA dehydrogenase deficiency (MCAD), common mutation panel--$280.79.

(vi) Very long chain acyl-CoA dehydrogenase deficiency (VLCAD), full gene sequencing--$1596.93.

(2) Microbiology.

(A) Bacteriology. Charges for bacteriology testing will be based upon the actual testing performed as determined by suspect organisms, specimen type and clinical history provided.

(i) Aerobic culture from clinical specimen--$367.37.

(ii) Anaerobic identification, pure culture--$146.70.

(iii) Anaerobic culture from clinical specimen--$197.10.

(iv) Bacteriology pulsed field gel electrophoresis (PFGE)--$112.67.

(v) Cholera, culture confirmation--$32.73.

(vi) Culture, stool--$158.07.

(vii) Definitive identification:

(I) bacillus--$175.88;

(II) group B streptococcus (Beta strep)--$113.70;

(III) *Bordetella*--$147.77;

(IV) *Bordetella pertussis,* polymerase chain reaction (PCR)--$32.11;

(V) *Campylobacter*--$165.44;

(VI) enteric bacteria--$243.97;

(VII) gram negative rod--$261.00;

(VIII) gram positive rod--$226.12;

(IX) *Haemophilus*--$242.23;

(X) *Legionella*--$265.57;

(XI) *Neisseria meningitides*--$390.52;

(XII) pertussis--$287.98;

(XIII) *Staphylococcus*--$188.88; and

(XIV) *Streptococcus*--$258.91.

(viii) Enteric bacteria:

(I) culture confirmation--$158.53;

(II) *Shigella* serotyping--$120.38; and

(III) *Salmonella* serotyping--$86.63.

(ix) Enterohaemorrhagic *Escherichia Coli* (EHEC), shiga-like toxin assay--$38.60.

(x) *Escherichia coli (E.coli)* O157:H7, culture confirmation--$26.64.

(xi) *Haemophilus:*

(I) culture confirmation, serological--$138.64; and

(II) isolation from clinical specimen--$100.18.

(xii) *Neisseria meningitides,* serotyping--$167.48.

(xiii) Shiga toxin producing *E.coli,* PCR--$36.60.

(xiv) Toxic shock syndrome toxin I assay (TSST 1)--$125.25.

(xv) *Vibrio cholerae,* serotyping--$32.73.

(B) Emergency preparedness.

(i) Biological threat agent analysis.

(I) Definitive identification:

(-a-) *Bacillus anthracis*--$420.73;

(-b-) Brucella species--$669.70;

(-c-) *Burkholderia pseudomallei*--$519.72;

(-d-) *Francisella tularensis*--$534.55; and

(-e-) *Yersinia pestis*--$485.23.

(II) Culture:

(-a-) all aerobes--$153.51; and

(-b-) Botulinum (human)--$231.82.

(III) Toxin Assay, Botulinum--$235.57.

(IV) PCR:

(-a-) *Bacillus anthracis*--$69.16;

(-b-) *Brucella abortus*--$164.20;

(-c-) *Burkholderia pseudomallei*--$50.88;

(-d-) *Coxiella burnetii*--$229.31;

(-e-) *Francisella tularensis*--$165.95;

(-f-) Orthopox--$124.27;

(-g-) Vaccinia--$165.78;

(-h-) Variola--$165.78;

(-i-) Varicella zoster virus--$221.72;

(-j-) *Yersinia pestis*--$51.36; and

(-k-) Unknown biological threat agent--$273.36.

(ii) Chemical threat agent analysis.

(I) Abrine/ricinine, LC/MS-MS--$62.25.

(II) Arsenic/selenium in urine, ICP-DRC (Dynamic reaction cell)-MS--$176.62.

(III) Cyanide in blood, gas chromatography/mass spectrometry (GC/MS)--$287.05.

(IV) Metabolic Toxin Panel (monochloroacetate and monofluoro acetate in urine, LC/MS-MS)--$93.38.

(V) Metals in blood (mercury, lead, cadmium), inductively coupled plasma mass spectrometry (ICP/MS)--$194.64.

(VI) Metals in urine (antimony, barium, beryllium, cadmium, cesium, cobalt, lead, molybdenum, platinum, titanium, tungsten, uranium), ICP/MS--$173.25.

(VII) Organophosphorus nerve agent, LC/MS-MS--$81.28.

(VIII) Tetramine, gas chromatography/mass selective detector (GC/MSD)--$183.05.

(IX) Tetranitormethane metabolite in urine (4-hydroxy-2-nitrophenylacetic acid (HNPAA)), liquid chromatography, tandem mass spectrometry (LC/MS-MS)--$62.21.

(X) Volatile organic compounds in blood, GC/MS--$124.85.

(C) Mycobacteriology/mycology.

(i) Acid fast bacilli (AFB).

(I) Clinical specimen, AFB isolation and identification.

(-a-) Blood culture--$138.97.

(-b-) Culture, other than blood--$32.04.

(-c-) Direct detection by high-performance liquid chromatography (HPLC)--$124.90.

(-d-) Identification of AFB isolate:

(-1-) HPLC--$66.26;

(-2-) Accuprobe--$81.40;

(-3-) biochemical, basic--$132.35; and

(-4-) biochemical, complex--$472.84.

(-e-) Nucleic acid amplification for *Mycobacterium tuberculosis (M. tuberculosis)* complex--$197.41.

(-f-) Specimen concentration--$5.38.

(-g-) Smear--$11.59.

(II) Referred AFB isolate identification.

(-a-) Identification, including HPLC--$133.88.

(-b-) Biochemical identification:

(-1-) basic--$132.35; and

(-2-) complex--$472.84.

(-c-) Isolate identification, Accuprobe--$81.40.

(ii) Actinomycete, Aerobic:

(I) Identification--$106.96; and

(II) HPLC--$138.05.

(iii) Fungi isolate identification:

(I) yeast--$90.34;

(II) mold--$65.98; and

(III) mold by Accuprobe--$81.40.

(iv) Mycobacterium Kansasii, Drug susceptibility, agar proportion drug, Rifampin--$185.96.

(v) Mycobacterium tuberculosis (M. tuberculosis) complex drug susceptibility.

(I) AGAR proportion drugs.

(-a-) Capreomycin--$30.41.

(-b-) Ethambutol--$30.41.

(-c-) Ethionamide--$30.41.

(-d-) Isoniazid--$30.41.

(-e-) Kanamycin--$30.41.

(-f-) Ofloxaxin--$30.41.

(-g-) Rifabutin--$30.41.

(-h-) Rifampin--$30.41.

(-i-) Streptomycin--$30.41.

(II) Primary drug, BACTEC.

(-a-) Ethambutol--$37.40.

(-b-) Isoniazid--$37.40.

(-c-) Rifampin--$37.40.

(-d-) Pyrazinamide (PZA)--$98.76.

(III) Secondary drug, BACTEC.

(-a-) Ethionamide--$23.24.

(-b-) Kanamycin--$23.24.

(-c-) Ofloxacin--$23.24.

(-d-) Rifabutin--$23.24.

(-e-) Streptomycin--$23.24.

(D) Parasitology.

(i) Blood parasite examination, thick and thin Giemsa--$181.79.

(ii) Fecal ova and parasite examination, concentration and trichrome stain--$67.41.

(iii) Malaria identification, (PCR)--$141.79.

(iv) Miscellaneous Parasite examination:

(I) acid fast stain--$74.17;

(II) chromotrope stain--$140.55;

(III) Giemsa stain--$177.55;

(IV) tissue preparation--$73.55;

(V) trichrome stain--$96.98; and

(VI) wet mount--$73.55.

(v) Parasite identification, PCR--$141.79.

(vi) Pinworm examination--$37.50.

(vii) Urine ova and parasite exam--$56.36.

(viii) Worm identification:

(I) simple--$46.44; and

(II) complex--$120.08.

(E) Serology.

(i) Arbovirus:

(I) Immunoglobulin G (IgG) (includes: Dengue, St. Louis Encephalitis, West Nile Virus)--$147.78;

(II) Immunoglobulin M (IgM) (includes: Dengue, St. Louis Encephalitis, West Nile Virus)--$82.45; and

(III) PCR West Nile Virus (WNV)--$57.87.

(ii) *Aspergillus*--$84.13.

(iii) *Brucella*--$74.52.

(iv) Cat scratch fever *(Bartonella)*--$171.30.

(v) Cytomegalovirus (CMV):

(I) IgG--$399.97; and

(II) IgM--$161.02.

(vi) *Ehrlichia* indirect fluorescent antibody (IFA)--$174.20.

(vii) Fungus:

(I) fungal identification (blastomycosis, coccidioidomycosis, histoplasmosis)--$142.05; and

(II) fungal panel (blastomycosis, coccidioidomycosis, histoplasmosis)--$130.55.

(viii) Hantavirus IgG/IgM--$362.05.

(ix) Hepatitis A:

(I) IgM--$317.74; and

(II) total--$219.60.

(x) Hepatitis B:

(I) core antibody--$143.90;

(II) core IgM antibody--$295.64;

(III) surface antibody (Ab)--$103.84; and

(IV) surface antigen (Ag)--$51.45.

(xi) Hepatitis BeAb--$109.20.

(xii) Hepatitis BeAg--$195.14.

(xiii) Hepatitis C (HCV)--$25.68.

(xiv) Human immunodeficiency virus (HIV):

(I) HIV 1, 2, plus 0 screen--$11.40;

(II) serum, multi-spot--$40.74.

(xv) Human immunodeficiency virus-1 (HIV-1):

(I) enzyme immunoassay (EIA) Dried Blood Spots (DBS)--$14.32;

(II) enzyme immunoassay (EIA) oral fluid--$69.99;

(III) Nucleic acid amplification test (NAAT)--$7.79;

(IV) western blot serum--$277.23;

(V) western blot DBS--$277.23; and

(VI) western blot oral--$324.71.

(xvi) *Legionella*--$168.42.

(xvii) Lyme *(Borrelia)* IgG/IgM Panel--$706.25.

(xviii) Measles, mumps, rubella - *Varicella zoster* virus (MMR-VCV) Magnetic Immunoassay (MIA)--$345.63.

(xix) Mumps:

(I) epidemic parotitis IgG--$154.46; and

(II) epidemic parotitis IgM--$251.96.

(xx) Q-Fever--$234.97.

(xxi) QuantiFERON (tuberculosis serology)--$84.45.

(xxii) *Rickettsia* panel (includes: Rocky Mountain spotted fever and typhus)--$134.14.

(xxiii) Rubella:

(I) IgM--$329.37; and

(II) screen--$24.13.

(xxiv) Rubeola:

(I) IgM--$210.24; and

(II) Screen (IgG)--$165.16.

(xxv) Schistosoma enzyme immunoassay (EIA)--$134.49.

(xxvi) Strongyloide enzyme immunoassay (EIA)--$73.45.

(xxvii) Syphilis:

(I) Confirmation fluorescent treponemal antibody absorbed (FTA-ABS)--$80.20;

(II) Confirmation particle agglutination (TP-PA)--$27.02; and

(III) Rapid plasma reagin (RPR):

(-a-) screen (qualitative)--$2.89; and

(-b-) titer (quantitative)--$12.88.

(xxviii) Toxoplasmosis--$357.49.

(xxix) Tularemia *(Francisella tularensis)*--$54.53.

(xxx) *Varicella zoster* virus (VCV)--$345.63.

(xxxi) *Yersinia pestis* (Plague), serum--$237.18.

(F) Virology.

(i) Adenoviruses, PCR--$304.38.

(ii) Arbovirus identification, PCR:

(I) Eastern Equine Encephalitis (EEE)--$60.39;

(II) St. Louis Encephalitis (SLE)--$60.18; and

(III) Western Equine Encephalitis (WEE)--$60.41.

(iii) Arbovirus identification, direct fluorescent antibody (DFA)--$152.93.

(iv) Coxsackievirus, DFA--$84.37.

(v) Culture:

(I) clinical--$135.46; and

(II) reference--$96.66.

(vi) Echovirus, DFA--$115.80.

(vii) Electron microscopy (includes observation, electron microscopy and photography)--$527.91.

(viii) Enterovirus:

(I) DFA--$162.96; and

(II) PCR--$393.27.

(ix) *Herpes simplex virus* 1 and 2, identification, DFA--$96.52.

(x) Influenza A/B identification, DFA--$54.02.

(xi) Influenza, culture--$248.00.

(xii) Influenza typing, PCR--$248.00.

(xiii) Norovirus (Norwalk-like virus) PCR--$55.77.

(xiv) Rotovirus, PCR--$55.75.

(xv) Viral agent:

(I) isolation--$172.70;

(II) indirect fluorescent antibody (IFA) detection, other--$147.83; and

(III) indirect fluorescent antibody (IFA) detection, respiratory--$95.34.

(xvi) Viral molecular sequencing--$400.65.

(xvii) Virus detection hemadsorption--$42.18.

(xviii) Virus isolation, mouse inoculation--$1029.50.

(xix) Virus typing, hemaglutination inhibition--$67.49.

(b) Tests performed on clinical specimens, South Texas Laboratory. Specimens that must be sent to a reference lab for testing will be billed at the reference laboratory price plus a $3.00 handling fee.

(1) Bacteriology.

(A) Aerobic isolation, definitive identification, *Streptococcus* screen--$9.94.

(B) Fecal occult blood--$3.94.

(C) Fecal white blood cell (WBC) smear--$11.67.

(D) KOH exam except for skin, hair nails--$7.85.

(E) Wet mount, vaginal--$9.14.

(2) Clinical Chemistry.

(A) Albumin, serum, urine or other source--$1.27.

(B) Alkaline phosphatase--$1.37.

(C) Amylase, serum--$7.37.

(D) Aspartate aminotransferase (AST)--$1.32.

(E) Bilirubin, total--$1.30.

(F) Blood urea nitrogen (BUN)--$1.48.

(G) Calcium--$1.64.

(H) Carbon dioxide (CO2)--$1.35.

(I) Chloride, serum--$1.35.

(J) Cholesterol:

(i) total--$1.36;

(ii) High-density lipoprotein (HDL)--$1.37; and

(iii) Low-density lipoprotein (LDL)--$2.20.

(K) Creatine kinase (CK) assay--$2.79.

(L) Creatinine assay--$1.30.

(M) Electrolyte panel--includes anion gap (calculated), CO2, chloride, potassium, and sodium--$2.83.

(N) Gamma-glutamyl transferase (GGT)--$3.90.

(O) Glucose:

(i) Glucose tolerance test, 2 hour--$1.37; and

(ii) postprandial, 0 and 2 hours--$1.34.

(P) Hepatic function panel--includes Alanine phosphatase (ALT), albumin, alkaline phosphatase, AST, bilirubin (direct and total), and protein (total)--$2.47.

(Q) Hemoglobin A1C--$10.37.

(R) Iron binding capacity, total--$8.55.

(S) Iron, total--$7.08.

(T) Lactic acid dehydrogenase (LDH)--$8.17.

(U) Lipase--$20.43.

(V) Lipid profile panel--includes cholesterol, HDL, and triglycerides--$8.84.

(W) Magnesium--$7.82.

(X) Metabolic panels:

(i) basic panel--includes calcium, carbon dioxide (CO2), chloride, creatinine, glucose, potassium, sodium and blood urea nitrogen (BUN)--$3.65; and

(ii) comprehensive panel--includes alanine amino transferase (ALT), albumin, alkaline phosphatase, AST, bilirubin (total), calcium, CO2, chloride, creatinine, glucose, potassium, protein (total), sodium, and BUN--$6.39.

(Y) Phosphorus--$11.56.

(Z) Potassium--$1.35.

(AA) Protein, total--$1.41.

(BB) Renal function panel--includes albumin, calcium, CO2, chloride, creatinine, phosphate, potassium, sodium, and BUN--$18.13.

(CC) Sodium--$1.35.

(DD) Triglycerides--$1.36.

(EE) Tuberculosis panel--includes-ALT, alkaline phosphatase, AST, bilirubin (total), cholesterol, creatinine, GGT, BUN, and uric acid (blood)--$10.36.

(FF) Uric acid--$4.07.

(3) Hematology.

(A) CBC (complete blood count) with smear review--$9.11.

(B) CBC complete, automated with differential--$1.51.

(C) Differential, manual--$9.89.

(D) Hematocrit--$6.01.

(E) Hemoglobin, total--$6.01.

(F) Sedimentation rate--$11.38.

(4) Immunology.

(A) Pregnancy test:

(i) serum--$4.40; and

(ii) urine--$4.24.

(B) Rheumatoid factor--$4.73.

(5) Microbiology.

(A) Mycobacteriology, Acid fast bacillus (AFB).

(i) Concentration--$4.31.

(ii) Culture, any source--$49.89.

(iii) Drug susceptibility studies:

(I) conventional susceptibility (each drug)--$36.45; and

(II) MGIT susceptibility (each drug)--$92.69.

(iv) Identification, referred isolates, DNA probe--$44.63.

(v) Smear only--$5.09.

(B) Parasitology, ova and parasites (concentration and trichrome stain)--$67.17.

(C) Serology, syphilis.

(i) Rapid plasma reagin (RPR):

(I) screen (qualitative)--$7.99; and

(II) titer (quantitative)--$7.99.

(ii) Confirmation particle agglutination (TP-PA)--$9.30.

(D) Wet mount, vaginal--$9.14.

(6) Special chemistry.

(A) Ferritin--$22.31.

(B) Follicle simulating hormone (FSH)--$15.10.

(C) Leuteinizing hormone (LH)--$17.83.

(D) Prolactin--$18.07.

(E) Prostate specific antigen (PSA), total--$27.90.

(F) Thyroxin (T4), free, prenatal--$35.53.

(G) Thyroid stimulating hormone (TSH), prenatal--$9.41.

(H) Tri-iodothyronine (T3) uptake, total, prenatal--$19.10.

(7) Urinalysis.

(A) Creatinine clearance test--$12.00.

(B) Protein, total, 24 hour--$5.82.

(C) Microscopy with urinalysis (UA)--$32.25.

(D) Urinalysis, no reflex--$5.24.

(E) Urine microalbumin, random--$5.69.

(c) Tests performed on clinical specimens, Women's Health Laboratory.

(1) Bacteriology.

(A) Bacterial culture, routine:

(i) body fluid--$33.19;

(ii) eye, ear, and nasopharynx (np)--$36.67;

(iii) sputum/trach (tracheostomy)--$35.35;

(iv) stool--$37.35;

(v) throat--$26.57;

(vi) urine--$11.03;

(vii) urogenital--$40.14; and

(viii) wound--$92.82.

(B) Fecal occult blood--$32.65.

(C) Fungus.

(i) clinical, definitive identification:

(I) mold, nocardia--$87.80; and

(II) yeast identification--$49.28.

(ii) reference culture:

(I) genital/urine--$49.46;

(II) routine with KOH--$29.44;

(III) skin, hair, nail--$71.85; and

(IV) tissue with KOH--$86.85.

(D) Genetic probe.

(i) Group B streptococcus--$18.97.

(ii) Gonorrhea/Chlamydia (GC/CT):

(I) amplified GenProbe--$19.72; and

(II) CT and GC, DNA--$19.72.

(E) Gram stain smear with fecal WBC:

(i) fecal leukocytes--$6.97; and

(ii) gram stain--$11.20.

(F) KOH prep--$6.88.

(G) Wet mount, vaginal--$18.05.

(2) Cytology.

(A) Pap smear:

(i) conventional--$13.28;

(ii) liquid based--$25.45; and

(iii) physician interpretation--$5.82.

(B) Non-gynecological (non-GYN) cytology--$66.78.

(3) Clinical chemistry.

(A) Albumin, serum, urine or other source--$1.27.

(B) Alkaline phosphatase--$1.37.

(C) Alanine aminotransferase (ALT)--$6.50.

(D) Amylase, serum--$7.37.

(E) AST--$1.32.

(F) Beta-human chorionic gonadotropin (beta-HCG) pregnancy test:

(i) qualitative--$9.15; and

(ii) quantative--$27.18.

(G) Blood typing:

(i) indirect COOMBS (AB screen)--$26.31; and

(ii) ABO RH--$15.36.

(H) BUN--$1.48.

(I) CO2--$1.35.

(J) Chloride, serum--$1.35.

(K) Cholesterol, total--$1.36.

(L) Cord blood panel--includes antihuman globulin tests (COOMBS); direct, each antiserum, blood typing ABO and RH (D)--$10.83.

(M) Creatine Kinase--$2.79.

(N) Creatinine:

(i) 24 hour urine--$16.37; and

(ii) 24 hour urine creatinine clearance--$27.66.

(O) Electrolyte panel--includes anion GAP (calculated) CO2, chloride, potassium, sodium--$2.83.

(P) Glucose:

(i) one half hour--$5.96;

(ii) one hour--$6.00;

(iii) 2 specimens--$9.27;

(iv) 3 specimens--$12.54;

(v) 4 specimens--$15.84;

(vi) fasting--$5.98;

(vii) gestational, 2 specimens--$9.27;

(viii) postprandial, 0 and 2 hours--$1.34; and

(ix) random--$5.96.

(Q) Hematology.

(i) CBC automated, with differential--$1.51.

(ii) CBC automated, without differential:

(I) CBC--$12.13;

(II) eosinophil screen--$6.63; and

(III) hematocrit--$6.01.

(iii) CBC with manual differential--$9.99.

(iv) Hemoglobin and hematocrit--$6.78.

(v) Hemoglobin, total--$6.01.

(R) Hepatic function panel--includes ALT, albumin, alkaline phosphatase, AST, bilirubin (direct and total), and protein (total)--$2.47.

(S) High risk panel--includes cholesterol, glucose, and triglycerides--$9.19.

(T) Lipid profile panel--includes cholesterol, HDL and triglycerides--$8.84.

(U) Liver function panels:

(i) liver function test (LFT) 4--includes ALT, alkaline phosphatase, AST and bilirubin (total)--$15.43; and

(ii) LFT 6--includes ALT, alkaline phosphatase, AST, bilirubin (total), creatinine, and BUN--$12.71.

(V) LDH, total--$19.95.

(W) Metabolic panels:

(i) basic panel--includes calcium, CO2, chloride, creatinine, glucose, potassium, sodium and BUN--$3.65; and

(ii) comprehensive panel--includes ALT, albumin, alkaline phosphatase, AST, bilirubin (total), calcium, CO2, chloride, creatinine, glucose, potassium, protein (total), sodium, and BUN--$5.38.

(X) Obstetric (OB) panels:

(i) OB--includes ABO RH, antibody screen, RBC, hepatitis B surface Ag, RPR, and rubella antibody--$80.18; and

(ii) OB with CBC--includes ABO HR, antibody screen RBC, CBC with differential, hepatitis B surface Ag, RPR and rubella antibody--$91.58.

(Y) Phosphorus--$11.56.

(Z) Potassium, urine--$15.49.

(AA) Protein:

(i) total--$1.41; and

(ii) total, 24 hour urine--$13.34.

(BB) Sodium--$1.35.

(CC) Triglycerides--$1.36.

(DD) Uric acid--$4.07.

(EE) Urinalysis:

(i) with microscopic examination--$32.25;

(ii) with microscopic examination and reflex culture--$20.74;

(iii) bilirubin ictotest confirmation--$3.74;

(iv) chemstrip UGK--$2.37;

(v) protein SSA confirmation--$2.49; and

(vi) urine analysis without microscopic examination--$17.00.

(4) Mycobacteriology.

(A) Acid fast bacillus (AFB).

(i) Anaerobic or aerobic identification--$30.77.

(ii) Culture, Accuprobe--$62.46.

(iii) Culture and smear, any source--$59.14.

(iv) Drug susceptibility studies direct and indirect, each drug--$47.58.

(v) Smear only--$5.09.

(B) Broth dilutions, minimum inhibitory concentration (MIC):

(i) BACTEC--$140.91; and

(ii) MGIT--$98.20.

(C) Rifabutin, agar susceptibility--$47.57.

(5) Serology.

(A) Hepatitis B surface antigen (Ag)--$14.68.

(B) Human papillomavirus (HPV)--$68.68.

(C) Human immunodeficiency virus-1 (HIV-1):

(i) enzyme immunoassay (EIA) DBS--$16.07; and

(ii) enzyme immunoassay (EIA) oral fluid--$16.07.

(D) Rubella, IgG--$16.37.

(E) Syphillis.

(i) Rapid plasma reagin (RPR):

(I) screen (qualitative)--$7.99; and

(II) titer (quantitative)--$7.99.

(ii) Confirmation particle agglutination (TP-PA)--$9.30.

(6) Surgical pathology:

(A) level I--$19.52;

(B) level II--$45.91;

(C) level III--$45.24;

(D) level IV--$37.29; and

(E) level V--$89.29.

(d) Non-clinical testing, Austin Laboratory.

(1) *Legionella,* culture--$265.48.

(2) Bat identification--$3.52.

(3) Entomology:

(A) insect identification--$20.86;

(B) mosquito identification for surveillance--$17.66; and

(C) mosquito larvae identification--$6.04.

(4) Food.

(A) Bacterial identification.

(i) Bacillis:

(I) identification--$101.16; and

(II) enumeration, most probable number (MPN)--$245.53.

(ii) *Campylobacter* identification--$145.40.

(iii) *Clostridium perfringens* identification--$217.06.

(iv) *E.coli* 0157 identification--$121.52.

(v) *E.coli* enumeration (MPN)--$180.97.

(vi) *Listeria* identification--$150.75.

(vii) *Salmonella* identification--$66.07.

(viii) *Shigella* identification--$119.40.

(ix) *Staphyloccus* identification--$127.28.

(x) *Yersinia* identification--$62.48.

(B) *Staphylococcus* enterotoxin detection--$90.80.

(C) Yeast and mold enumeration (MPN)--$128.50.

(D) Standard plate count--$67.38.

(5) Milk and dairy.

(A) Aflatoxin--$65.63.

(B) Bacterial counts:

(i) coliform count, milk--$33.97;

(ii) coliform count, containers--$41.28;

(iii) standard plate count, milk--$22.14; and

(iv) standard plate count, container--$44.33.

(C) Dairy water--$16.19.

(D) Freezing point--$26.59.

(E) Growth inhibitors.

(i) Charm SL-6 beta-lactam test--$81.14.

(ii) Charm SLBL beta-lactam test--$58.91.

(iii) Charm II sulfonamide test--$51.69.

(iv) Charm II tetracycline test--$55.15.

(v) Delvo test--$25.60.

(F) Phosphatase--$37.82.

(G) Somatic cell counts.

(i) Direct microscope somatic cell count (DMSC):

(I) bovine (cow)--$50.83; and

(II) caprine (goat)--$58.54.

(ii) Optical somatic cell count (OSCC):

(I) bovine (cow)--$51.05; and

(II) caprine (goat)--$51.05.

(6) *Yersinia pestis* (plague), Nobuto--$8.57.

(7) Shellfish.

(A) Bay water--$25.76.

(B) Brevetoxin identification--$242.95.

(C) *E.coli,* identification and enumeration (MPN)--$151.43.

(D) Standard plate count--$67.38.

(E) *Vibrio* identification--$211.47.

(F) *Vibrio* identification and enumeration (MPN)--$478.70.

(8) Virology.

(A) Arbovirus:

(i) culture from mosquito--$44.25;

(ii) Eastern Equine Encephalitis (EEE), mosquitoes, PCR--$60.39;

(iii) St. Louis Encephalitis (SLE), mosquitoes, PCR--$60.18; and

(iv) Western Equine Encephalitis (WEE), mosquitoes, PCR--$60.41.

(B) Rabies:

(i) detection, DFA--$72.99;

(ii) detection, DFA, cell culture--$158.77;

(iii) molecular typing--$181.05; and

(iv) monoclonal typing--$31.19.

(9) Water.

(A) Bottled water--$71.74.

(B) Fecal coliforms, multiple tube fermentation (MTF)--$182.01.

(C) Heterotrophic plate count (HPC) bacteria in water (Simplate)--$84.86.

(D) Potable water--$16.19.

(E) Surface water, (MPN) (Quanti-tray)--$257.66.

(F) Reagent water suitability--$60.26.

(e) Non-clinical testing, South Texas Laboratory, Water bacteriology, potable water--$8.82.

(f) Service charges.

(1) Restocking fee for NBS specimen collection kit--$50.00.

(2) Thermometer calibration--$12.23.

(3) Shipping and handling fees:

(A) AFB--$50.20;

(B) Arbovirus reference sample--$96.66; and

(C) CDC reference virus isolation--$23.00.

§73.55. Fee Schedule for Chemical Analyses.

Fees for chemical analyses and physical testing.

(1) Analysis of volatile organic compounds in air (charcoal tubes), National Institute for Occupational Safety and Health NIOSH method--$127.24.

(2) The following fees apply to the analysis of drinking water (including bottled water) samples.

(A) Inorganic parameters.

(i) Individual tests:

(I) alkalinity, total and phenolphthalein, Standard Methods (SM), 19th edition, 2320B--$17.44;

(II) ammonia, SM, 20th edition, 4500-NH3H--$33.20;

(III) bromate, Environmental Protection Agency (EPA) method 300.1--$248.10;

(IV) bromide, EPA method 300.0--$233.31;

(V) carbon, total organic, SM, 20th edition, 5310C--$161.36;

(VI) chlorate, EPA method 300.0--$233.31;

(VII) chloride, EPA method 300.0--$15.11;

(VIII) chlorine, SM, 20th edition, 4500-Cl F--$54.42;

(IX) chlorine dioxide, SM, 20th edition, 4500-ClO2 B--$54.42;

(X) chlorite, EPA method 300.0--$233.31;

(XI) chlorite, EPA method 300.1--$248.10;

(XII) chloramines, SM, 20th edition, 4500-ClO2 D--$54.42;

(XIII) color, SM, 19th edition, 2120B--$97.06;

(XIV) specific conductance, SM, 19th edition, 2510B--$16.42;

(XV) cyanide, total, QuickChem 10-204-00-1-X--$135.47;

(XVI) fluoride, EPA method 300.0--$15.03;

(XVII) nitrate and nitrite as nitrogen, EPA method 353.2--$8.49;

(XVIII) nitrate as nitrogen, EPA method 353.2--$8.49;

(XIX) nitrite as nitrogen, EPA method 353.2--$8.49;

(XX) odor, SM, 20th edition, 2150B--$51.93;

(XXI) perchlorate, EPA method 314.0--$1008.60;

(XXII) pH, SM, 19th edition, 4500H--$4.15;

(XXIII) phenolics, total recoverable, EPA method 420.4--$114.49;

(XXIV) silica, dissolved, SM, 20th edition, 4500SiO, E--$20.25;

(XXV) solids, total dissolved, determined, SM, 20th edition, 2540C--$14.65;

(XXVI) sulfate, EPA method 300.0--$15.11; and

(XXVII) turbidity, EPA method 180.1--$136.28.

(ii) Routine water mineral group, EPA methods 300.0, and 353.2, and SM, 19th edition, 2320B, 2510B, 4500-HB and 2540C--$106.39.

(B) Metals analysis. A preparation fee applies to all drinking water samples analyzed by inductively coupled plasma (ICP) or by inductively coupled plasma-mass spectrometry (ICP-MS) with turbidity greater than or equal to 1 Nephelometric Turbidity

Unit (NTU) or that contains visible particles. The total analysis cost includes the per-element or per-group fee and any required sample preparation fee.

(i) Sample preparation fee, total recoverable metals digestion, EPA method 200.2--$20.29.

(ii) Per-element analysis fees:

(I) mercury, EPA method 245.1--$18.41;

(II) single ICP, EPA method 200.7--$7.73; and

(III) single ICP-MS, EPA method 200.8--$6.88.

(iii) Group fees:

(I) all metals drinking water group, EPA methods 200.7, 200.8, and 245.1 and SM 19th edition 2340B--$152.43;

(II) ICP/ICP-MS metals drinking water group, EPA methods 200.7 and 200.8 and SM 19th edition 2340B--$81.33;

(III) total hardness, SM, 19th edition 2340B--$10.58; and

(IV) reagent water metal suitability group, EPA methods 200.7 and 200.8--$41.80.

(C) Organic compounds:

(i) chlorinated pesticides and polychlorinated biphenyls (PCBs) in drinking water, EPA method 508.1--$150.22;

(ii) chlorophenoxy herbicides, EPA method 515.4--$313.25;

(iii) diquat and paraquat EPA method 549.2--$72.09;

(iv) ethylene dibromide (EDB) and dibromochloropropane (DBCP), EPA method 504.1--$75.67;

(v) endothall, EPA method 548.1--$265.63;

(vi) glyphosate, EPA method 547--$39.40;

(vii) haloacetic acids, EPA method 552.2--$53.72;

(viii) carbamates insecticides, EPA 531--$57.01;

(ix) PCB SOC6, EPA method 508A--$1045.02;

(x) synthetic organic contaminants group 5, EPA methods 508.1 and 525.2--$205.41;

(xi) semi-volatile organic compounds by GC-MS, EPA method 525.2--$111.74;

(xii) trihalomethanes, EPA methods 502.2 or 524.2--$50.13; and

(xiii) volatile organic compounds VOCs by GC-MS, EPA method 524.2--$55.12.

(D) Radiochemicals:

(i) gross alpha and beta, EPA method 900.0--$170.73;

(ii) gross alpha or beta, EPA method 900.0--$170.73;

(iii) gamma emitting isotopes, EPA method 901.1--$36.53;

(iv) radium-226, SM, 19th edition, 7500 RaC--$43.24;

(v) radium-228, SM, 19th edition, 7500 RaD--$101.74;

(vi) strontium-89 or 90, EPA method 905.0--$152.89;

(vii) tritium, EPA method 906.0--$73.19;

(viii) uranium isotopes, SM, 19th edition, 7500 UC--$104.81; and

(ix) composite/storage fee--$19.23.

(3) The following fees apply to the analysis of food and food products.

(A) Inorganic analyses:

(i) added water, Association of Analytical Communities (AOAC) calculation--$5.34;

(ii) benzoate, AOAC method 980.17--$82.71;

(iii) BRIX, AOAC method 932.14--$23.04;

(iv) cereal, U.S. Department of Agriculture (USDA) method CRL--$72.97;

(v) deterioration, canned products, AOAC chart--$9.91;

(vi) fat, paly screen, AOAC method 964.12--$61.61;

(vii) fat, soxhlet extraction, USDA method Fat-1--$106.80;

(viii) filth, AOAC method 941.16--$40.82;

(ix) food coloring, AOAC method 988.13--$131.63;

(x) insect identification, Food and Drug Administration (FDA) Technical Bulletin Number 2--$88.92;

(xi) meat protein, AOAC calculation--$5.34;

(xii) moisture (total water), USDA M01 method--$63.00;

(xiii) pH of food products, USDA PHM--$43.12;

(xiv) phosphate determination-(tri-poly-phosphate), USDA PHS1--$65.36;

(xv) protein, total, USDA PRO1--$81.14;

(xvi) salt, USDA SLT--$85.81;

(xvii) soy protein concentrate, USDA SOY1 method--$53.21;

(xviii) soya, USDA SOY1 method--$53.21;

(xix) sulfite AOAC 980.17--$28.27; and

(xx) water activity, AOAC method 978.18--$33.22.

(B) Metals analyses. A sample preparation fee applies to all food samples analyzed by ICP or ICP-MS techniques. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total analysis fee includes the sample preparation fees and the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fee--total recoverable metals digestion, EPA methods 200.2, 200.3, or SW-846 method 3050B--$22.88.

(ii) Per-element fees:

(I) mercury, EPA method 245.1 and EPA SW-846 methods 7470A and 7471B--$192.35;

(II) single metal, ICP, EPA 200.7 or EPA SW-846 method 6010C--$443.10; and

(III) single metal, ICP-MS, EPA method 200.8, and EPA SW-846 method 6020A--$91.24.

(4) The following fees apply to the analysis of soil and solids.

(A) Metals analysis. A sample preparation fee applies to the analysis of all solid (soil, sediment, etc.) samples. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total cost of the analysis will be the sample preparation fees plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees. Determination of leachable metals in solid samples will require a solid leachate sample preparation procedure, as well as analysis of the leachate using non-potable water analytical methods. The total cost of the analysis will be the solid leachate sample preparation fee plus the required non-potable water preparation fee(s) and the per-element test(s).

(i) Sample preparation fee--acid digestion of sediments, sludges, and soils, EPA SW-846 Method 3050B--$84.92.

(ii) Solid leachate for metals--$273.88.

(iii) Per-element fee:

(I) mercury, sediment, EPA SW-846 method 7471B--$194.22;

(II) single metal, ICP, EPA SW-846 method 6010C--$443.10; and

(III) single metal, ICP-MS, EPA SW-846 method 6020A--$56.74.

(B) Radiochemistry. Except for gamma emitting isotopes and tritium, a sample preparation fee applies to the analysis of all solid (soil, sediment, etc.) samples. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(i) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(ii) Americium isotopes, DOE CHEM-TP-A.20--$59.23.

(iii) Gross alpha and beta, SM, 19th edition, 7110B--$54.91.

(iv) Gross alpha or beta SM, 19th edition, 7110B--$54.91.

(v) Gamma emitting isotopes, Ga-01-R--$65.56.

(vi) Plutonium isotopes, DOE CHEM-TP-A.20--$36.63.

(vii) Radium-226 SM, 19th edition, 7500 RaC modified--$58.79.

(viii) Radium-228 SM, 19th edition, 7500 RaD modified--$118.00.

(ix) Strontium-89 or 90, EPA method 905.0 modified--$198.64.

(x) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(xi) Tritium, EPA 520/5-86-006 H-01--$57.55.

(xii) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(5) The following fees apply to the analysis of tissue and vegetation samples. A tissue preparation (homogenization) fee applies to all seafood tissue samples analyzed for metals. The total analysis cost includes the tissue preparation fee, any analyte specific sample preparation fee, and the per-element or per-group test fee.

(A) Tissue preparation fees:

(i) fillets--$34.56; and

(ii) whole fish and crabs--$46.08.

(B) Metals analyses. A sample preparation fee applies to all tissue samples analyzed by ICP or ICP-MS. The total analysis cost includes the per-element or per-group fee plus any required sample preparation fee:

(i) sample preparation fee--total recoverable metals digestion, EPA method 200.3--$22.88;

(ii) per-element fees:

(I) mercury, EPA method 7471B--$192.35;

(II) single metal, ICP, EPA 200.7 or EPA SW-846 methods 6010C--$443.10; and

(III) single metal, ICP-MS, EPA method 200.8, EPA SW-846 method 6020A--$91.24.

(C) Radiochemistry. Except for gamma emitting isotopes and tritium, a sample preparation fee applies to the analysis of all tissue and vegetation samples. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(i) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(ii) Americium isotopes, DOE CHEM-TP-A.20--$59.23.

(iii) Gamma emitting isotopes, Ga-01-R--$76.47.

(iv) Gross alpha and beta, SM, 19th edition, 7110B--$54.91.

(v) Gross alpha or beta, SM, 19th edition, 7110B--$54.91.

(vi) Plutonium isotopes, DOE CHEM-TP-A.20--$36.63.

(vii) Radium-226,SM, 19th edition, RaC modified--$58.79.

(viii) Radium-228, SM 19th edition, RaD modified--$118.00.

(ix) Strontium-89 or 90, EPA method 905.0 modified--$198.64.

(x) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(xi) Tritium EPA Method 520/5-86-006 H-01--$57.55.

(xii) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(6) The following fees apply to the analysis of non-potable water.

(A) Inorganic parameters:

(i) odor, SM, 20th edition, 2150B--$51.93; and

(ii) phenolics, total recoverable, EPA method 420.4--$114.49.

(B) Metals analysis. The following sample preparation fees apply to the analysis of non-potable water samples. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total cost of the analysis will be the required sample preparation fee(s) plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fees:

(I) total recoverable metals digestion, EPA method 200.2 and EPA SW-846 methods 3005A, 3010A, and 3020A--$29.92; and

(II) filtration (dissolved metals), EPA SW-846 method 3005A--$22.36.

(ii) Per-element fees:

(I) mercury, EPA method 245.1 and EPA SW-846 method 7470A--$28.10;

(II) single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C--$67.49; and

(III) single metal, ICP-MS, EPA method 200.8, and EPA SW-846 method 6020A--$67.49.

(C) Radiochemistry. A sample preparation fee applies to the analysis of non-potable water samples for americium isotopes, plutonium isotopes, and thorium isotopes. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(i) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(ii) Americium isotopes, DOE CHEM-TP-A.20--$59.23.

(iii) Gamma emitting isotopes, Ga-01-R--$36.53.

(iv) Grossalpha and beta, EPA method 900.0--$170.73.

(v) Gross alpha or beta, EPA method 900.0--$170.73.

(vi) Plutonium isotopes, DOE CHEM-TP-A.20--$36.63.

(vii) Radium-226, SM, 19th edition 7500 RaC--$113.23.

(viii) Radium-228, SM 19th edition, 7500 RaD--$101.74.

(ix) Strontium-89 or 90, EPA method 905.0--$152.89.

(x) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(xi) Tritium, EPA method 906.0--$73.19.

(xii) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(7) The following fees apply to the analysis of a wipe, filter or cartridge. Radiochemistry. Except for gamma emitting isotopes and tritium, a sample preparation fee applies to the analysis of all wipe, filter or cartridge samples. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(A) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(B) Americium isotopes DOE CHEM-TP-A.20--$59.23.

(C) Gamma emitting isotopes, Ga-01-R--$28.84.

(D) Gross and beta, EPA method 900.0--$9.66.

(E) Gross or beta, EPA method 900.0--$9.66.

(F) Plutonium, DOE CHEM-TP-A.20--$36.63.

(G) Radium-226, SM, 19th edition, RaC modified--$58.79.

(H) Radium-228, SM, 19th edition, RaD modified--$118.00.

(I) Strontium-89 or 90 EPA method 905.0 modified--$198.64.

(J) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(K) Tritium, EPA 906.0 modified--$73.19.

(L) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(8) Identification of feces and urine stains:

(A) identification of feces stains, AOAC method 981.22--$103.63; and

(B) identification of urine stains, AOAC methods 963.28, and 959.14--$86.78.

(9) Additional charges.

(A) Analysis of trip and field blank samples will be billed at the same rate as the requested sample analysis.

(B) If the submitter requires specific samples within their batch to be analyzed and reported as laboratory fortified matrix (FM) or matrix spike (MS), and laboratory fortified matrix duplicate (LFMD) or matrix spike duplicate (MSD), a fee for two additional samples will be charged.

(C) A fee of $8 per sample will be charged for samples submitted but not analyzed at the submitter's request, including samples on hold, and then voided.

(D) The preparation fee (or 20% of the analysis fee if there is no separate preparation fee) will be charged for any sample prepared but not analyzed at the client's request.

(E) A fee equal to 3% of the analysis fee will be charged for a summary of the quality control data routinely generated during the analysis. This summary may include data for method blanks, duplicate, matrix spike recovery, laboratory control samples, and surrogate recovery.

(F) Additional copies of reports and raw data packages will be provided at a cost of $0.10 per page for each request in excess of 50 pages. An additional fee of $15.00 will be charged for each hour in excess of one hour to prepare the request.

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

Filed with the Office of the Secretary of State on March 26, 2012.

TRD-201201581
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 776-6972

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25 TAC §§73.51, 73.53 - 73.55

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

STATUTORY AUTHORITY

The repeals are authorized under Texas Health and Safety Code, §§12.031 and 12.032, which allow the department to charge fees to a person who receives public health services from the department, §12.034, which requires the department to establish collection procedures, §12.035, which required the department to deposit all money collected for fees and charges under §§12.032 and 12.033 in the state treasury to the credit of the department's public health service fee fund, and §12.0122, which allows the department to enter into a contract for laboratory services; and Texas Government Code, §531.0055. and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeals affect the Texas Health and Safety Code, Chapters 12 and 1001; and Texas Government Code, Chapter 531.

§73.51. Fees.
§73.53. Fee Schedule for Training of Laboratorians.
§73.54. Fee Schedule for Clinical Testing and Newborn Screening.
§73.55. Fee Schedule for Chemical Analyses.

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

Filed with the Office of the Secretary of State on March 26, 2012.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 776-6972

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CHAPTER 230. SPECIFIC ADDITIONAL REQUIREMENTS FOR DRUGS
SUBCHAPTER B. LIMITATIONS ON SALES OF PRODUCTS CONTAINING EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §230.11 and §230.15, the repeal of §230.16, and new §§230.16 - 230.18, concerning the limitations on sales of products containing ephedrine, pseudoephedrine, and norpseudoephedrine.

BACKGROUND AND PURPOSE

The amendments, repeal, and new sections are necessary to implement legislative changes to the Health and Safety Code. Health and Safety Code, Chapter 486, was amended by House Bill 1137, 82nd Legislature, Regular Session, 2011, regarding the retail sale of drug products containing ephedrine, pseudoephedrine and norpseudoephedrine. The purposes of the proposed rules are to amend definitions; modify restrictions on sales of the drug products; mandate the use of a non-departmental real-time electronic monitoring system; provide for temporary exemptions to the mandate; and establish privacy protections for electronic data.

Current law requires non-pharmacy retailers of ephedrine, pseudoephedrine and norpseudoephedrine to obtain a Certificate of Authority (COA) with the department. These retailers are required to track sales of ephedrine, pseudoephedrine, and norpseudoephedrine containing drug products using electronic or paper records. Information collected by the retailer includes name of the person making the purchase, date of purchase, product name, and number of grams purchased. Texas law requires certain limitations on the quantity of drug products sold and the department has the authority to review those records.

SECTION-BY-SECTION SUMMARY

Amended §230.11(b)(8) revises the definition of "over-the-counter sale" in order to correspond with the new quantity limits of substances in drug products established in §230.15(b).

Section 230.11(b)(9) adds the definition of "real-time electronic logging system."

The amendment to §230.15(a)(1)(A) now requires the person making a purchase of drug products containing ephedrine, pseudoephedrine and norpseudoephedrine to display a government-issued identification.

The amendment to §230.15(a)(2) stipulates that the business establishment selling the product will also have to document the date of birth and address of the purchaser, the time of the purchase and the type of identification displayed, as well as the number on the identification.

Amended §230.15(a)(3) requires a business establishment selling the products to transmit the sale information using the real-time logging system as defined in §230.11(b)(9).

New §230.15(b) prohibits the sale, within any calendar day, of more than 3.6 grams of ephedrine, pseudoephedrine, norpseudoephedrine or any combination of those substances; and, within a 30-day period, of more than 9 grams of ephedrine, pseudoephedrine, norpseudoephedrine or any combination of those substances.

New §230.15(c) requires businesses to maintain each record of sale until at least the second anniversary of the date the record was made. Upon request, records shall be provided to local, state or federal law enforcement agencies, including the United States Drug Enforcement Administration.

New §230.15(d) states that a business that has used a real-time electronic logging system for longer than two years does not need to comply with §230.15(c).

New §230.15(e) states that a business that has used a real-time electronic logging system for longer than two years shall destroy all papers maintained under this section unless prohibited by law.

Section 230.16 in its entirety is repealed in order to replace the section with a new §230.16, which will detail the requirements for establishing a real-time electronic monitoring system. The text of the repealed §230.16 is revised and rewritten under new §230.17. The purpose of the repeal is to renumber affected sections and improve the flow of the subchapter.

New §230.16(a) has new language regarding the transmission of sales information to a real-time electronic logging system. Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment shall transmit the information in a record to a real-time electronic logging system.

New §230.16(b) states that a business establishment cannot complete the sale if the real-time electronic logging system returns a report that the purchaser would obtain an amount of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances greater than the allowable amount.

New §230.16(c) allows an employee of a business establishment to use an override mechanism if the employee has a reasonable fear of imminent bodily injury or death from the person attempting to obtain the drug products.

New §230.16(d) requires the administrators of a real-time electronic logging system, when requested, to make available to the Texas Department of Public Safety a copy of each record of an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine when the record is submitted by a business establishment located in this state.

New §230.16(e) states that a pharmacy that engages in over-the-counter sales of the drug products may apply to the State Board of Pharmacy for a temporary exemption from the requirement of using a real-time electronic logging system under this subchapter. Such exemption cannot exceed 180 days.

New §230.16(f) allows a business establishment that engages in over-the-counter sales of the drug products to request from the department a temporary exemption from the requirement of using a real-time electronic logging system under this subchapter. Such exemption cannot exceed 180 days.

New §230.16(g) states that a business establishment granted a temporary exemption under this section must continue to keep records of sales as they did before enactment of these amendments.

New §230.16(h) states that an exemption granted under this section does not relieve a business establishment of any duty other than the duty to use a real-time electronic logging system.

New §230.16(i) states that a business establishment that experiences a mechanical or electronic failure of the real-time electronic logging system shall maintain a written record or an electronic record that satisfies the requirements this section and enter the information in the real-time electronic logging system as soon as practicable after the system becomes operational.

New §230.16(j) requires the administrators of a real-time electronic logging system to provide real-time access to the information in the system to the Department of Public Safety if that agency executes a memorandum of understanding with the administrators.

New §230.17(a) allows the department to impose an administrative penalty for a violation of the Health and Safety Code, Chapter 486, or this subchapter.

New §230.17(b) sets the amount of the administrative penalty up to $1,000 per violation per day, not to exceed $20,000 for a violation of a continuing nature.

New §230.17(c) sets a penalty based on the following: the seriousness of the violation; the threat to health or safety; the history of previous violations; an amount necessary to deter a future violation; whether the violator demonstrated a good faith effort to correct the violation; and any other matter that justice may require.

New §230.17(d) - (e) sets forth the procedure for the department's notice of a violation and for a person's response to the notice.

New §230.17(f) states that hearings will be held at the State Office of Administrative Hearings and will be conducted under Government Code, Chapter 2001.

New §230.18 defines the privacy protections for information entered or stored in a real-time electronic logging system.

New §230.18(a) documents where privacy protections for an individual are codified under Title 21, Code of Federal Regulations, §1314.45.

New §230.18(b) allows business establishments to disclose information only to the United States Drug Enforcement Administration and other federal, state, and local law enforcement agencies.

New §230.18(c) states that business establishments may not use information for any purpose other than for a disclosure that complies with the requirement of the subchapter.

The department has also made other corrections throughout the proposed rules.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS

Ms. Tennyson has also determined that there may be anticipated economic costs to small businesses, persons, or micro-businesses required to comply with the sections as proposed. For those businesses or persons that do not have a computer or access to the Internet, there will be a cost to purchase the computer and maintain a subscription to an Internet service provider. The price for a mid-range computer is approximately $1,000. A subscription to an Internet service provider is approximately $60 per month.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to

prevent access to quantities of ephedrine, pseudoephedrine and norpseudoephedrine that exceed amounts mandated by law.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments, repeal and new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Karen Tannert, Drugs and Medical Devices Group, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347, (512) 834-6755 or by email to Karen.Tannert@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§230.11, 230.15 - 230.18

STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, §486.003, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to adopt rules to enforce the chapter; and Government Code §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments and new rules affect the Health and Safety Code, Chapters 486 and 1001; and Government Code, Chapter 531.

§230.11. General Provisions.

(a) Purpose and applicability. The purpose of this subchapter [~~these sections~~] is to implement the duties of the Department of State Health Services (department) under the Health and Safety Code (HSC), Chapter 486, relating to over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. [~~Unless otherwise specified, the terms have the meaning assigned by HSC, Chapters 481 and 486, or their common use meaning.~~]

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

(7) Regulated products--Any compound, mixture, or preparation containing any detectable amount of ephedrine, pseudoephedrine, or norpseudoephedrine, including its salts, optical isomers, and salts of optical isomers. The term does not include any compound, mixture, or preparation that is in liquid, liquid capsule, or liquid gel capsule form. A list of regulated products, by name and universal product code (commonly referred to as UPC) or stock-keeping unit (commonly referred to as SKU) identifiers, may be obtained from the Department of State Health Services, P.O. Box 149347 [~~1100 West 49th~~], Austin, Texas 78714-9347 [~~78756~~].

(8) Over-the-counter sale--The sale within any calendar day of no more than 3.6 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances; and within any 30-day period, no more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances [~~of not more than two packages or six grams of regulated products, in a single transaction~~] to an individual.

(9) "Real-time electronic logging system"--A system intended to be used by law enforcement agencies and pharmacies or other business establishments that:

(A) is installed, operated, and maintained free of any one-time or recurring charge to the business establishment or to the state;

(B) is able to communicate in real time with similar systems operated in other states and similar systems containing information submitted by more than one state;

(C) complies with the security policy of the Criminal Justice Information Services division of the Federal Bureau of Investigation;

(D) complies with information exchange standards adopted by the National Information Exchange Model;

(E) uses a mechanism to prevent the completion of a sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that would violate state or federal law regarding the purchase of a product containing those substances; and

(F) is equipped with an override of the mechanism described in subparagraph (E) of this paragraph that:

(i) may be activated by an employee of a business establishment; and

(ii) creates a record of each activation of the override.

(c) (No change.)

§230.15. Records.

(a) Before completing a sale of a regulated product, an employee with authority to access regulated products must:

(1) require the person making the purchase to:

(A) display a driver's license or other form of government-issued identification containing the person's photograph and indicating that the person is 16 years of age or older; and

(B) (No change.)

(2) make a record of the sale, using a format approved or provided by the department for this purpose, that includes the name and date of birth of the person making the purchase, the address of the purchaser, the date and time of the purchase, the type of identification displayed by the person and the identification number, the product name for the item purchased, and the number of grams purchased; and

(3) transmit the record of sales as required by §230.16 of this title (relating to Real-Time Electronic Logging System). [~~take reasonable measures to limit single sales transactions to:~~]

[~~(A) two packages of a regulated product; or~~]

[~~(B) no more than 6 grams of ephedrine, pseudoephedrine, or norpseuodoephedrine base.~~]

(b) A business establishment may not sell to a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine:

(1) within any calendar day, more than 3.6 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances; and

(2) within any 30-day period, more than 9 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

[~~(b) The COA holder must maintain these records at the business establishment for a minimum of two years from the date the record is made.~~]

(c) Except as provided by subsection (d) of this section, a business establishment shall maintain each record made under subsection (a)(2) of this section until at least the second anniversary of the date the record is made and shall make each record available on request by the department or any local, state, or federal law enforcement agency, including the United States Drug Enforcement Administration.

[~~(c) The COA holder must make the records available to the agent(s) of the Department of State Health Services or the Department of Public Safety upon request.~~]

(d) Subsection (c) of this section does not apply to a business establishment that has used a real-time electronic logging system for longer than two years.

(e) A business establishment that has used a real-time electronic logging system for longer than two years shall destroy all paper records maintained under this section unless the destruction is otherwise prohibited by law.

§230.16. Real-Time Electronic Logging System.

(a) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall transmit the information in the record made under §230.15(a)(2) of this title (relating to Records) to a real-time electronic logging system.

(b) Except as provided by subsection (c) of this section, a business establishment may not complete an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine if the real-time electronic logging system returns a report that the completion of the sale would result in the person obtaining an amount of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances greater than the amount described by §230.15(b) of this title, regardless of whether all or some of the products previously obtained by the buyer were sold at the establishment or another business establishment.

(c) An employee of a business establishment may complete a sale prohibited by subsection (b) of this section by using the override mechanism described by §230.11(b)(9)(F) of this title (relating to General Provisions) only if the employee has a reasonable fear of imminent bodily injury or death from the person attempting to obtain ephedrine, pseudoephedrine, or norpseudoephedrine.

(d) On request of the Department of Public Safety, the administrators of a real-time electronic logging system shall make available to the Department of Public Safety a copy of each record of an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that is submitted by a business establishment located in this state.

(e) On application by a business establishment that operates a pharmacy and engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as authorized by §230.12 of this title (relating to Exemptions), the State Board of Pharmacy may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this subchapter.

(f) On application by a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine in accordance with a certificate of authority issued under §230.12 of this title, the department may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this subchapter.

(g) A business establishment granted a temporary exemption under this section must keep records of sales in the same manner required under subsection (i) of this section for a business establishment that experiences a mechanical or electronic failure of the real-time electronic logging system.

(h) An exemption granted under this section does not relieve a business establishment of any duty under this subchapter other than the duty to use a real-time electronic logging system.

(i) If a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine experiences a mechanical or electronic failure of the real-time electronic logging system, the business shall:

(1) maintain a written record or an electronic record made by any means that satisfies the requirements of §230.15(a)(2) of this title; and

(2) enter the information in the real-time electronic logging system as soon as practicable after the system becomes operational.

(j) The administrators of a real-time electronic logging system must comply with Health and Safety Code §486.0144 (relating to Online Portal), which requires providing real-time access to the information in the system to the Department of Public Safety if the Department of Public Safety executes a memorandum of understanding with the administrators.

§230.17. Enforcement.

(a) The department may impose an administrative penalty for a violation of the Health and Safety Code (HSC), Chapter 486, or this subchapter.

(b) The amount of the administrative penalty may not exceed $1,000 per violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days may not exceed $20,000.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department initially determines that a violation has occurred, the department will provide notice of the violation in writing to the person. The person may respond to the notice in writing not later than the 20th day after the date the person receives the notice, informing the department that the person:

(1) accepts the determination and recommended penalty; or

(2) requests a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) If a person does not respond to the department's notice within 20 calendar days after receiving the notice, the department will issue an order approving the determination by default.

(f) Hearings will be held at the State Office of Administrative Hearings and will be conducted under Government Code, Chapter 2001.

§230.18. Privacy Protections.

(a) The privacy protections provided an individual under Title 21, Code of Federal Regulations, §1314.45, apply to information entered or stored in a real-time electronic logging system.

(b) A business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may disclose information entered or stored in a real-time electronic logging system only to the United States Drug Enforcement Administration and other federal, state, and local law enforcement agencies.

(c) A business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may not use information entered or stored in a real-time electronic logging system for any purpose other than for a disclosure authorized by subsection (b) of this section or to comply with the requirements of this subchapter.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201551
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 776-6990

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25 TAC §230.16

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

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §486.003, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to adopt rules to enforce the chapter; and Government Code §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects the Health and Safety Code, Chapters 486 and 1001; and Government Code, Chapter 531.

§230.16. Enforcement.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201565
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 776-6990

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CHAPTER 405. PATIENT CARE--MENTAL HEALTH SERVICES
SUBCHAPTER C. LIFE-SUSTAINING TREATMENT

25 TAC §§405.51 - 405.63

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

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§405.51 - 405.63, concerning life-sustaining treatment in state hospitals.

BACKGROUND AND PURPOSE

These rules address the Resuscitative Status Policy, the Natural Death Act, Out-of-Hospital Do-Not-Resuscitate Orders, and a Durable Power of Attorney for Health Care for patients in state hospitals. The rules were formerly under the Department of Mental Health and Mental Retardation and were transferred and consolidated with the department on September 1, 2004. The rules are no longer necessary because the requirements for resuscitative treatment of patients are covered sufficiently and comprehensively in Health and Safety Code, Chapter 166, other rules, and policies. Health and Safety Code, Chapter 166, includes

specific directions about directives to physicians, Out-of-Hospital Do-Not-Resuscitate Orders, and a medical power of attorney.

The repeal is necessary to better conform advanced directives in state hospitals (Austin State Hospital, Big Spring State Hospital, El Paso Psychiatric Center, Kerrville State Hospital, North Texas State Hospital, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, Rio Grande State Center, and Waco Center for Youth) to state law.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 405.51 - 405.63 have been reviewed and the department has determined that reasons for adopting the sections no longer exist because rules are no longer needed.

SECTION-BY-SECTION SUMMARY

The repeal of §§405.51 - 405.63 will eliminate unnecessary rules and bring the department into compliance with state law.

FISCAL NOTE

Michael Maples, Assistant Commissioner, Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the repeals are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the repeal of the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the repeal of the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the repeal of the sections as proposed.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the repeal of the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Maples has determined that for each year of the first five years the repeals are in effect the public will benefit as a result of the repeal of these rules because unnecessary rules will be eliminated while maintaining continued protection of the public health, welfare, and safety in keeping with currently accepted medical practices.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Nnenna Ezekoye, Mental Health and Substance Abuse Division, Department of State Health Services, Mail Code 2053, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5268, or by email to Nnenna.Ezekoye@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeals have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, Chapter 166, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to life sustaining treatment and advanced directives; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The repeals affect the Health and Safety Code, Chapters 166 and 1001; and Government Code, Chapter 531.

§405.51. Purpose.
§405.52. Application.
§405.53. Definitions.
§405.54. Resuscitative Status Policy.
§405.55. Determination and Implementation of Resuscitative Status Order.
§405.56. General Provisions Relating to Withholding or Withdrawal of Life-Sustaining Treatment under the Natural Death Act.
§405.57. Legal Expression through Directive under the Natural Death Act.
§405.58. Legal Expression through Directive under a Durable Power of Attorney for Health Care.
§405.59. Decision-making under the Natural Death Act and Durable Power of Attorney for Health Care for Individuals Who Have Issued Directives.
§405.60. Ethics Committee.
§405.61. Exhibits.
§405.62. References.
§405.63. Distribution.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201548

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 776-6990

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TEXAS HIGHWAY PATROL
SUBCHAPTER D. TRAFFIC SUPERVISION

37 TAC §3.52

The Texas Department of Public Safety (the department) proposes amendments to §3.52, concerning Police Traffic Supervision on Interstate Highways in Cities of Over 50,000 Population. Amendments to §3.52 are necessary to reflect the current enforcement needs to detect, deter, and apprehend violators using the interstate system. This revision allows the flexibility and discretion of officers to enforce violations on all areas of the interstate system.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by drivers on all areas of the interstate system with the statutes and regulations pertaining to the safe operation of vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Major Ron Joy, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§3.52. Police Traffic Supervision on Interstate Highways in Cities of Over 50,000 Population.

Police traffic activities. Local agencies will be encouraged to conduct all police traffic supervision activities on all interstate highways within their jurisdiction.

(1) Officers of the department will not be routinely assigned traffic supervision duties on these sections of the interstate systems. Officers will handle major dangerous violations they observe while traveling such sections, and may take [~~but will refrain from taking~~] routine enforcement action.

(2) There are occasions when it may become highly desirable for units to be routinely assigned to an interstate system within a city of more than 50,000 population.

(3) Requests for permission to assign units to these systems should be submitted through channels to the Assistant Director [~~Office of Chief~~] of Texas Highway Patrol.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201556
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER C. STANDARDS

37 TAC §35.47

The Texas Department of Public Safety (the department) proposes new §35.47, concerning Residential Solicitation. This rule is intended to provide assurance to the public and to local law enforcement that those who engage in residential solicitation of private security services are properly licensed with the department.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the new rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule. There are no anticipated economic costs to individuals who are required to comply with this rule. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the new rule is in effect the anticipated public benefit is enhanced public safety through greater assurance that those who solicit residents for the purpose of selling private security services (including alarm systems) are properly licensed under the Private Security Act, as well as through the facilitation of complaint submission on licensees by the public. There should be no economic costs resulting from this new rule.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.47. Residential Solicitation.

A license holder or employee of a license holder who offers or attempts to sell regulated goods or services to a homeowner or resident of a home or apartment through direct physical contact, including door to door solicitation, shall:

(1) carry a department-issued pocket card, or a receipt of registration issued by the department, and present said pocket card or proof of registration for inspection to the homeowner or resident;

(2) inform the homeowner or resident of the person's name and employer's name;

(3) provide to the homeowner or resident, at no charge, a document or business card listing the person's name, employer's name, address, phone number, license number, and the department's phone number with instructions on how to contact or file a complaint with the department;

(4) not approach or solicit a home or residence during any times where a placard is displayed indicating that the homeowner or residential occupant does not wish to be solicited;

(5) comply with any applicable door-to-door solicitation ordinance consistent with state and federal law; and

(6) provide to the local law enforcement agency with primary jurisdiction a written list of all registrants that will be engaging in the door-to-door solicitation of its residents before any solicitation occurs. The licensed company shall update the information provided to the department if there are any changes to the list. This notification can be made via fax, email, regular mail, or by hand delivery to the agency. This notification shall include the company name and department-issued license number.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201571
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.63, §35.70

The Texas Department of Public Safety (the department) proposes amendments to §35.63 and §35.70, concerning General Administration and Examinations. Amendments to §35.63 relate to the photographs required with an application for a private security license. Amendments to §35.70 modify the fee structure to address the additional costs associated with the production of a new, hard plastic license.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments. There are no anticipated economic costs to individuals who are required to comply with these amendments. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rules are in effect the anticipated public benefit will be enhanced public safety through the assurance that those who provide private security services regulated under the Private Security Act are in fact licensed by the department. This will be achieved through a higher quality photographic image that corresponds when possible to that which appears on the individual's driver license and a new physical license card facilitated by these amendments. There should be no economic costs resulting from the amendments of these rules.

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

the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter; and Texas Occupations Code, §1702.062, which authorizes the department to establish licensing fees by rule.

Texas Government Code, §411.004(3) and Texas Occupations Code, §§1702.061(b), 1702.062, and 1702.112 are affected by this proposal.

§35.63. Photographs.

Applicants shall submit two identical photographs of the applicant to the department. The photographs must be un-retouched color prints. Snapshots, vending machine prints, and full length photographs will not be accepted. The photographs must be 2 inches by 2 inches in size and printed on photo quality paper. The photographs must be taken in normal light, with a contrasting white, off-white, or blue background. The photographs must present a good likeness of the applicant taken within the last six months. Unless worn daily for religious purposes, all hats or headgear must be removed for the photograph and no item or attire may cover or otherwise obscure any facial features (eyes, nose, and mouth). Eyeglasses must be removed for the photograph. The photographs must present a clear, frontal image of the applicant and include the full face from the bottom of the chin to the top of the head, including hair. The image of the applicant must be between 1 and 1-3/8 inches. Only the applicant may be portrayed. Photographs in which the face of the person being photographed are not in focus will not be accepted. Upon development of an interface allowing the Regulatory Services Division to access the photographs on file with the Driver License Division system or development of other electronic means to obtain the applicant's photograph, applicants may not be required to submit printed photographs. [~~Photographs required by the Act shall be in color and shall show a facial likeness of applicants. Photographs placed on pocket cards shall have been taken within six months prior to the issuance of the card and be 1" x 1 1/4" in size.~~]

§35.70. Fees.

(a) Pursuant to §1702.0062 of the Act, the Private Security Board adopts the following fee schedule:

(1) Class A license (original and renewal) $350;

(2) Class B license (original and renewal) $400;

(3) Class C license (original and renewal) $540;

(4) Class T license (original and renewal) $2,500;

(5) Assignment of license $150;

(6) Branch office certificate and renewal $300;

(7) Change name of license $75;

(8) Delinquency fee (post-expiration renewal penalty) $30;

(9) Duplicate pocket card $10;

(10) Employee information update fee $15;

(11) FBI fingerprint check $25;

(12) Letter of authority fee for private business and political subdivision $400;

(13) Letter of authority renewal fee for private business and political subdivision $225;

(14) Personal protection officer authorization $50;

(15) Preliminary Background Check and Evaluation Letter $100;

(16) Pocket Card Endorsement (add or delete) $20;

(17) Reinstate suspended license $150;

(18) Registration fee for alarm systems monitor $30;

(19) Registration fee for dog trainer $30;

(20) Registration fee for employee of license holder $30;

(21) Registration fee for noncommissioned security officer (original and renewal) $30;

(22) Registration fee for owner, officer, partner, or shareholder of a license holder $50;

(23) Registration fee for private investigator, manager, branch office manager, locksmith, electronic access control device installer, and alarm systems installer (original and renewal) $30;

(24) Registration fee for security consultant $30;

(25) Registration fee for security salesperson $30;

(26) School instructor fee (original and renewal) $100;

(27) Security officer commission fee (original and renewal) $50; and

(28) Training School and CE School approval fee (original and renewal) $350.

(b) The fees submitted to the board shall be the same as subsection (a) of this section unless otherwise specified in Article V of the General Appropriations Act in accordance with §316.043 of the Texas Government Code, whether for an original application, renewal, reciprocal or provisional license, registration, endorsement, or security officer commission.

(c) Fees collected by the board are neither refundable nor transferable.

(d) Payment of fees shall be made by licensed company check, cashier's check, or money order or by an attorney on behalf of his client paid on the attorney's trust fund account. Should the company check be returned for insufficient funds, the applicant must promptly make payment by cashier's check or money order. If prompt payment is not made in this manner, the application will be abandoned as "incomplete." If the license was issued prior to notification of the insufficiency of funds, and proper payment is not promptly made, revocation proceedings will be initiated under §1702.361 of the Texas Occupations Code.

(e) Original fees shall not be prorated. The full license fee shall accompany all applications for original license.

(f) Upon completion of development and production of the department's secure, laminated pocket card, an additional fee of $5.00 will be charged when a pocket card is to be issued.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201572
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER F. ADMINISTRATIVE HEARINGS

37 TAC §35.93

The Texas Department of Public Safety (the department) proposes amendments to §35.93, concerning Penalty Range. This amendment adds fines to the board's rule-based standardized penalty schedule for the violation of the board's proposed new §35.47, relating to Residential Solicitation. This rule also provides guidance to the Private Security Bureau staff and the regulated industry regarding the fine associated with violations of the new rule.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule. There are no anticipated economic costs to individuals who are required to comply with this rule. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit as a result of the rule is more transparency and greater consistency relating to the manner in which the department administers the statute. There should be no economic costs resulting from this rule.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter; and Texas Occupations Code, §1702.402(c), which authorizes the department to adopt a rule-based standardized penalty schedule.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) and §1702.402(c) are affected by this proposal.

§35.93. Penalty Range.

The board hereby adopts the following as guidelines for administrative penalties to be used in proceedings under Subchapter Q of the Act (§1702.401 et seq.) for violations of the Act and this chapter. The following fines are to be construed as maximum penalties only. In assessing fines, department personnel are encouraged to consider the factors provided in §1702.402 of the Act.
Figure: 37 TAC §35.93
[~~Figure: 37 TAC §35.93~~]

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201573
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER N. COMPANY LICENSE QUALIFICATIONS

37 TAC §35.221

The Texas Department of Public Safety (the department) proposes amendments to §35.221, concerning Qualifications for Investigations Company License. The amendments remove the requirement that training courses be taught in a "face to face classroom" environment, thus permitting online instruction.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments. There are no anticipated economic costs to individuals who are required to comply with these amendments. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amendments will be greater access to private investigative services and assurance that those who are providing such services have received the necessary training. There should be no economic costs resulting from the amendments of this rule.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) and §1702.004 are affected by this proposal.

§35.221. Qualifications for Investigations Company License.

(a) Pursuant to §1702.114 of the Act, the board has determined that an applicant for licensure as a private investigations company (as owner), or the prospective manager of the applicant company, must have met one of the following qualifications:

(1) Three consecutive years of investigation-related experience;

(2) A bachelor's degree in criminal justice;

(3) A bachelor's degree, with an additional six months of investigation-related experience;

(4) An associate degree in criminal justice or related course of study, with an additional 12 months of investigation-related experience; or

(5) A specialized course of study directly designed for and related to the private investigations profession, taught and presented through affiliation with a four-year college or university accredited and recognized by the State of Texas. This course of study must be endorsed by the four year college or university's department of criminal justice program and include a departmental faculty member(s) on its instructional faculty. This course of study must consist of a minimum of two hundred instructional [~~face-to-face classroom~~] hours including coverage of ethics, Private Security Board administrative rules, the Private Security Act, and related statutes.

(b) Other combinations of education and investigation-related experience may be substituted for the qualifications in subsection (a) of this section [~~above~~] at the discretion of the board or its designated representative [~~bureau manager~~].

(c) The bachelor's degrees, associate degrees and specialized courses referenced in subsection (a) of this section must be affiliated with a college or university recognized by the Texas Higher Education Coordinating Board, Southern Association of Colleges and Schools or other accreditation organization recognized by the State of Texas.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201574
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER Q. TRAINING

37 TAC §35.256

The Texas Department of Public Safety (the department) proposes amendments to §35.256, concerning Application for a Training Instructor Approval. The amendments are intended to clarify the number of hours of instruction required for approval as a private security training instructor, and to recognize the certification as a concealed handgun license instructor as evidence of qualification as such private security training instructor.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments. There are no anticipated economic costs to individuals who are required to comply with these amendments. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amendments will be greater clarity in the eligibility criteria for training instructors, and therefore greater efficiency in the manner in which the department administers the statute and assurance that those who are providing such services have received the necessary training. There should be no economic costs resulting from the amendments of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environ-

ment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) and §1702.1675 are affected by this proposal.

§35.256. Application for a Training Instructor Approval.

(a) An application for approval as an instructor shall contain evidence of qualification as required by the board. Instructors may be approved for classroom and/or firearm training. An individual may apply for approval for one or both of these categories. To qualify for [a] classroom or firearm instructor approval the applicant [~~for approval~~] must submit [~~acceptable~~] certificates of training for each category reflecting training completed within two years of the date of application. The classroom instructor and firearm certificates shall represent a combined [~~each have consisted of a~~] minimum of 40 hours of board approved instruction.

(b) Proof of qualification as a classroom instructor shall include, but not be limited to:

(1) an instructor's certificate issued by Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE);

(2) an instructor's certificate issued by federal, state, or political subdivision law enforcement agency approved by the manager [~~academy~~];

(3) an instructor's certificate issued by the Texas Education Agency; [~~and~~]

(4) an instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university; or[.]

(5) a concealed handgun instructor certificate issued by the department.

[~~(c) In addition to the proof of qualification, a classroom instructor shall complete the Level III Instructor's 24 hour training course and submit completion certificate to the bureau.~~]

(c) [~~(d)~~] Proof of qualification as a firearm training instructor shall include, but not be limited to:

(1) an instructor's certificate issued by the Law Enforcement Activities Division of the National Rifle Association (NRA);

(2) an instructor's certificate issued by TCLEOSE; [~~and~~]

(3) a firearm instructor's certificate issued by a federal, state or political subdivision law enforcement agency approved by the manager; or[.]

(4) a concealed handgun instructor certificate issued by the department.

(d) [~~(e)~~] A letter of approval from the board shall be issued to each approved instructor and shall be valid for a period of one year. The instructor's approval may be renewed during the month preceding the month in which the approval expires for a period of one year after expiration, upon application to the board and payment of the renewal fee.

(e) [~~(f)~~] The board may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(1) The instructor or applicant has violated any provisions of the Act or this chapter;

(2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(3) A material false statement was made in the application; or

(4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter as amended.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201575
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §19.101, concerning Definitions, and §19.1601, concerning Infection Control, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement portions of Senate Bill 7, 82nd Legislature, First Called Session, 2011. The proposed amendments require nursing facilities to develop policies for the vaccination of employees and contractors as a means of protecting residents from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.101 adds a definition for "vaccine preventable diseases."

The proposed amendment to §19.1601 adds requirements for facilities to develop and implement a policy to protect residents from vaccine preventable diseases. It also reorganizes existing provisions regarding vaccination of residents to clarify the existing requirements.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because there is no cost to the facilities to develop and implement a policy about the vaccination of employees to protect residents from vaccine preventable diseases. The amendment does not require facilities to provide the vaccination.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that rules will be clarified in accordance with legislation and there will be additional protection from vaccine preventable diseases for residents in nursing facilities.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R25, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R25" in the subject line.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§19.101. Definitions.

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

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(A) "Involuntary seclusion"--Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.

(B) "Mental/psychological abuse"--Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.

(C) "Physical abuse"--Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.

(D) "Sexual abuse"--Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.

(E) "Verbal abuse"--The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(11) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(17) CFR--Code of Federal Regulations.

(18) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(19) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(22) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph [~~definition~~] but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(25) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) DADS--The Department of Aging and Disability Services.

(27) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(29) Department--Department of Aging and Disability Services.

(30) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(32) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

(33) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph [~~definition~~]. It does not include devices or their components, parts, or accessories.

(35) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(37) Exploitation--The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(38) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(39) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this chapter (relating to Preadmission Screening and Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(40) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(41) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(42) Fiduciary agent--An individual who holds in trust another's monies.

(43) Free choice--Unrestricted right to choose a qualified provider of services.

(44) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(45) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(46) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(47) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(48) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(49) HIV--Human Immunodeficiency Virus.

(50) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(51) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(52) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(53) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(54) IV--Intravenous.

(55) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(56) Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(57) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(58) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(59) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association(NFPA).

(60) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(61) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(62) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(63) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(64) Long-term care-regulatory--DADS' Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(65) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(66) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(67) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(68) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(69) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(70) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(71) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(72) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(73) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(74) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(75) Medical-social care plan--See Interdisciplinary Care Plan.

(76) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(77) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(78) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(79) Neglect--A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(80) NHIC--Formerly, this term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(81) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(82) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(83) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(84) Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(85) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(86) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(87) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(88) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(89) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(90) Objectives--See definition of "goals."

(91) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(92) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(93) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(94) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(95) PASARR--Preadmission Screening and Resident Review.

(96) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(97) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(98) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(99) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(100) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(101) Physical restraint--See Restraints (physical).

(102) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(103) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(104) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(105) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(106) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(107) PRN (pro re nata)--As needed.

(108) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(109) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(110) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(111) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(112) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS' Regulatory Services Division.

(113) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(114) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(115) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(116) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(117) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(118) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(119) Resident--Any individual residing in a nursing facility.

(120) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(121) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(122) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(123) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(124) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(125) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(126) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(127) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(128) Seclusion--See the definition of "involuntary seclusion" in paragraph (1)(A) of this section.

(129) Secretary--Secretary of the U.S. Department of Health and Human Services.

(130) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or fam-

ily setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(131) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(132) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(133) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(134) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(135) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(136) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(137) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(138) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(139) Supervision--General supervision, unless otherwise identified.

(140) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(141) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(142) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(144) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(145) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(146) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(147) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(148) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(149) Title XVIII--Medicare provisions of the Social Security Act.

(150) Title XIX--Medicaid provisions of the Social Security Act.

(151) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(152) UAR--HHSC's Utilization and Assessment Review Section.

(153) Uniform data set--See Resident Assessment Instrument (RAI).

(154) Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(155) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(156) [~~(155)~~] Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(157) [~~(156)~~] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201495
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 438-4162

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SUBCHAPTER Q. INFECTION CONTROL

40 TAC §19.1601

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§19.1601. Infection Control.

(a) Infection Control Program. The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection, including influenza, pneumococcal pneumonia, and tuberculosis. Under the program, the facility must:

(1) investigate, control, and prevent infections in the facility;

(2) decide what procedures, such as isolation, should be applied to an individual resident; and

(3) maintain a record of incidents and corrective actions related to infections.

(b) Preventing spread of infection.

(1) If the facility determines in accordance with its infection control program, that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident. Residents with communicable disease must be provided acceptable accommodations according to current practices and policies for infection control. See §19.1(b)(4)(I) of this title (relating to Basis and Scope) for information concerning the Centers for Disease Control and Prevention (CDC) guidelines [~~Guidelines publications~~].

(2) The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(3) The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(4) The name of any resident with a reportable disease as specified in Title 25, Chapter 97, Subchapter A [~~Texas Administrative Code §§97.1-97.14~~] (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(c) Communicable Diseases. The facility must have and implement written policies for the control of communicable diseases in employees and residents and must maintain evidence of compliance with local and state health codes and ordinances regarding employee and resident health status.

(d) [~~(1)~~] Tuberculosis.

(1) [~~(A)~~] The facility must conduct and document an annual review that assesses the facility's current risk classification according to the current CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Settings.

(2) [~~(B)~~] The facility must screen all employees before providing services in the facility, according to CDC [~~(CDC)~~] guidelines. The facility must require all persons providing services under an outside resource contract to provide evidence of a current tuberculosis screening prior to providing services in the facility. The facility must document or keep a copy of the evidence provided.

(3) [~~(C)~~] If the facility determines or suspects that an employee or person providing services under an outside resource contract has been exposed to or has a positive screening for a communicable disease, the facility must respond according to the current CDC guidelines and keep documentation of the action taken.

(4) [~~(D)~~] If the facility determines that an employee or a person providing services under an outside resource contract has been exposed to a communicable disease, the facility must conduct and document a reassessment of the risk classification. The facility must conduct and document subsequent screening based upon the reassessed risk classification.

(5) [~~(E)~~] The facility must screen all residents at admission in accordance with the attending physician's recommendations and current CDC guidelines. If the facility determines or suspects that a resident has been exposed to a communicable disease or has a positive screening, the facility must respond according to the current CDC guidelines and attending physician's recommendations, and keep documentation of the response.

~~[(2) Hepatitis B.]~~

~~[(A) The facility's policy regarding hepatitis B vaccinations must address all circumstances requiring vaccinations and include a method to identify employees at risk of directly contacting blood or potentially infectious materials.]~~

~~[(B) The facility must offer all of the employees identified in subparagraph (A) of this paragraph hepatitis B vaccinations within 10 days of employment. If the employee initially declines the hepatitis B vaccination but at a later date, while still at risk of directly contacting blood or potentially infectious materials, decides to accept the vaccination, the facility must make the vaccination available at that time.]~~

(e) Vaccinations.

(1) Effective September 1, 2012, a facility must develop and implement a policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(A) The policy must:

(i) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(ii) specify the vaccines an employee or contractor is required to receive in accordance with paragraph (1) of this subsection;

(iii) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(iv) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC;

(v) for an employee or contractor who is exempt from the required vaccines, include procedures the employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(vi) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(vii) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy; and

(viii) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(B) The policy may:

(i) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including a religious beliefs; and

(ii) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Definitions).

(2) [~~(d)~~] [~~Vaccinations.~~] A facility must offer vaccinations to residents in accordance with an immunization schedule adopted by the Advisory Committee on Immunization Practices of the CDC [~~Texas Department of State Health Services~~].

(A) [~~(1)~~] Pneumococcal vaccinations [~~vaccine~~] for residents. The facility must offer pneumococcal vaccination to a resident [~~all residents~~] 65 years of age or older who has [~~have~~] not received the vaccination [~~this immunization~~] and to a resident [~~residents~~] younger than 65 years of age, who has [~~have~~] not received the vaccination [~~this vaccine,~~] but is a candidate [~~are candidates~~] for it [~~vaccination~~] because of chronic illness. A pneumococcal vaccination [~~Pneumococcal vaccine~~] must be offered [~~both~~] to a current resident of a [~~residents who currently reside in the~~] facility and to a new resident [~~residents upon~~] at the time of admission. A vaccination [~~Vaccination~~] must be completed unless a physician has indicated that the vaccination [~~vaccine~~] is medically contraindicated or the resident refuses the vaccination [~~vaccine~~]. [~~Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the vaccination.~~]

(i) [~~(A)~~] The facility must develop and implement policies and procedures to ensure that the resident or resident's legal representative receives education regarding the benefits and potential side effects of the pneumococcal vaccination. The medical record of a resident must show this education was provided.

(ii) [~~(B)~~] Based on an assessment and practitioner recommendation, a second pneumococcal vaccination [~~immunization~~] may be given five years after the first pneumococcal vaccination [~~immunization~~], unless medically contraindicated or the resident or the resident's legal representative refuses the second vaccination [~~immunization~~].

(B) [~~(2)~~] Influenza vaccinations for residents and employees. The facility must offer influenza vaccinations [~~vaccine~~] to residents and employees in contact with residents, unless the vaccination [~~vaccine~~] is medically contraindicated by a physician or the employee or resident has refused the vaccination [~~vaccine~~].

(i) [~~(A)~~] Influenza vaccinations for all residents and employees in contact with residents must be completed by November 30 of each year. Employees hired or residents admitted after this date and during the influenza season (through March of each year) must receive influenza vaccinations, unless medically contraindicated by a physician or the employee, the resident, or the resident's legal representative [~~resident~~] refuses the vaccination [~~vaccine~~].

[~~(B) Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the most recent vaccination.~~]

(ii) [~~(C)~~] The facility must develop and implement policies and procedures that ensure that the resident or resident's legal representative receives education regarding the benefits and potential side effects of the influenza vaccination. The medical record of a resident must show this education was provided.

(C) Hepatitis B vaccinations for employees. The facility must offer an employee identified as being at risk of directly contacting blood or potentially infectious materials a hepatitis B vaccine within 10 days of employment. If the employee initially declines the hepatitis B vaccination but at a later date, while still at risk of directly contacting blood or potentially infectious materials, decides to accept the vaccination, the facility must make the vaccination available at that time.

(D) [~~(3)~~] Documentation of receipt, refusal, or contraindication of vaccination.

[~~(A) Immunization records must be maintained for each employee in contact with residents and must show the date of the receipt or refusal of each annual influenza vaccination.~~]

(i) [~~(B)~~] Except as provided in clause (ii) of this subparagraph [~~(C) of this paragraph~~], the medical record for each resident must show the date of the receipt or refusal of the annual influenza vaccination and the pneumococcal vaccination [~~vaccine~~].

(ii) [~~(C)~~] If a resident does not receive or refuse a vaccination, the resident's medical record must show the resident did not receive the annual influenza vaccination or the pneumococcal vaccination due to a medical contraindication.

[~~(D) The medical record for each resident must show the resident or resident's legal representative was provided education regarding the benefits and potential side effects of the influenza and pneumococcal vaccination.~~]

(f) [~~(e)~~] Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection and in accordance with §19.325 of this chapter (relating to Linen).

(g) [~~(f)~~] The Quality Assessment and Assurance Committee as described in §19.1917 of this chapter [~~title~~] (relating to Quality Assessment and Assurance) will monitor the infection control program.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201496
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 438-4162

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CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §90.3, Definitions, and §90.42, Standards for Facilities Serving Persons with Mental Retardation or Related Conditions; new §90.43, Administration of Medication; and new §90.329, Vaccine Preventable Disease, in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions.

BACKGROUND AND PURPOSE

The purpose of the amendments and new sections is to implement provisions of Senate Bill (SB) 1857, 82nd Legislature, Regular Session, 2011, which added Human Resources Code, Chapter 161, Subchapter D-1, allowing administration of medication to a resident of an intermediate care facility by an unlicensed person under certain circumstances. DADS also initiated these changes in response to provisions of SB 7, 82nd Legislature, First Called Session, 2011, which requires facilities to develop and implement a policy to protect residents from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224. This proposal also changes the title of Chapter 90 to Intermediate Care Facilities for Persons with an Intellectual Disability or Related Conditions.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §90.3 adds definitions for "administration of medication," "metered dose inhaler," "oral medication," "topical medication," and "vaccine preventable diseases." In addition, the definition of "facility" has been amended to replace "mental retardation" with "intellectual disability."

The proposed amendment to §90.42 removes current requirements regarding administration of medication and clarifies that self-administration of medication is administration of medication and self-administration of medication training can be conducted by unlicensed personnel in accordance with new §90.43.

Proposed new §90.43 clarifies the circumstances in which unlicensed personnel may administer medication without delegation from a registered nurse.

Proposed new §90.329 requires a facility to develop and implement a policy to protect residents from vaccine preventable diseases and includes procedures regarding vaccination of employees.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new sections are in effect, enforcing or administering the amendments and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new sections will not have an adverse economic effect on small businesses or micro-businesses because the amendments and new sections do not require additional staff or resources to accomplish compliance. Administration of medication to individuals residing in intermediate care facilities has always required staff oversight and will continue with the exception that registered nurse delegation is not required if the medication is administered orally, topically, or by metered dose inhaler.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new sections are in effect, the public benefit expected as a result of enforcing the amendments and new sections is that rules will be clarified in accordance with legislation.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new sections. The amendments and new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS Policy, Rules, and Curriculum Development Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R19, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or

(3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R19" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §90.3

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with an intellectual disability or related conditions; 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§252.001 - 252.208; and Texas Human Resources Code, §161.021.

§90.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions that are specific to the subchapter.

(1) Addition--The addition of floor space to a facility.

(2) Administrator--The administrator of a facility.

(3) Administration of medication--Removing a unit or dose of medication from a previously dispensed, properly labeled container; verifying the medication with the medication order; giving the proper medication in the proper dosage to the proper resident at the proper time by the proper administration route; and recording the time of administration and dosage administered.

(4) [~~(3)~~] Applicant--A person applying for a license under Health and Safety Code, Chapter 252.

(5) [~~(4)~~] APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(6) [~~(5)~~] Attendant personnel--All persons who are responsible for direct and non-nursing services to residents of a facility. (Nonattendant personnel are all persons who are not responsible for direct personal services to residents.) Attendant personnel come within the categories of: administration, dietitians, medical records, activities, housekeeping, laundry, and maintenance.

(7) [~~(6)~~] Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a behavior therapy program; and

(D) does not occur during a medical or dental procedure.

(8) [~~(7)~~] Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and provide reasonable safety, all consistent with the preferences of the resident.

(9) [~~(8)~~] Centers for Medicare and Medicaid Services (CMS)--The federal agency that provides funding and oversight for the Medicare and Medicaid programs. CMS was formerly known as the Health Care Financing Administration (HCFA).

(10) [~~(9)~~] Change of ownership--A change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility, or a change in the federal taxpayer identification number.

(11) [~~(10)~~] Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Health and Safety Code, Chapter 481, as amended, or the Federal Controlled Substance Act of 1970, Public Law 91-513, as amended.

(12) [~~(11)~~] Controlling person of an applicant, license holder, or facility--A person who, acting alone or with others, has the ability to directly or indirectly influence or direct the management, expenditure of money, or policies of an applicant or license holder or of a facility owned by an applicant or license holder.

(A) The term includes:

(i) a person who owns at least 5 percent interest in the applicant or license holder;

(ii) a spouse of the applicant or license holder;

(iii) an officer or director, if the applicant or license holder is a corporation;

(iv) a partner, if the applicant or license holder is a partnership;

(v) a trustee or trust manager, if the applicant or license holder is a trust;

(vi) a person that operates or contracts with others to operate the facility;

(vii) a person who, because of a personal, familial, or other relationship is in a position of actual control or authority over the facility, without regard to whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility; and

(viii) a person who would be a controlling person of an entity described in clauses (i) - (vii) of this subparagraph, if that entity were the applicant or license holder.

(B) The term does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(13) [~~(12)~~] DADS--The Department of Aging and Disability Services.

(14) [~~(13)~~] Dangerous drug--Any drug as defined in the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483.

(15) [~~(14)~~] Department--The Department of Aging and Disability Services.

(16) [~~(15)~~] Designee--A state agency or entity with which DADS contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(17) [~~(16)~~] Drug (also referred to as medication)--A drug is:

(A) any substance recognized as a drug in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the human body; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(18) [~~(17)~~] Establishment--A place of business or a place where business is conducted which includes staff, fixtures, and property.

(19) [~~(18)~~] Facility--A facility serving persons with an intellectual disability [~~mental retardation~~] or related conditions licensed under this chapter as described in §90.2 of this subchapter [~~title~~] (relating to Scope) and required to be licensed under the Health and Safety Code, Chapter 252.

(20) [~~(19)~~] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(21) [~~(20)~~] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(22) [~~(21)~~] Immediate and serious threat--A situation in which there is a high probability that serious harm or injury to residents could occur at any time or has already occurred and may occur again if residents are not protected effectively from the harm or if the threat is not removed.

(23) [~~(22)~~] Immediate jeopardy to health and safety--A situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

(24) [~~(23)~~] Incident--An unusual or abnormal event or occurrence in, at, or affecting the facility or the residents of the facility.

(25) [~~(24)~~] Inspection--Any on-site visit to or survey of a facility by DADS for the purpose of inspection of care, licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(26) [~~(25)~~] Large facility--Facilities with 17 or more resident beds.

(27) [~~(26)~~] Legal guardian--A person who is appointed guardian under §693 of the Probate Code.

(28) [~~(27)~~] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(29) [~~(28)~~] License--Approval from DADS to establish or operate a facility.

(30) [~~(29)~~] License holder--A person who holds a license to operate a facility.

(31) [~~(30)~~] Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(32) [~~(31)~~] Life safety features--Fire safety components required by the Life Safety Code such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

(33) [~~(32)~~] Local authorities--A local health authority, fire marshal, building inspector, etc., who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(34) [~~(33)~~] Local health authority--The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as described in the Health and Safety Code, §§121.021 - 121.025.

(35) [~~(34)~~] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services shall not include contracts solely for maintenance, laundry, or food services.

(36) Metered dose inhaler--A device that delivers a measured amount of medication as a mist that can be inhaled.

(37) Oral medication--Medication administered by way or through the mouth and does not include sublingual or buccal.

(38) [~~(35)~~] Person--An individual, firm, partnership, corporation, association, or joint stock company, and any legal successor of those entities.

(39) [~~(36)~~] Personal hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(40) [~~(37)~~] Qualified mental retardation professional (QMRP)--A person with at least a bachelor's degree who has at least one year of experience working with persons with an intellectual disability [~~mental retardation~~] or related conditions.

(41) [~~(38)~~] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian, employed by DADS, who is trained and experienced in long-term care regulations, standards of practice in long-term care, and evaluation of resident care and functions independently of DADS Regulatory Services Division.

(42) [~~(39)~~] Remodeling--The construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (i.e., sprinkler systems, fire alarm systems), that will change the existing plan and use areas of the facility.

(43) [~~(40)~~] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

(44) [(41)] Restraint--A manual method, or a physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that restricts freedom of movement or normal access to the resident's body. This term includes a personal hold.

(45) [(42)] Seclusion--The involuntary separation of a resident away from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(46) [(43)] Small facilities--Facilities with 16 or fewer resident beds.

(47) [(44)] Specialized staff--Personnel with expertise in developmental disabilities.

(48) [(45)] Standards--The minimum conditions, requirements, and criteria with which a facility will have to comply to be licensed under this chapter.

(49) Topical medication--Medication applied to the skin but does not include medication administered in the eyes.

(50) [(46)] Universal precautions--The use of barrier precautions by facility personnel to prevent direct contact with blood or other body fluids that are visibly contaminated with blood.

(51) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(52) [(47)] Well-recognized church or religious denomination--An organization which has been granted a tax-exempt status as a religious association from the state or federal government.

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

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Proposed date of adoption: June 1, 2012
For further information, please call: (512) 438-3734

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SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.42, §90.43

STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with an intellectual disability or related conditions; 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment and new section affect Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§252.001 - 252.208; and Texas Human Resources Code, §161.021.

§90.42. Standards for Facilities Serving Persons with an Intellectual Disability [Mental Retardation or Related Conditions.

(a) Purpose. The purpose of this section is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards:

(1) for the habilitation of persons based on an active treatment program in institutions defined and covered in this section; and

(2) for the establishment, construction, maintenance, and operation of such institutions that [which] view an intellectual disability [mental retardation] and other developmental disabilities within the context of a developmental model in accordance with the principle of normalization.

(b) Philosophy. Facilities regulated by the standards in this section are known as facilities for persons with an intellectual disability [mental retardation] and related conditions in Texas (ICF/ID) [(MR facilities)]. Persons in these facilities have the same civil rights, equal liberties, and due process of law as other individuals, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment, to the extent possible, that is normalized and normalizing.

(c) Standards. Each facility serving persons with an intellectual disability [mental retardation] or related conditions shall comply with regulations promulgated by the United States Department of Health and Human Services in Title 42, Code of Federal Regulations (CFR), Part 483, Subpart I, §§483.400 - 483.480, titled, "Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded." Additionally, DADS adopts by reference the federal regulations governing conditions of participation for the ICF/ID [ICF/MR] program as specified in 42 CFR, Part 483, Subpart I, §§483.410, 483.420, 483.430, 483.440, 483.450, 483.460, 483.470, and 483.480 as licensing standards.

(d) Precertification training conference for new providers of service. Each new provider must attend the precertification/prelicensure training conference prior to licensing by DADS. The purpose of the training is to assure that providers of services are familiar with the licensing requirements and to facilitate the delivery of quality services to residents in facilities serving persons with an intellectual disability [mental retardation] or related conditions.

(1) A new provider is an entity which has not had at least one year of administering services in a facility serving persons with an intellectual disability [mental retardation] or related conditions in Texas. All new providers must attend a precertification training conference prior to the life safety code survey.

(2) Each new provider must designate at least one individual who will be involved with the direct management of the facility to attend the training conference prior to a health survey being scheduled.

(3) Each new provider will be given a training schedule. DADS will schedule training sessions, and the date, time, and location of the training will be indicated on the schedule.

(e) Additional requirements.

(1) A facility must develop and implement policies and procedures for reporting abuse, neglect, and exploitation to the Department of Family and Protective Services and reporting other incidents to DADS.

(2) In the area of cardiopulmonary resuscitation (CPR), the following apply:

(A) At least one staff person per shift and on duty must be trained by a CPR instructor certified by an organization such as the American Heart Association or the Red Cross.

(B) The facility must ensure that staff maintain their certification as recommended by such organizations.

(3) In the area of behavior management, seclusion of residents may not be used.

(4) In the area of physical restraints, the following apply:

(A) A facility must not use restraint:

(i) in a manner that:

(I) obstructs the resident's airway, including the placement of anything in, on, or over the resident's mouth or nose;

(II) impairs the resident's breathing by putting pressure on the resident's torso;

(III) interferes with the resident's ability to communicate;

(IV) extends muscle groups away from each other;

(V) uses hyperextension of joints; or

(VI) uses pressure points or pain;

(ii) for disciplinary purposes, that is, as retaliation or retribution;

(iii) for the convenience of staff or other residents; or

(iv) as a substitute for effective treatment or habilitation.

(B) A facility may use restraint:

(i) in a behavioral emergency;

(ii) as an intervention in a behavior therapy program that addresses inappropriate behavior exhibited voluntarily by a resident;

(iii) during a medical or dental procedure if necessary to protect the resident or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;

(iv) to protect the resident from involuntary self-injury; and

(v) to provide postural support to the resident or to assist the resident in obtaining and maintaining normative bodily functioning.

(C) In order to decrease the frequency of the use of restraint and to minimize the risk of harm to a resident, a facility must ensure that the interdisciplinary team:

(i) with the participation of a physician, identifies:

(I) the resident's known physical or medical conditions that might constitute a risk to the resident during the use of restraint;

(II) the resident's ability to communicate; and

(III) other factors that must be taken into account if the use of restraint is considered, including the resident's:

(-a-) cognitive functioning level;

(-b-) height;

(-c-) weight;

(-d-) emotional condition (including whether the resident has a history of having been physically or sexually abused); and

(-e-) age;

(ii) documents the conditions and factors identified in accordance with clause (i) of this subparagraph, and, as applicable, limitations on specific restraint techniques or mechanical restraint devices in the resident's record; and

(iii) reviews and updates with a physician, registered nurse, or licensed vocational nurse, at least annually or when a condition or factor documented in accordance with clause (ii) of this subparagraph changes significantly, information in the resident's record related to the identified condition, factor, or limitation.

(D) If a facility restrains a resident as provided in subparagraph (B) of this paragraph, the facility must:

(i) take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices documented in accordance with subparagraph (C)(ii) and (iii) of this paragraph;

(ii) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the resident and others;

(iii) safeguard the resident's dignity, privacy, and well-being; and

(iv) not secure the resident to a stationary object while the resident is in a standing position.

(E) If a facility uses restraint in a circumstance described in subparagraph (B)(i) or (ii) of this paragraph:

(i) the facility may use only a personal hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of subparagraph (A)(i) of this paragraph; and

(ii) if a resident rolls into a prone or supine position during restraint, the facility must transition the resident to a side, sitting, or standing position as soon as possible. The facility may only use a prone or supine hold:

(I) as a transitional hold, and only for the shortest period of time necessary to ensure the protection of the resident or others;

(II) as a last resort, when other less restrictive interventions have proven to be ineffective; and

(III) except in a small facility, when an observer who is trained to identify risks associated with positional, compression, or restraint asphyxiation, and with prone and supine holds is ensuring that the resident's breathing is not impaired.

(F) A facility must release a resident from restraint:

(i) as soon as the resident no longer poses a risk of imminent physical harm to the resident or others; or

(ii) if the resident in restraint experiences a medical emergency, as soon as possible as indicated by the medical emergency.

(G) If a facility restrains a resident as provided in subparagraph (B)(i) of this paragraph, the facility must obtain a physician's order authorizing the restraint by the end of the first business day after the use of restraint.

(H) A facility must ensure that each resident and the resident's legally authorized representative are notified of the DADS rules and the facility's policies related to restraint and seclusion.

(I) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(5) In the area of pharmacy services, the following applies.

(A) All pharmacy services must comply with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

(B) All medications must be ordered in writing by a physician, dentist, or podiatrist. Verbal orders may be taken only by a licensed nurse, pharmacist, or another physician, and must be immediately transcribed and signed by the individual taking the order. Verbal orders must be signed by the physician, dentist, or podiatrist within seven working days.

(C) The facility, with input from the consultant pharmacist and physician, must develop and implement policies and procedures regarding automatic stop orders for medications. These procedures must be utilized when the order for a medication does not specify the number of doses to be given or the time for discontinuance or re-order.

(6) Specialized nutrition support (delivery of parenteral nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes, etc.) must be given in accordance with physician's orders by a registered or licensed nurse. Proper technique must be utilized when giving nutritional support.

(7) In the area of self-administration of medication and emergency medication kits, the following apply.

[(A) Medications may be administered only by physicians, licensed nursing personnel, permitted medication aides, or persons who are exempt from licensure or permit requirements pursuant to the Health and Safety Code, §242.1511. These persons must function in accordance with the memorandum of understanding (MOU) between DADS and the Board of Nurse Examiners. DADS adopts the MOU by reference and copies are available for review at DADS' Regulatory Services, 701 West 51st Street, Austin, Texas 78714-9030.]

[(i) The licensed or certified individual who removes the medication dose from the container in which it was dispensed must administer the dose.]

[(ii) The individual who administers the medication must record the dose after it is administered and during the shift in which it was given.]

(A) [(B)] Residents who have demonstrated the competency for self-administration of medications must have access to and maintain their own medications. They must have an individual storage space that permits them to store their medications under lock and key.

(B) [(C)] Residents may participate in a self-administration of medication [habilitation] training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication [habilitation] training program must have training in coordination with and as part of the resident's total active treatment program. The resident's training plan must be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication training [habilitation] program is administration of medication and may be conducted by unlicensed [nonlicensed] personnel in accordance with §90.43 of this subchapter (relating to Administration of Medication) [and is not limited to personnel who have completed an approved training program in medication administration].

(C) [(D)] A facility may maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs, as outlined under §90.324 and §90.325 of this chapter [title] (relating to Emergency Medication Kit and Controlled Substances).

(8) In the area of communicable diseases, the facility must have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility must report in accordance with Communicable Disease and Prevention Act, Health and Safety Code, Chapter 81, or as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) and 25 TAC §§97.131 - 97.136 (relating to Sexually Transmitted Diseases Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his duties. The facility must have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control and Prevention (CDC).

(9) In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A) - (F) of this paragraph apply.

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools.

(B) A minimum of one staff person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities.

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(E) Each individual's program plan must address each person's needs for safety when participating in water activities including, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety;

the ability to swim independently; and, when called for, special precautions.

(F) If the interdisciplinary team recommends the use of a flotation device as a precaution for any individual to engage in water activities, it must be identified and precautions outlined in the individual program plan. The device must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized in the individual's therapy program.

(10) In the area of communication, a facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

(11) In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by:

(A) a person licensed to practice medicine in accordance with Texas Occupations Code, Chapter 155 (relating to License to Practice Medicine);

(B) a person licensed as a physician assistant in accordance with Texas Occupations Code, Chapter 204 (relating to Physician Assistants); or

(C) a person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301 (relating to Nurses), and authorized by the Texas Board of Nursing to practice as an advanced practice nurse.

§90.43. Administration of Medication.

(a) Administration of medication to a resident of a facility may be performed only by:

(1) a person who holds a license under state law that authorizes the person to administer medication;

(2) in a facility, as defined in §95.101 of this title (relating to Introduction):

(A) a person who holds a permit issued under Texas Health and Safety Code §242.610 and acts under the authority of a person described in paragraph (1) of this subsection; or

(B) a person who is exempt from licensure or permit requirements in accordance with Texas Health and Safety Code §242.607;

(3) a person to whom a registered nurse has delegated the administration of medication under 22 TAC Chapter 224 or 225 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments and RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); or

(4) in a facility with a licensed or certified capacity of less than 14 residents, an unlicensed person who administers medication in accordance Texas Human Resource Code Chapter 161, Subchapter D-1.

(b) A person may perform administration of medication in accordance with subsection (a)(4) of this section without the requirement that a registered nurse delegate or oversee each administration if:

(1) the medication is:

(A) an oral medication;

(B) a topical medication; or

(C) a metered dose inhaler;

(2) the medication is administered to the resident for a stable or predictable condition;

(3) the resident has been personally assessed by a registered nurse initially and in response to significant changes in the resident's health status, and the registered nurse has determined that the resident's health status permits the administration of medication by an unlicensed person; and

(4) the unlicensed person has been:

(A) trained by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication; or

(B) determined to be competent by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed person.

(c) A registered nurse or a licensed vocational nurse under the supervision of a registered nurse must review the administration of medication to a resident by a person described in subsection (a)(4) of this section at least annually and after any significant change in the resident's condition.

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

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER L. PROVISIONS APPLICABLE TO FACILITIES GENERALLY

40 TAC §90.329

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with an intellectual disability or related conditions; 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§252.001 - 252.208; and Texas Human Resources Code, §161.021.

§90.329. Vaccine Preventable Diseases.

(a) Effective September 1, 2012, a facility must develop and implement a policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(b) The policy must:

(1) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(2) specify the vaccines an employee or contractor is required to receive in accordance with paragraph (1) of this subsection;

(3) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(4) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for an employee or contractor who is exempt from the required vaccines, include procedures the employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(6) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(7) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy;

(8) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(c) The policy may:

(1) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(2) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Definitions).

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

Filed with the Office of the Secretary of State on March 23, 2012.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Proposed date of adoption: June 1, 2012
For further information, please call: (512) 438-3734

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CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to Subchapter A, §92.2, concerning definitions; Subchapter C, §92.41, concerning standards for type A and type B assisted living facilities; and Subchapter H, Division 9, §92.551, concerning administrative penalties, in Chapter 92, Licensing Standards for Assisted Living Facilities.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement House Bill (HB) 2109, 82nd Legislature, Regular Session, 2011, and Senate Bill (SB) 7, Article 8, 82nd Legislature, First Called Session, 2011. HB 2109 amends Texas Health and Safety Code, §247.066 and §247.068, regarding assisted living facilities. A resident of an assisted living facility may be considered inappropriately placed due to a change in the types of services the resident needs or a change in the resident's evacuation capability. HB 2109 allows an assisted living facility to proactively submit documents to DADS for a waiver of the requirement to discharge an inappropriately placed resident instead of waiting for DADS to make the initial determination. HB 2109 also authorizes DADS to take action when a facility has not discharged a resident when required to do so and prohibits DADS staff from retaliating against an assisted living facility for complaints about or disagreements with a DADS employee. Additionally, HB 2109 requires facility supervisors and other staff, as appropriate, to complete training regarding aging in place and retaliation.

SB 7, Article 8, requires a facility to develop policies to ensure that employees are immunized against vaccine preventable diseases. The proposed amendment adds the requirement for a facility to develop and implement these policies and adds a definition for "vaccine preventable diseases."

SECTION-BY-SECTION SUMMARY

The proposed amendment to §92.2 adds a definition of "vaccine preventable diseases."

The proposed amendment to §92.41(f) clarifies the process DADS and an assisted living facility must follow if a resident is inappropriately placed in the facility. Section 92.41(f)(4)(A) - (B) authorizes DADS to take action if a facility has not discharged a resident when required to do so. The actions include assessing administrative penalties, seeking emergency suspension or closing, or other sanctions under appropriate circumstances. Section 92.41(f)(5) requires a facility to notify a resident and the resident's legally authorized representative of the waiver policies and process regarding aging in place. Section 92.41(f)(6) requires a facility manager to annually complete DADS training relating to aging in place and retaliation. Section 92.41(r) adds requirements for a facility to develop and implement a policy to protect residents from vaccine preventable diseases. Section 92.41(s) prohibits a DADS employee from retaliating against a facility or a facility employee for complaining about the conduct of a DADS employee, disagreeing with a DADS employee about the existence of a violation or rule, or asserting a right under state or federal law.

The proposed amendment to §92.551(d) adds new administrative penalties to the schedule to reflect that DADS may assess the administrative penalty described in the proposed amendments to §92.41(f)(4).

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments may have an adverse economic effect on small businesses as a result of enforcing or administering the amendments, because the rule allows DADS to assess an administrative penalty against an assisted living facility that intentionally or repeatedly disregards the waiver process.

DADS estimates that the number of small businesses subject to the proposed amendments is less than 1,455. The estimate is based on DADS records which indicate that of the 1,680 licensed assisted living facilities, approximately 1,455 of them are formed for the purpose of making a profit, one of the requirements for being classified as a "small business." DADS does not have specific data regarding number of employees and gross receipts to determine what percentage of these facilities are operated by an entity that would meet the definition of a small business or micro-business.

The projected economic impact for a small business is an administrative penalty of $700 to $1,000, but that penalty is incurred only if the small business intentionally and repeatedly disregards the waiver process in accordance with the proposed amendments. For that reason, DADS projects that there will be minimal economic impact to small businesses subject to these amendments.

Several alternatives were considered in determining how to accomplish the objectives of the proposed rules while minimizing the adverse economic effect on small businesses. THSC §247.066 gives DADS the option of assessing an administrative penalty if an assisted living facility intentionally or repeatedly disregards the waiver process. DADS considered not imposing a penalty against a facility that intentionally or repeatedly disregards the waiver process. However, DADS did not consider this option to be consistent with its responsibility as a regulatory agency and specifically determined that this option would not adequately address the need for waivers or relocation of inappropriately placed residents. DADS considered the use of lower penalties to minimize the adverse economic impact on small businesses, but determined that imposition of a lower penalty would not be effective in encouraging compliance with the rule. The proposed penalty amount is consistent with other penalty amounts DADS imposes for non-compliance with similar requirements that may directly impact the health and safety of a resident.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that an assisted living facility may proactively submit waiver documents to DADS relating to an inappropriately placed resident to address the evacuation and health concerns of an aging resident without waiting for DADS to make the initial determination during an on-site inspection. By requiring the facility to include specific information regarding facility policies on aging in place in the facility's disclosure statement, residents and their families will have a better understanding of the potential needs and concerns residents may face in an assisted living facility as they age in place. Additionally, a facility may be more inclined to follow the requirements if an administrative penalty is imposed for intentionally or repeatedly disregarding the regulations.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R26, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R26" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §92.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.2. Definitions.

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(2) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(3) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(4) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(5) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(6) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(7) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(8) Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(9) Change of ownership--A change of ownership is:

(A) a change of sole proprietorship that is licensed to operate a facility;

(B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

(C) a change in the federal taxpayer identification number; or

(D) relinquishment by the license holder of the operation of the facility.

(10) Commingles--The laundering of apparel or linens of two or more individuals together.

(11) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(12) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(13) DADS--The Department of Aging and Disability Services.

(14) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(15) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(16) Disclosure statement--A DADS form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(17) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(18) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(19) Fire suppression authority--The paid or volunteer firefighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(20) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(21) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(22) Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(23) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(24) Large facility--A facility licensed for 17 or more residents.

(25) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(26) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(27) Manager--The individual in charge of the day-to-day operation of the facility.

(28) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(29) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(30) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(31) Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(32) NFPA 101--The 1988 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(33) Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

(34) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(35) Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(36) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(37) Physician--A practitioner licensed by the Texas Medical Board.

(38) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(39) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(40) Resident--An individual accepted for care in a facility.

(41) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(42) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(43) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(44) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(45) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(46) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(47) Short-term acute episode--An illness of less than 30 days duration.

(48) Small facility--A facility licensed for 16 or fewer residents.

(49) Staff--Employees of an assisted living facility.

(50) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(51) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(52) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(53) Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(54) [~~(53)~~] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201497
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 438-4162

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SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §92.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.41. Standards for Type A and Type B Assisted Living Facilities.

(a) Employees.

(1) Manager. Each facility must designate, in writing, a manager to have authority over the operation.

(A) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:

(i) an associate's degree in nursing, health care management, or a related field;

(ii) a bachelor's degree; or

(iii) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in health care industry management.

(B) Training in management of assisted living facilities. After August 1, 2000, a manager must have completed at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on the Americans with Disability Act's accessibility requirements; community resources; ethics, and financial management.

(i) The course must be at least 24 hours in length.

(I) Eight hours of training on the assisted living standards must be completed within the first three months of employment.

(II) The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.

(III) Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.

(ii) Managers hired after August 1, 2000, who can show documentation of a previously completed comparable course of study are exempt from the training requirements.

(iii) Managers hired after August 1, 2000, must complete the course by the first anniversary of employment as manager.

(iv) An assisted living manager who was employed by a licensed assisted living facility on August 1, 2000, is exempt from the training requirement. An assisted living manager who was employed by a licensed assisted living facility as the manager before August 1, 2000, and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 30 days, is also exempt from the training requirement.

(C) Continuing education. All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:

(i) resident and provider rights and responsibilities, abuse/neglect, and confidentiality;

(ii) basic principles of management;

(iii) skills for working with residents, families, and other professional service providers;

(iv) resident characteristics and needs;

(v) community resources;

(vi) accounting and budgeting;

(vii) basic emergency first aid; or

(viii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, Family and Medical Leave Act of 1993, and the Fair Housing Act.

(D) Manager's responsibilities. The manager must be on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.

(E) Manager's absence. An employee competent and authorized to act in the absence of the manager must be designated in writing.

(2) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(A) An attendant must be in the facility at all times when residents are in the facility.

(B) Attendants are not precluded from performing other functions as required by the assisted living facility.

(3) Staffing.

(A) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(B) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §92.127 of this title (relating to Required Postings).

(C) A facility must have sufficient staff to:

(i) maintain order, safety, and cleanliness;

(ii) assist with medication regimens;

(iii) prepare and service meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(iv) assist with laundry;

(v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(4) Staff training. The facility must document that staff members are competent to provide personal care before assuming responsibilities and have received the following training.

(A) All staff members must complete four hours of orientation before assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(i) reporting of abuse and neglect;

(ii) confidentiality of resident information;

(iii) universal precautions;

(iv) conditions about which they should notify the facility manager;

(v) residents' rights; and

(vi) emergency and evacuation procedures.

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

(i) in Type A and B facilities, providing assistance with the activities of daily living;

(ii) resident's health conditions and how they may affect provision of tasks;

(iii) safety measures to prevent accidents and injuries;

(iv) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status;

(v) managing disruptive behavior;

(vi) behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and

(vii) fall prevention.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include:

(i) promoting resident dignity, independence, individuality, privacy, and choice;

(ii) resident rights and principles of self-determination;

(iii) communication techniques for working with residents with hearing, visual, or cognitive impairment;

(iv) communicating with families and other persons interested in the resident;

(v) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;

(vi) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;

(vii) cardiopulmonary resuscitation;

(viii) common medications and side effects, including psychotropic medications, when appropriate;

(ix) understanding mental illness;

(x) conflict resolution and de-escalation techniques; and

(xi) information regarding community resources.

(D) Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

(i) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);

(ii) assessment and interventions related to the common physical and psychological changes of aging for each body system;

(iii) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;

(iv) common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma; and obtaining emergency treatment;

(v) common mental disorders with related nursing implications; and

(vi) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

(b) Social services. The facility must provide an activity and/or social program at least weekly for the residents.

(c) Resident assessment. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

(A) the location from which the resident was admitted;

(B) primary language;

(C) sleep-cycle issues;

(D) behavioral symptoms;

(E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);

(F) Alzheimer's/dementia history;

(G) activities of daily living patterns (i.e., wakened to toilet all or most nights, bathed in morning/night, shower or bath);

(H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);

(I) cognitive skills for daily decision-making (independent, modified independence, moderately impaired, severely impaired);

(J) communication (ability to communicate with others, communication devices);

(K) physical functioning (transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

(L) continence status;

(M) nutritional status (weight changes, nutritional problems or approaches);

(N) oral/dental status;

(O) diagnoses;

(P) medications (administered, supervised, self-administers);

(Q) health conditions and possible medication side effects;

(R) special treatments and procedures;

(S) hospital admissions within the past six months or since last assessment; and

(T) preventive health needs (i.e., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed and a service plan developed for them.

(d) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. An assisted living facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident Bill of Rights.

(3) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(4) Each facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(5) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized

representative, of DADS' rules and the facility's policies related to restraint and seclusion.

(e) Admission policies.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility or who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all Life Safety Code requirements based on each resident's evacuation capabilities, except as provided in subsection (f) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The assisted living facility must secure at the time of admission of a resident the following identifying information:

(A) full name of resident;

(B) social security number;

(C) usual residence (where resident lived before admission);

(D) sex;

(E) marital status;

(F) date of birth;

(G) place of birth;

(H) usual occupation (during most of working life);

(I) family, other persons named by the resident, and physician for emergency notification;

(J) pharmacy preference; and

(K) Medicaid/Medicare number, if available.

(f) Inappropriate placement in Type A or Type B facilities.

(1) DADS or a facility may determine that a resident is inappropriately placed in the facility if a resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If DADS determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from DADS, the facility submits the following to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(2) DADS or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements referenced in §92.3 of this chapter (relating to Types of Assisted Living Facilities) for the evacuation of a designated resident.

(A) If, during a site visit, DADS determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph to the DADS regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 372, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph from the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) the specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by DADS, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by DADS.

(D) A facility must meet the following criteria to receive a waiver from DADS:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff is on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) DADS reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the DADS regional office.

(F) Upon notification that DADS has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, DADS may determine that there is an immediate threat to the health or safety of a resident.

(G) DADS reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

~~[(1) A facility is not required to move a resident who a DADS surveyor determines is inappropriately placed if the facility submits the following to DADS not later than the 10th working day after the date the facility is informed in writing of the specific basis of the surveyor's determination:]~~

~~[(A) a written assessment from a physician that states the resident is appropriately placed. The assessment must address the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;]~~

~~[(B) a written statement from the resident that he wishes to remain in the facility. If the resident lacks capacity to give a written statement, a family member or guardian may give a statement that he wishes the resident to remain in the facility; and]~~

~~[(C) a statement from the facility that the facility wishes the resident to remain in the facility.]~~

~~[(2) A facility that does not meet all requirements for the evacuation of a designated resident must apply for a waiver from DADS of all applicable requirements for evacuation not met with respect to the resident. Documentation must be submitted not later than the 10th working day after the date the facility is informed in writing of the specific basis of the surveyor's determination].~~

~~[(A) Documentation. When an evacuation waiver is requested, the following documentation must be submitted to DADS in addition to the documentation required in paragraph (1)(A)-(C) of this subsection:]~~

~~*[(i)* a detailed plan that explains how the facility will meet the evacuation needs of the resident. The plan should include, for example,]~~

[(I) the specific staff positions that will be on duty to assist with evacuation and their shift times;]

[(II) specific staff positions that will be on duty and awake at night; and]

[(III) specific staff training that relates to resident evacuation;]

[(ii) a copy of the facility floor plan that indicates the specific resident's room;]

[(iii) a copy of the facility's emergency evacuation plan;]

[(iv) copies of the facility fire drills for the last 12-month period;]

[(v) a copy of the DADS notice form to the local fire marshal, or state fire marshal, if applicable (authority having jurisdiction), advising that the facility is requesting a waiver of the change of capability of resident evacuation. The DADS form must contain the signature of the fire authority having jurisdiction;]

[(vi) a copy of the DADS notice form to the local fire suppression authority advising that the facility is requesting a waiver of the change of capability of resident evacuation. The DADS form must contain the signature of the fire suppression authority having jurisdiction;]

[(vii) a copy of a comprehensive assessment of the resident, completed within the last 60 days, that addresses the areas required by subsection (c) of this section, and the service plan, that addresses all aspects of the resident's care, particularly those areas identified by DADS. The facility must address the resident's medical condition(s) and related nursing needs, hospitalizations within the last 60 days, any significant change in condition in the last 60 days, specific staffing needs, and services that are provided by an outside provider; and]

[(viii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident.]

[(B) Criteria. Each facility has specific characteristics that vary from other facilities, which prevents the specification of a universal emergency procedure. A facility must meet the following criteria to receive a waiver from DADS:]

[(i) The facility must have an emergency plan to meet the evacuation needs of the resident. The plan must ensure that:]

[(I) staff is adequately trained;]

[(II) a sufficient number of staff is on all shifts to move all residents to a place of safety;]

[(III) residents will be moved to appropriate locations, given health and safety issues;]

[(IV) inclusion of all possible locations of the fire origin area is included in the emergency plan;]

[(V) the emergency plan addresses all possible locations of fire origin areas and the necessity for full evacuation of the building;]

[(VI) the fire alarm signal is adequate;]

[(VII) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;]

[(VIII) the plan is effective for communicating the actual location of the fire to staff; and]

[(IX) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire.]

[(ii) The facility must show that the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation and other residents of the facility who have special needs that require staff assistance. In evaluating whether the emergency plan will have an adverse effect on other residents, DADS may also review the service plans provided by the facility.]

[(C) Determination. DADS will review the documentation submitted under this subsection to determine whether to grant or deny a request for a waiver under this section. DADS notifies the facility in writing of its determination not later than the 10th working day after the date the request is received in the DADS regional office.]

[(D) Plan of Action. Upon notification that DADS has approved a waiver of evacuation, the facility must immediately initiate all provisions of the proposed plan of action. If the facility does not follow the proper plan of action, and there are health and safety concerns, DADS may cite the facility for immediate threat to the health or safety of a resident.]

[(E) Waiver Renewal. A waiver of evacuation from DADS will be reviewed by DADS during the facility's annual renewal licensing inspection.]

(3) If a DADS surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

[(C) DADS will not assess an administrative penalty against the facility because of the inappropriate placement.]

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the DADS regional office, or DADS denies the waiver as described in paragraph (2) of this subsection, DADS may:

(A) assess an administrative penalty if DADS determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when DADS conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code Chapter 247, Subchapter C (relating to General Enforcement), if DADS determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of DADS training on aging in place and retaliation.

(g) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

(vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of $500.

(A) Facilities will receive written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which written notice is sent to a facility, the facility must give written consent to the penalty or make written request for a hearing to the Texas Health and Human Services Commission.

(C) Hearings will be held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(h) Resident records.

(1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.

(2) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's assessments;

(C) the resident's service plan;

(D) physician's orders, if any;

(E) any advance directives;

(F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record. Christian Scientists are excluded from this requirement; and

(G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(3) Records must be available to residents, their legal representatives, and DADS staff.

(i) Personnel records. The facility must keep personnel records on all staff in a central location.

(j) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility.

(iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, who has trained them to administer medications or verified their training. The delegation of the administration of medication is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) All resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label must include, but is not limited to, the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and limited to:

(A) reminders to take their medications at the prescribed time;

(B) opening containers or packages and replacing lids;

(C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual resident's medication profile record the medication

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his/her medications/treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the assisted living facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include, but are not limited to:

(i) central storage area;

(ii) medication cart; and

(iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(i) medications discontinued by order of the physician;

(ii) medications that remain after a resident is deceased; or

(iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(k) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the assisted living facility will:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(l) Resident finances. The assisted living facility must keep a simple financial record on all charges billed to the resident for care and these records must be available to DADS. If the resident entrusts the handling of any personal finances to the assisted living facility, a

simple financial record must be maintained to document accountability for receipts and expenditures, and these records must be available to DADS. Receipts for payments from residents or family members must be issued upon request.

(m) Food and nutrition services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by DADS.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the assisted living facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it must be kept sealed, and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products must not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC §§229.161 - 229.171 and §§229.173 - 229.175 (relating to Texas Food Establishment rules) and local health ordinances or requirements must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(n) Infection control.

(1) Each facility must establish and maintain an infection control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with departmental rules regarding special waste in 25 TAC §§1.131 - 1.137.

(3) The name of any resident of a facility with a reportable disease as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present.

(B) The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) All residents should be screened upon admission and after exposure to TB, in accordance with the attending physician's recommendations and CDC guidelines.

(5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(6) Universal precautions must be used in the care of all residents.

(o) Access to residents. The facility must allow an employee of DADS or an employee of a local mental health and mental retardation authority into the facility as necessary to provide services to a resident.

(p) Restraints. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(1) As provided in §92.125(a)(3) of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used; or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.

(4) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative; or

(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in subsection (c) of this section for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility must not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(q) Accreditation status. If a license holder uses an on-site accreditation survey by an accreditation commission instead of a licensing survey by DADS, as provided in §92.11(c)(2) and §92.15(j) of this chapter (relating to Criteria for Licensing; and Renewal Procedures and Qualifications), the license holder must provide written notification to DADS within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission. The license holder must include a copy of the notice of change with its written notification to DADS.

(r) Vaccine Preventable Diseases.

(1) Effective September 1, 2012, a facility must develop and implement a policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(2) The policy must:

(A) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(B) specify the vaccines an employee or contractor is required to receive in accordance with paragraph (1) of this subsection;

(C) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(D) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(E) for an employee or contractor who is exempt from the required vaccines, include procedures the employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(F) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(G) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy;

(H) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(3) The policy may:

(A) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(B) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Communicable Diseases).

(s) A DADS employee must not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of a DADS employee;

(2) disagreeing with a DADS employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201498
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4162

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SUBCHAPTER H. ENFORCEMENT
DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §92.551

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.551. Administrative Penalties.

(a) Assessment of an administrative penalty. DADS may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by DADS;

(3) refuses to allow a DADS representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a DADS representative or the enforcement of this chapter;

(5) willfully interferes with a DADS representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final; or

(7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.

(b) Criteria for assessing an administrative penalty. DADS considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to

timely pay the administrative penalty, DADS may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. DADS uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.
Figure: 40 TAC §92.551(d)

(e) Administrative penalty assessed against a resident. DADS does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) DADS issues a preliminary report stating the facts on which DADS concludes that a violation has occurred after DADS has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) DADS may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) DADS provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with DADS a plan of correction for approval by DADS; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give DADS written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to DADS for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to DADS that the violation has been corrected, DADS inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and DADS will not assess an administrative penalty; or

(B) the correction is not satisfactory and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:

(A) give DADS written consent to DADS' report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) the commissioner or the commissioner's designee assesses the recommended administrative penalty;

(B) DADS gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

(1) A license holder has an opportunity to correct a violation, except a violation described in paragraph (2) of this subsection, and to avoid paying an administrative penalty, if the license holder corrects the violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) A license holder does not have an opportunity to correct a violation:

(A) that DADS determines results in serious harm to or death of a resident;

(B) described by subsection (a)(2) - (7) of this section;

(C) related to advance directives as described in §92.41(g);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §92.125 of this chapter (relating to Advance Directives); or

(ii) the same right of all residents under §92.125 of this chapter; or

(E) a violation that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, DADS may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) DADS is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) DADS may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under DADS' supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that DADS determines constitutes immediate jeopardy to the health or safety of a resident.

(3) DADS offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from DADS; and

(B) agree to waive the license holder's right to an administrative hearing if DADS approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

(C) establish clear goals to be achieved through the proposed changes;

(D) establish a time line for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) DADS may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) DADS approves or denies a license holder's amelioration plan not later than 45 calendar days after the date DADS receives the plan. If DADS approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) DADS does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201499
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 6, 2012
For further information, please call: (512) 438-4162

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 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.5

The Comptroller of Public Accounts withdraws the proposed amendment to §1.5 which appeared in the February 10, 2012, issue of the *Texas Register* (37 TexReg 648).

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201500
Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: March 22, 2012
For further information, please call: (512) 475-0387

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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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.30

The Railroad Commission of Texas (Commission) adopts amendments to §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), with two changes to the text published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9147). The adopted changes are in subsection (e)(7)(B)(ii) to correct a typographical error and in subsection (g) to specify the effective date.

The Commission received no comments on the proposed amendments.

The memorandum of understanding (MOU) between the TCEQ and the RRC (or Commission) was last updated substantively in August 2010. Article 2 of House Bill (HB) 2694, passed by the 82nd Texas Legislature and signed by the Governor, transferred from the TCEQ to the RRC duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, the law transfers from the TCEQ to the RRC, effective September 1, 2011, those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. After the transfer, the RRC will be responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

In addition, Article 2 of HB 2694 amended Texas Water Code, §27.046, transferring from the TCEQ to the RRC the responsibility of issuing to permit applicants for geologic storage of anthropogenic carbon dioxide a letter of determination stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

The TCEQ's Surface Casing Program and staff transferred to the RRC effective September 1, 2011. The RRC's Surface Casing Program has been renamed the Groundwater Advisory Unit and is now located in the William B. Travis Building, 1701 North Congress, Austin. The Commission adopts these amendments to §3.30, while the TCEQ will adopt concurrent amendments to 30 TAC §7.117 (relating to Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality) to incorporate by reference the amendments to §3.30.

The Commission will propose amendments to other rules to comply with Article 2 of HB 2694 in a future rulemaking procedure.

The Commission amends subsection (a)(4) and (5) and subsection (g) to revise the dates on which the agencies amended the MOU. The adopted effective date is May 1, 2012.

The Commission amends §3.30(e)(7)(B) to reflect the transfer from TCEQ to RRC required under HB 2694 of the duties relating to groundwater protection letters and to include the definition of underground sources of drinking water currently in TCEQ's regulations at 30 TAC §331.2 (relating to Definitions).

The Commission amends §3.30(e)(9), relating to anthropogenic carbon dioxide storage, to delete the sentence stating that interagency coordination of review and processing of a permit application for injection of carbon dioxide for geologic storage under Texas Water Code, Chapter 27, Subchapter C-1, shall include application review by and production of a letter from the TCEQ's executive director as specified under Texas Water Code, §27.046. HB 2694 amended Texas Water Code, §27.046, to replace references to the executive director of TCEQ with references to the RRC.

The Commission adopts the amendments to §3.30 under Texas Water Code, §26.131, which gives the Commission jurisdiction over pollution of surface or subsurface waters from oil and gas exploration, development, and production activities; Texas Water Code, Chapter 27, which authorizes the Commission to adopt and enforce rules relating to injection wells and, specifically, Texas Water Code, §27.033, as amended by HB 2694, which transfers to the RRC from the TCEQ the function of preparing a letter of determination, stating that drilling and using the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand, to accompany an application for a permit for a disposal well; Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission under Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.201, which authorizes the Commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; Texas Natural Resources Code, §85.202, which authorizes the Commission to adopt rules to prevent waste of oil and gas in producing operations; Texas Natural Resources Code, §91.101, which authorizes the Commission to adopt rules relating to the various oilfield operations, including the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste; and Texas Natural Resources Code §91.602, which authorizes the Commission to adopt and enforce rules relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

Texas Water Code, §26.131; Chapter 27 and §27.033, as amended by HB 2694; and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602 are affected by the adopted amendments.

Statutory authority: Texas Water Code, §26.131; Chapter 27 and §27.033, as amended by HB 2694; and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Cross-reference to statute: Texas Water Code, §26.131; Chapter 27 and §27.033, as amended by HB 2694; and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Issued in Austin, Texas, on March 20, 2012.

§3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

(1) Section 10 of House Bill 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, provides as follows: On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

(2) Texas Health and Safety Code, §401.414, relating to Memoranda of Understanding, requires the Railroad Commission of Texas and the Texas Commission on Environmental Quality to adopt a memorandum of understanding (MOU) defining the agencies' respective duties under Texas Health and Safety Code, Chapter 401, relating to radioactive materials and other sources of radiation. Texas Health and Safety Code, §401.415, relating to oil and gas naturally occurring radioactive material (NORM) waste, provides that the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, and in so doing shall consult with the Texas Natural Resource Conservation Commission (now TCEQ) and the Department of Health (now Department of State Health Services) regarding protection of the public health and the environment.

(3) Texas Water Code, Chapters 26 and 27, provide that the Railroad Commission and TCEQ collaborate on matters related to discharges, surface water quality, groundwater protection, underground injection control and geologic storage of carbon dioxide. Texas Water Code, §27.049, relating to Memorandum of Understanding, requires the RRC and TCEQ to adopt a new MOU or amend the existing MOU to reflect the agencies' respective duties under Texas Water Code, Chapter 27, Subchapter C-1 (relating to Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide).

(4) The original MOU between the agencies adopted pursuant to House Bill 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, and again on August 30, 2010, to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on August 30, 2010, should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission).

(A) Solid waste. Under Texas Health and Safety Code, Chapter 361, §§361.001 - 361.754, the TCEQ has jurisdiction over solid waste. The TCEQ's jurisdiction encompasses hazardous and nonhazardous, industrial and municipal, solid wastes.

(i) Under Texas Health and Safety Code, §361.003(34), solid waste under the jurisdiction of the TCEQ is defined to include "garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities."

(ii) Under Texas Health and Safety Code, §361.003(34), the definition of solid waste excludes "material which results from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code. . . ."

(iii) Under Texas Health and Safety Code, §361.003(34), the definition of solid waste includes the following until the United States Environmental Protection Agency (EPA) delegates its authority under the Resource Conservation and Recovery Act, 42 United States Code (U.S.C.) §6901, et seq., (RCRA) to the RRC: "waste, substance or material that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the EPA. . . ."

(iv) After delegation of RCRA authority to the RRC, the definition of solid waste (which defines TCEQ's jurisdiction) will not include hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, or reservoir pressure maintenance or repressurizing plants. The term natural gas or natural gas liquids processing plant refers to a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment is considered a part of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. Further, a pressure maintenance or repressurizing plant is a plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurization) in a natural gas recycling project. A compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system is not a pressure maintenance or repressurizing plant.

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC.

(ii) Storm water. TCEQ has jurisdiction over storm water discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit. These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

(I) Storm water associated with industrial activities. The TCEQ regulates storm water discharges associated with certain industrial activities under individual TPDES permits and under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities under the jurisdiction of the RRC.

(II) Storm water associated with construction activities. The TCEQ regulates storm water discharges associated with construction activities, except for discharges from construction activities under the jurisdiction of the RRC.

(III) Municipal storm water discharges. The TCEQ has jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of storm water from a facility that stores both refined products intended for off-site use and crude oil in aboveground tanks is regulated by the TCEQ.

(iii) State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

(iv) Commercial brine extraction and evaporation. Under Texas Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the RRC.

(C) Injection wells. Under the Texas Water Code, Chapter 27, the TCEQ has jurisdiction to regulate and authorize the drilling, construction, operation, and closure of injection wells unless the activity is subject to the jurisdiction of the RRC. Injection wells under TCEQ's jurisdiction are identified in 30 TAC §331.11 (relating to Classification of Injection Wells) and include:

(i) Class I injection wells for the disposal of hazardous, radioactive, industrial or municipal waste that inject fluids below the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water;

(ii) Class III injection wells for the extraction of minerals including solution mining of sodium sulfate, sulfur, potash, phosphate, copper, uranium and the mining of sulfur by the Frasch process;

(iii) Class IV injection wells for the disposal of hazardous or radioactive waste which inject fluids into or above formations that contain an underground source of drinking water; and

(iv) Class V injection wells that are not under the jurisdiction of the RRC, such as aquifer remediation wells, aquifer recharge wells, aquifer storage wells, large capacity septic systems, storm water drainage wells, salt water intrusion barrier wells, and closed loop geothermal wells.

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at §3.8(a)(30) of this title (relating to Water Protection) and at 30 TAC §335.1 (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) Hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TCEQ to the RRC.

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water quality standards. The TCEQ and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(ii) Storm water. When required by federal law, authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities. Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be

authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under §3.8 of this title (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water to help ensure protection of surface water quality during storm events.

(II) Storm water associated with construction activities. Where required by federal law, discharges of storm water associated with construction activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Activities under RRC jurisdiction include construction of a facility that, when completed, would be associated with the exploration, development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing facility; compressor station; terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over storm water from land disturbance associated with a site survey that is conducted prior to construction of a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under §3.8 of this title (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water during construction activities to help ensure protection of surface water quality during storm events.

(III) Municipal storm water discharges. Storm water discharges from facilities regulated by the RRC located within an MS4 are not regulated by the TCEQ. However, a municipality may regulate storm water discharges from RRC sites into their MS4.

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the RRC and the EPA, and a portion of a site is regulated by the TCEQ, storm water authorization must be obtained from the EPA and the RRC, as applicable, for the portion(s) of the site under RRC jurisdiction and from the TCEQ for the TCEQ regulated portion(s) of the site. Discharge of storm water from a terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC.

(iii) State water quality certification. The RRC performs state water quality certifications, as authorized by the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341) for activities that require a federal license or permit and that may result in any discharge to waters of the United States for those activities regulated by the RRC.

(C) Injection wells. The RRC has jurisdiction over the drilling, construction, operation, and closure of the following injection wells.

(i) Disposal wells. The RRC has jurisdiction under Texas Water Code, Chapter 27, over injection wells used to dispose of oil and gas waste. Texas Water Code, Chapter 27, defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material." The term "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources" includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101.

(ii) Enhanced recovery wells. The RRC has jurisdiction over wells into which fluids are injected for enhanced recovery of oil or natural gas.

(iii) Brine mining. Under Texas Water Code, §27.036, the RRC has jurisdiction over brine mining and may issue permits for injection wells.

(iv) Geologic storage of carbon dioxide. Under Texas Water Code, §27.011 and §27.041, and subject to the review of the legislature based on the recommendations made in the preliminary report described by Section 10, Senate Bill No. 1387, Acts of the 81st Legislature, Regular Session (2009), the RRC has jurisdiction over geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir and over a well used for such injection purposes regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and converted.

(v) Hydrocarbon storage. The RRC has jurisdiction over wells into which fluids are injected for storage of hydrocarbons that are liquid at standard temperature and pressure.

(vi) Geothermal energy. Under Texas Natural Resources Code, Chapter 141, the RRC has jurisdiction over injection wells for the exploration, development, and production of geothermal energy and associated resources.

(vii) *In-situ* tar sands. Under Texas Water Code, §27.035, the RRC has jurisdiction over the *in situ* recovery of tar sands and may issue permits for injection wells used for the *in situ* recovery of tar sands.

(c) Definition of hazardous waste.

(1) Under the Texas Health and Safety Code, §361.003(12), a "hazardous waste" subject to the jurisdiction of the TCEQ is defined as "solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901, et seq.)." Similarly, under Texas Natural Resources Code, §91.601(1), "oil and gas hazardous waste" subject to the jurisdiction of the RRC is defined as an "oil and gas waste that is a hazardous waste as defined by the administrator of the United

States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.)."

(2) Federal regulations adopted under authority of the federal Solid Waste Disposal Act, as amended by RCRA, exempt from regulation as hazardous waste certain oil and gas wastes. Under 40 Code of Federal Regulations (CFR) §261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy" are described as wastes that are exempt from federal hazardous waste regulations.

(3) A partial list of wastes associated with oil, gas, and geothermal exploration, development, and production that are considered exempt from hazardous waste regulation under RCRA can be found in EPA's "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes," 53 FedReg 25,446 (July 6, 1988). A further explanation of the exemption can be found in the "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy, " 58 FedReg 15,284 (March 22, 1993). The exemption codified at 40 CFR §261.4(b)(5) and discussed in the Regulatory Determination has been, and may continue to be, clarified in subsequent guidance issued by the EPA.

(d) Jurisdiction over waste from specific activities.

(1) Drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources. Wells associated with the exploration, development, or production of oil, gas, or geothermal resources include exploratory wells, cathodic protection holes, core holes, oil wells, gas wells, geothermal resource wells, fluid injection wells used for secondary or enhanced recovery of oil or gas, oil and gas waste disposal wells, and injection water source wells. Several types of waste materials can be generated during the drilling, operation, and plugging of these wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters (including used oil filters), domestic sewage (including waterborne human waste and waste from activities such as bathing and food preparation), and trash (including inert waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by discharge, landfill, land farm, evaporation, or injection, are subject to the jurisdiction of the RRC. Wastes from oil, gas, and geothermal exploration activities subject to regulation by the RRC when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized by the TCEQ under 30 TAC Chapter 330 are, as defined in 30 TAC §330.3(148) (relating to Definitions), "special wastes."

(2) Field treatment of produced fluids. Oil, gas, and water produced from oil, gas, or geothermal resource wells may be treated in the field in facilities such as separators, skimmers, heater treaters, dehydrators, and sweetening units. Waste that results from the field treatment of oil and gas include waste hydrocarbons (including used oil), produced water, hydrogen sulfide scavengers, dehydration wastes, treating and cleaning chemicals, filters (including used oil filters), asbestos insulation, domestic sewage, and trash are subject to the jurisdiction of the RRC.

(3) Storage of oil.

(A) Tank bottoms and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. In addition, waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TCEQ.

(B) Wastes generated from storage tanks that are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TCEQ.

(4) Underground hydrocarbon storage. The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the RRC, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in Texas Natural Resources Code, §91.201.

(5) Underground natural gas storage. The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the RRC, provided that the terms "natural gas" and "storage facility" have the meanings set out in Texas Natural Resources Code, §91.173.

(6) Transportation of crude oil or natural gas.

(A) Jurisdiction over pipeline-related activities. The RRC has jurisdiction over matters related to pipeline safety for pipelines in Texas, as referenced in §8.1 of this title (relating to General Applicability and Standards) pursuant to Chapter 121 of the Texas Utilities Code and Chapter 117 of the Texas Natural Resources Code. The RRC has jurisdiction over spill response and remediation of releases from pipelines transporting crude oil, natural gas, and condensate that originate from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC is responsible for water quality certification issues related to construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines transporting carbon dioxide.

(B) Crude oil and natural gas are transported by railcars, tank trucks, barges, tankers, and pipelines. The RRC has jurisdiction over waste from the transportation of crude oil by pipeline, regardless of the crude oil source (foreign or domestic) prior to arrival at a refinery. The RRC also has jurisdiction over waste from the transportation by pipeline of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The transportation wastes subject to the jurisdiction of the RRC include wastes from pipeline compressor or pressure stations and wastes from pipeline hydrostatic pressure tests and other pipeline operations. These wastes include waste hydrocarbons (including used oil), treating and cleaning chemicals, filters (including used oil filters), scraper trap sludge, trash, domestic sewage, wastes contaminated with polychlorinated biphenyls (PCBs) (including transformers, capacitors, ballasts, and soils), soils contaminated with mercury from leaking mercury meters, asbestos insulation, transite pipe, and hydrostatic test waters.

(C) The TCEQ has jurisdiction over waste from transportation of refined products by pipeline.

(D) The TCEQ also has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker.

(7) Reclamation plants.

(A) The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other wastes are subject to the jurisdiction of the TCEQ.

(B) The RRC has jurisdiction over the conservation and prevention of waste of crude oil and therefore must approve all movements of crude oil-containing materials to reclamation plants. The applicable statute and regulations consist primarily of reporting requirements for accounting purposes.

(8) Refining of oil.

(A) The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and American Petroleum Institute (API) separator sludges, is subject to the jurisdiction of the TCEQ. The processing of light ends from the distillation and cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

(B) The RRC has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The RRC requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the RRC requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported.

(9) Natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants. Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials. These wastes are subject to the jurisdiction of the RRC under Texas Natural Resources Code, §1.101. Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. However, until delegation of authority under RCRA to the RRC, the TCEQ shall have jurisdiction over wastes resulting from these activities that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules.

(10) Manufacturing processes.

(A) Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TCEQ. The term "manufacturing process" does not include the processing (including fractionation) of natural gas or natural gas liquids at natural gas or natural gas liquids processing plants.

(B) The RRC has jurisdiction under Texas Natural Resources Code, Chapter 87, to regulate the use of natural gas in the production of carbon black.

(C) Biofuels. The TCEQ has jurisdiction over wastes associated with the manufacturing of biofuels and biodiesel. TCEQ Regulatory Guidance Document RG-462 contains additional information regarding biodiesel manufacturing in the state of Texas.

(11) Commercial service company facilities and training facilities.

(A) The TCEQ has jurisdiction over wastes generated at facilities, other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. In addition, the TCEQ has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. However, wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC.

(B) The TCEQ also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

(C) The term "commercial service company facility" does not include a station facility such as a warehouse, pipeyard, or equipment storage facility belonging to an oil and gas operator and used solely for the support of that operator's own activities associated with the exploration, development, or production activities.

(D) Notwithstanding subparagraphs (A) - (C) of this paragraph, the RRC has jurisdiction over disposal of oil and gas wastes, such as waste drilling fluids and NORM-contaminated pipe scale, in volumes greater than the incidental volumes usually received at such facilities, that are managed at commercial service company facilities.

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to §3.8(f) of this title (relating to Water Protection).

(12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

(A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources.

(B) The TCEQ and, where applicable, the EPA, the U.S. Coast Guard, or the GLO, have jurisdiction over discharges from an MODU when the unit is being serviced at a maintenance facility.

(C) Where applicable, the EPA, the U.S. Coast Guard, or the GLO has jurisdiction over discharges from an MODU during transportation from shore to exploration, development or production site, transportation between sites, and transportation to a maintenance facility.

(e) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEQ and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of solid wastes. Questions regarding source reduction and recycling may be directed to the TCEQ Small Business and Environmental Assistance (SBEA) Division, or to the RRC. The TCEQ

may require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility regulated by the RRC.

(B) The TCEQ SBEA Division and the RRC will coordinate as necessary to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TCEQ SBEA Division will make the proper TCEQ personnel aware of the services offered by the RRC, share information with the RRC to maximize services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC personnel aware of the services offered by the TCEQ SBEA Division, share information with the TCEQ SBEA Division to maximize services to industrial operators, and advise industrial operators of the TCEQ SBEA Division services.

(2) Treatment of wastes under RRC jurisdiction at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K, (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil).

(A) Soils contaminated with constituents that are physically and chemically similar to those normally found in soils at leaking underground petroleum storage tanks from generators under the jurisdiction of the RRC are eligible for treatment at TCEQ regulated soil treatment facilities once alternatives for recycling and source reduction have been explored. For the purpose of this provision, soils containing petroleum substance(s) as defined in 30 TAC §334.481 (relating to Definitions) are considered to be similar, but drilling muds, acids, or other chemicals used in oil and gas activities are not considered similar. Generators under the jurisdiction of the RRC must meet the same requirements as generators under the jurisdiction of the TCEQ when sending their petroleum contaminated soils to soil treatment facilities under TCEQ jurisdiction. Those requirements are in 30 TAC §334.496 (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste), except subsection (c) which is not applicable, and 30 TAC §334.497 (relating to Recordkeeping and Reporting Procedures Applicable to Generators). RRC generators with questions on these requirements should contact the TCEQ.

(B) Generators under RRC jurisdiction should also be aware that TCEQ regulated soil treatment facilities are required by 30 TAC §334.499 (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities) to maintain documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site.

(C) The RRC must specifically authorize management of contaminated soils under its jurisdiction at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations.

(D) All waste, including treated waste, subject to the jurisdiction of the RRC and managed at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K will remain subject to the jurisdiction of the RRC. Such materials will be subject to RRC regulations regarding final reuse, recycling, or disposal.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K.

(3) Processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ.

(A) As provided in this paragraph, waste materials subject to the jurisdiction of the RRC may be managed at solid waste facilities under the jurisdiction of the TCEQ once alternatives for recycling and source reduction have been explored. The RRC must specifically authorize management of wastes under its jurisdiction at facilities regulated by the TCEQ. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations. In addition, except as provided in subparagraph (B) of this paragraph, the concurrence of the TCEQ is required to manage "special waste" under the jurisdiction of the RRC at a facility regulated by the TCEQ. The TCEQ's concurrence may be subject to specified conditions.

(B) A facility under the jurisdiction of the TCEQ may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase "that type of waste" does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste's physical and chemical characteristics. Management and disposal of waste under the jurisdiction of the RRC is subject to TCEQ's rules governing both special waste and industrial waste.

(C) If the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization, individual written concurrences from the TCEQ shall be required to manage wastes under the jurisdiction of the RRC at TCEQ regulated facilities. Recommendations for the management of special wastes associated with the exploration, development, or production of oil, gas, or geothermal resources are found in TCEQ Regulatory Guidance document RG-3. (This is required only if the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization provided by the TCEQ.) To obtain an individual concurrence, the waste generator must provide to the TCEQ sufficient information to allow the concurrence determination to be made, including the identity of the proposed waste management facility, the process generating the waste, the quantity of waste, and the physical and chemical nature of the waste involved (using process knowledge and/or laboratory analysis as defined in 30 TAC Chapter 335, Subchapter R (relating to Waste Classification)). In obtaining TCEQ approval, generators may use their existing knowledge about the process or materials entering it to characterize their wastes. Material Safety Data Sheets, manufacturer's literature, and other documentation generated in conjunction with a particular process may be used. Process knowledge must be documented and submitted with the request for approval.

(D) Domestic septage collected from portable toilets at facilities subject to RRC jurisdiction that is not mixed with other waste materials may be managed at a facility permitted by the TCEQ for disposal, incineration, or land application for beneficial use of such domestic septage waste without specific authorization from the TCEQ or the RRC. Waste sludge subject to the jurisdiction of the RRC may not be applied to the land at a facility permitted by the TCEQ for the beneficial use of sewage sludge or water treatment sludge.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities under the jurisdiction of the TCEQ. If a receiving facility requires a TCEQ waste code for waste under the jurisdiction of the RRC, a code consisting of the following may be provided:

(i) the sequence number "RRCT";

(ii) the appropriate form code, as specified in 30 TAC Chapter 335, Subchapter R, §335.521, Appendix 3 (relating to Appendices); and

(iii) the waste classification code "H" if the waste is a hazardous oil and gas waste, or "R" if the waste is a nonhazardous oil and gas waste.

(F) If a facility requests or requires a TCEQ waste generator registration number for wastes under the jurisdiction of the RRC, the registration number "XXXRC" may be provided.

(G) Wastes that are under the jurisdiction of the RRC need not be reported to the TCEQ.

(4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the RRC.

(A) Once alternatives for recycling and source reduction have been explored, and with prior authorization from the RRC, the following nonhazardous wastes subject to the jurisdiction of the TCEQ may be disposed of, other than by injection into a Class II well, at a facility regulated by the RRC; bioremediated at a facility regulated by the RRC (prior to reuse, recycling, or disposal); or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous wastes that are chemically and physically similar to oil and gas wastes, but excluding soils, media, debris, sorbent pads, and other clean-up materials that are contaminated with refined petroleum products.

(B) To obtain an individual authorization from the RRC, the waste generator must provide the following information, in writing, to the RRC: the identity of the proposed waste management facility, the quantity of waste involved, a hazardous waste determination that addresses the process generating the waste and the physical and chemical nature of the waste, and any other information that the RRC may require. As appropriate, the RRC shall reevaluate any authorization issued pursuant to this paragraph.

(C) Once alternatives for recycling and source reduction have been explored, and subject to the RRC's individual authorization, the following wastes under the jurisdiction of the TCEQ are authorized without further TCEQ approval to be disposed of at a facility regulated by the RRC, bioremediated at a facility regulated by the RRC, or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous bottoms from tanks used only for crude oil storage; unused and/or reconditioned drilling and completion/workover wastes from commercial service company facilities; used and/or unused drilling and completion/workover wastes generated at facilities where workers in the oil and gas exploration, development, and production industry are trained; used and/or unused drilling and completion/workover wastes generated at facilities where materials, processes, and equipment associated with oil and gas exploration, development, and production operations are researched, developed, designed, and manufactured; unless other provisions are made in the underground injection well permit used and/or unused drilling and completion wastes (but not workover wastes) generated in connection with the drilling and completion of Class I, III, and V injection wells; wastes (such as contaminated soils, media, debris, sorbent pads, and other cleanup materials) associated with spills of crude oil and natural gas liquids if such wastes are under the jurisdiction of the TCEQ; and sludges from washout pits at commercial service company facilities.

(D) Under Texas Water Code, §27.0511(g), a TCEQ permit is required for injection of industrial or municipal waste as an injection fluid for enhanced recovery purposes. However, under §27.0511(h), the RRC may authorize a person to use nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without obtaining a permit from the TCEQ. The use or disposal of radioactive material under this subparagraph is subject to the applicable requirements of Texas Health and Safety Code, Chapter 401.

(5) Drilling in landfills. The TCEQ will notify the Oil and Gas Division of the RRC and the landfill owner at the time a drilling application is submitted if an operator proposes to drill a well through a landfill regulated by the TCEQ. The RRC and the TCEQ will cooperate and coordinate with one another in advising the appropriate parties of measures necessary to reduce the potential for the landfill contents to cause groundwater contamination as a result of landfill disturbance associated with drilling operations. The TCEQ requires prior written approval before drilling of any test borings through previously deposited municipal solid waste under 30 TAC §330.15 (relating to General Prohibitions), and before borings or other penetration of the final cover of a closed municipal solid waste landfill under 30 TAC §330.955 (relating to Miscellaneous). The installation of landfill gas recovery wells for the recovery and beneficial reuse of landfill gas is under the jurisdiction of the TCEQ in accordance with 30 TAC Chapter 330, Subchapter I (relating to Landfill Gas Management). Modification of an active or a closed solid waste management unit, corrective action management unit, hazardous waste landfill cell, or industrial waste landfill cell by drilling or penetrating into or through deposited waste may require prior written approval from TCEQ. Such approval may require a new authorization from TCEQ or modification or amendment of an existing TCEQ authorization.

(6) Coordination of actions and cooperative sharing of information.

(A) In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the TCEQ at a facility permitted by the RRC, the TCEQ is responsible for enforcement actions against the generator or transporter, and the RRC is responsible for enforcement actions against the disposal facility. In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the RRC at a facility permitted by the TCEQ, the RRC is responsible for enforcement actions against the generator or transporter, and the TCEQ is responsible for enforcement actions against the disposal facility.

(B) The TCEQ and the RRC agree to cooperate with one another by sharing information. Employees of either agency who receive a complaint or discover, in the course of their official duties, information that indicates a violation of a statute, regulation, order, or permit pertaining to wastes under the jurisdiction of the other agency, will notify the other agency. In addition, to facilitate enforcement actions, each agency will share information in its possession with the other agency if requested by the other agency to do so.

(C) The TCEQ and the RRC agree to work together at allocating respective responsibilities. To the extent that jurisdiction is indeterminate or has yet to be determined, the TCEQ and the RRC agree to share information and take appropriate investigative steps to assess jurisdiction.

(D) For items not covered by statute or rule, the TCEQ and the RRC will collaborate to determine respective responsibilities for each issue, project, or project type.

(E) The staff of the RRC and the TCEQ shall coordinate as necessary to attempt to resolve any disputes regarding interpretation of this MOU and disputes regarding definitions and terms of art.

(7) Groundwater.

(A) Notice of groundwater contamination. Under Texas Water Code, §26.408, effective September 1, 2003, the RRC must submit a written notice to the TCEQ of any documented cases of groundwater contamination that may affect a drinking water well.

(B) Groundwater protection letters. The RRC provides letters of recommendation concerning groundwater protection.

(i) For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the RRC provides geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the RRC. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water.

(ii) For recommendations related to injection in a non-producing zone, the RRC provides geologic interpretation of the base of the underground source of drinking water. Underground source of drinking water is defined as an aquifer or its portions which supplies drinking water for human consumption; or in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and which is not an exempted aquifer.

(8) Emergency and spill response.

(A) The TCEQ and the RRC are members of the state's Emergency Management Council. The TCEQ is the state's primary agency for emergency support during response to hazardous materials and oil spill incidents. The TCEQ is responsible for state-level coordination of assets and services, and will identify and coordinate staffing requirements appropriate to the incident to include investigative assignments for the primary and support agencies.

(B) Contaminated soil and other wastes that result from a spill must be managed in accordance with the governing statutes and regulations adopted by the agency responsible for the activity that resulted in the spill. Coordination of issues of spill notification, prevention, and response shall be addressed in the State of Texas Oil and Hazardous Substance Spill Contingency Plan and may be addressed further in a separate Memorandum of Understanding among these agencies and other appropriate state agencies.

(C) The agency (TCEQ or RRC) that has jurisdiction over the activity that resulted in the spill incident will be responsible for measures necessary to monitor, document, and remediate the incident.

(i) The TCEQ has jurisdiction over certain inland oil spills, all hazardous-substance spills, and spills of other substances that may cause pollution.

(ii) The RRC has jurisdiction over spills or discharges from activities associated with the exploration, development, or production of crude oil, gas, and geothermal resources, and discharges from brine mining or surface mining.

(D) If TCEQ or RRC field personnel receive spill notifications or reports documenting improperly managed waste or contaminated environmental media resulting from a spill or discharge that is under the jurisdiction of the other agency, they shall refer the issue to the other agency. The agency that has jurisdiction over the activity that resulted in the improperly managed waste, spill, discharge, or contaminated environmental media will be responsible for measures necessary to monitor, document, and remediate the incident.

(9) Anthropogenic carbon dioxide storage. In determining the proper permitting agency in regard to a particular permit application for a carbon dioxide geologic storage project, the TCEQ and the RRC will coordinate by any appropriate means to review proposed locations, geologic settings, reservoir data, and other jurisdictional criteria specified in Texas Water Code, §27.041.

(f) Radioactive material.

(1) Radioactive substances. Under the Texas Health and Safety Code, §401.011, the TCEQ has jurisdiction to regulate and license:

(A) the disposal of radioactive substances;

(B) the processing or storage of low-level radioactive waste or NORM waste from other persons, except oil and gas NORM waste;

(C) the recovery or processing of source material;

(D) the processing of by-product material as defined by Texas Health and Safety Code, §401.003(3)(B); and

(E) sites for the disposal of low-level radioactive waste, by-product material, or NORM waste.

(2) NORM waste.

(A) Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of NORM waste that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called "oil and gas NORM waste." Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas.

(B) Under Texas Health and Safety Code, §401.412, the TCEQ has jurisdiction over the disposal of NORM that is not oil and gas NORM waste.

(C) The term "disposal" does not include receipt, possession, use, processing, transfer, transport, storage, or commercial distribution of radioactive materials, including NORM. These non-disposal activities are under the jurisdiction of the Texas Department of State Health Services under Texas Health and Safety Code, §401.011(a).

(3) Drinking water residuals. A person licensed for the commercial disposal of NORM waste from public water systems may dispose of NORM waste only by injection into a Class I injection well permitted under 30 TAC Chapter 331 (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

(4) Management of radioactive tracer material.

(A) Radioactive tracer material is subject to the definition of low-level radioactive waste under Texas Health and Safety Code, §401.004, and must be handled and disposed of in accordance with the rules of the TCEQ and the Department of State Health Services.

(B) Exemption. Under Texas Health and Safety Code, §401.106, the TCEQ may grant an exemption by rule from a licensing requirement if the TCEQ finds that the exemption will not constitute a significant risk to the public health and safety and the environment.

(5) Coordination with the Texas Radiation Advisory Board. The RRC and the TCEQ will consider recommendations and advice provided by the Texas Radiation Advisory Board that concern either agency's policies or programs related to the development, use, or regulation of a source of radiation. Both agencies will provide written response to the recommendations or advice provided by the advisory board.

(6) Uranium exploration and mining.

(A) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium exploration activities.

(B) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium mining, except for *in situ* recovery processes.

(C) Under Texas Water Code, §27.0513, the TCEQ has jurisdiction over injection wells used for uranium mining.

(D) Under Texas Health and Safety Code, §401.2625, the TCEQ has jurisdiction over the licensing of source material recovery and processing or for storage, processing, or disposal of by-product material.

(g) Effective date. This Memorandum of Understanding, as of its May 1, 2012, effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated August 30, 2010.

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

Filed with the Office of the Secretary of State on March 20, 2012.

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Acting Executive Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

The Public Utility Commission of Texas (commission) adopts the repeal of §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS), without changes to the proposed text and new §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS), with changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9150). The new rule expands the repealed rule to include dispatchable distributed generation that is not registered with ERCOT as a generation resource and consequently changes the name of the service to ERS. In addition the new rule promotes reliability through energy emergencies through provisions that provide ERCOT flexibility in the implementation and administration of ERS. The new rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 39948 is assigned to this proceeding.

The commission received comments on the proposed rule changes from Exelon Generation, LLC (Exelon), Enchanted Rock, Ltd. (Enchanted Rock), North America Power Partners (NAPP), CMC Steel Texas (CMC), Chaparral Steel (Chaparral), Luminant Energy Company (Luminant), Frontier Associates (Frontier), EnerNOC, Inc. (EnerNOC), Nucor Steel - Texas (Nucor), Electric Reliability Council of Texas (ERCOT), Public Citizen, Alliance for Retail Markets (ARM), Texas Industrial Energy Consumers (TIEC), Steering Committee of Cities Served by ONCOR (ONCOR Cities), EnergyConnect, Inc. (ECI), NRG Energy, Inc. (NRG), Texas Competitive Power Advocates (TCPA), and the Lone Star Chapter of Sierra Club (Sierra Club).

After notice in the *Texas Register,* commission staff conducted a public hearing on January 31, 2012. Verbal comments were received at that hearing from EnerNOC, Sierra Club, NRG, Chaparral, and Public Citizen.

To the extent ERCOT is referenced in this rule or this order the term refers to the professional staff of the Electric Reliability Council of Texas rather than to the Stakeholder process at ERCOT.

(1) Issues Relating to the Pricing Mechanism for ERS

In the preamble to the Proposal for Publication in this project the commission requested comment regarding the pricing mechanism for ERS. Specifically, the commission asked the following question: "The current EILS rule provides for "pay as bid" settlement, which is different from other ERCOT services that typically use a market clearing price mechanism. Should the rule require ERCOT to use a particular mechanism, or should the rule leave this to ERCOT's discretion?"

NAPP recommended that the commission require ERCOT to use a market clearing price mechanism, arguing that this mechanism would help attract additional resources while retaining current pricing safeguards. Alternatively, NAPP recommended that, if the commission is concerned about moving to a market clearing price mechanism until more resources are bidding in the market, the commission could establish a trigger at a certain number of megawatts of capacity procured, at which point ERCOT would be required to establish a market clearing price mechanism.

CMC Steel also recommended that the commission require ERCOT to adopt a market clearing price mechanism, stating that it would increase participation in the ERS program.

Chaparral argued that the current pay-as-bid pricing mechanism creates upward pressure on bidding, as no market participant wants to feel as if it has "left money on the table." A market clearing price mechanism, on the other hand would tend to reduce bid offers, thus reducing the overall cost of the service. Chaparral believes that the market clearing price mechanism should be required in the rule, rather than left to ERCOT's discretion, as the primary focus of ERCOT is ensuring the reliable operation of the grid rather than optimizing market design.

Frontier stated that the ERS market is not yet sufficiently developed to permit a market clearing price mechanism and recommended that the commission direct ERCOT to develop a uniform price for ERS that would be pegged at between 75% and 90% of the price for responsive reserve service.

EnerNOC stated that the market clearing price mechanism, rather than "pay as bid," is more efficient, as it is for procuring electric energy, and fair, stating that there is no reason that other customer-providers should receive higher or lower prices for the service they provide.

Nucor stated that the rule should require ERCOT to use a clearing mechanism instead of the current "pay as bid" process. Nucor stated that the pay as bid process places a damper on ERS participation because pressure to make a bid that is low enough to be chosen may be substantially lower than the value of ERS in a given emergency situation, which has the effect of suppressing participation. Nucor also offered a third approach as an al-

ternative to pay as bid or clearing mechanism. Nucor calls this "a standard offer" approach. Under this approach, a price would be set for the standard offer at some percentage of the price paid for RRS, which Nucor states would eliminate the need to bid a price.

ERCOT supported giving ERCOT the flexibility to determine the appropriate clearing methodology. This would be consistent with the treatment of other ERCOT-administered ancillary services in the commission's rules and would permit ERCOT the flexibility to implement a market clearing price mechanism based on the number of participants in the program and the bidding behavior of those participants.

TIEC stated that it has no issues with the current settlement process, but that a market clearing price (MCP) based settlement process might have merit. TIEC commented that MCP is a more efficient pricing mechanism and it would support either requiring EILS to be settled with MCP or, most preferably, removing the pay-as-bid requirement from the rule so that ERCOT could make settlement changes through protocol revisions.

The ONCOR Cities stated that the rule should continue to mandate the pay as bid settlement mechanism. The commission already considered settlement mechanisms in Project Number 33457, the original EILS project, and concluded that there was no reason for ERCOT to develop an MCP auction. Cities recalled that the commission found that pay as bid would produce adequate results in the EILS auction process considering that the products are not homogenous and may be geographically balanced if necessary. ERS will also require specific, differentiated products, dispatched geographically and therefore the pay as bid settlement mechanism and differentiated prices are still valid. With the proposed cost cap, an MCP settlement mechanism could result in less contracted service for the same cost to load. Cities recommended that the proposed §25.507(e)(1) be amended to require ERCOT to make payments using a pay as bid settlement basis.

ECI preferred a market clearing mechanism over the current pay as bid system and suggested that the commission express a preference for a market clearing mechanism but allow ERCOT flexibility to develop the market mechanism and a the objective function rather than specifying the mechanism in the rule.

NRG stated that the rule should be amended to prohibit ERCOT from pay-as-bid settlement for EILS/ERS, arguing that a marginal clearing price will result in more efficient market outcomes. NRG supported a market clearing price mechanism for EILS. An auction mechanism can be referenced in the rule and preamble language can provide direction to ERCOT on implementing detailed business practices.

Sierra Club supported a combination of pay-as-bid settlement and an MCP based energy payment, and stated that it might support a price floor or ceiling to provide surety to customers. Sierra Club commented that it believes exact contact and payment mechanisms should be handled through the ERCOT process, rather than specified in the rule.

Commission Response

The concept of establishing a market clearing price mechanism would appear to have the potential for solving some problems that exist in establishing prices for the service, and the commission encourages ERCOT staff to expeditiously explore the feasibility of implementing such a mechanism. The commission declines to require a market clearing price mechanism in this rule. The rule as published permits ERCOT staff the flexibility to implement a market clearing price mechanism at such time as it deems such a mechanism to be appropriate, given the number of participants in the program and the bidding behavior of participants. However, to make it clear that ERCOT does have the flexibility to implement market clearing price mechanism, the proposed rule has been changed at §25.507(e)(1) to provide that ERCOT may implement a pricing mechanism other than pay-as-bid, to include the use of a market clearing price mechanism.

(2) Issues Relating to the Pricing of Energy Under Conditions of Scarcity

In the preamble to the Proposal for Publication in this project the commission requested comment regarding the impact on scarcity pricing of the deployment or procurement of ERS. Specifically, the commission asked the following question: "What impact, if any, does the deployment or procurement of the proposed Emergency Response Service have on scarcity pricing?"

Exelon stated that the core assumption underlying the energy-only market policy is that when additional capacity resources are needed, the high price for energy will signal the need for new supply resources and will elicit investment. Accordingly, Exelon recommended that emergency resources that are deployed should be priced at the system-wide offer cap.

NAPP commented that the only way the commission can assure that there is no inconsistency with scarcity pricing during an emergency is to price all energy - whether injections from generators or created by load interruption - at the system-wide offer cap.

CMC stated that the deployment of ERS will have little, if any, impact on scarcity pricing, because ERS would be deployed during an Energy Emergency Alert (EEA) event, when prices are already at or near the system-wide offer cap.

Chaparral noted that Nodal Protocol Revision Request (NPRR) 427, adopted by the ERCOT board in December, 2011, already requires the energy offer curve to be set at the system-wide offer cap whenever responsive reserves are dispatched at a level above the high ancillary services limit. This would always be the case when ERS is deployed, because ERS is deployed at a later stage during an EEA event. A small window where price suppression might occur may exist after responsive reserves are restored and before ERS is recalled. If the commission is concerned about this very short interval, Chaparral would not oppose imposition of a scarcity pricing mechanism for that time period.

Luminant stated that deployment of ERS could result in a price reversal that is not reflective of the actual scarcity condition that exists when it is deployed. Luminant recommended that the rule should instruct ERCOT to implement a Security Constrained Economic Dispatch (SCED) solution that will create an additional mechanism to determine and set prices based on what the price would have been in the absence of the ERS deployment.

Nucor stated that the current ERS load has not reached the level at which it would have a significant effect on scarcity pricing. Nucor stated that if curtailed load does affect scarcity pricing in the future, the commission can set price floors for energy during ERS deployment.

ERCOT stated that ERS could have the effect of reducing prices to some extent, but that such an impact is justified in the context of a grid emergency.

ARM stated that it supports an energy-only market design and ERS deployments could inappropriately mitigate the scarcity pricing needed to encourage new generation in such a market. ARM commented that in theory an energy emergency event should trigger both scarcity pricing and emergency measures such as load curtailment and small generation deployment, but in the event scarcity prices are not accurately reflected in the wholesale market, an administrative adjustment should be made to remedy the prices.

TIEC stated that it does not believe potential scarcity pricing impacts are prudent or necessary to take up in this rulemaking. Due to time constraints regarding finalizing the rule before the 2012 procurement period, TIEC recommended that the issue continue to be holistically analyzed by ERCOT's Reliability Deployments Task Force. Again, this would allow ERCOT to implement any needed changes to protocols or pricing requirements without a commission rulemaking proceeding. TIEC cited suggestions that ERCOT price EILS at the System Wide Offer Cap for the duration of the deployment. Analysis would show such a suggestion to be inappropriate since EILS deployments do not necessarily coincide with depletion of reserves and may last much longer than scarcity conditions. TIEC stated that it is critical to examine actual deployment conditions before making pricing assumptions.

The ONCOR Cities stated that ERS pricing impacts are not clear at this time. ERS procurement will not affect the market, and ERS deployment may have minimal impact in view of recent changes to the overall market design as well as ancillary service pricing. The proposed rule would give ERCOT discretion in determining how and when to deploy ERS, so the historical pricing trends that could be drawn from the EILS program may not necessarily apply with the proposed ERS program. Further, if the program is deployed at EEA Level Two, such as EILS, pricing mechanisms are not needed to prevent SCED from prematurely accessing the deployments from this new service. Cities commented that it cautions the commission against applying additional measures with the intent of increasing wholesale prices.

ECI stated that EILS or the proposed ERS service would not have an impact on scarcity pricing.

NRG made two specific recommendations to mitigate the impact of ERS deployment on scarcity pricing. First, the commission should require that the energy deployed from ERS/EILS be added back to SCED so that the reliability actions taken by ERCOT do not damage scarcity pricing signals. Second, the commission should require that loads receiving capacity payments from ERS also offer to shed load with a price curve in SCED.

TCPA urged the commission to require that energy be priced at the system-wide offer cap when ERS is deployed, in order to prevent ERS deployments from having a price dampening impact.

Sierra Club supported the $50 million cost caps as a mechanism to prevent a significant strain on the market. Sierra Club commented that since ERS should only be used to prevent emergency grid situations, allowing ERCOT to review payment methodology and adjust the linking of settlement with actual energy prices might help to avoid undercutting the market and the need to produce appropriate price signals for the market.

Commission Response

While there may be some impact on energy prices due to the deployment of ERS during an energy emergency, the commission declines to adopt a specific mechanism to mitigate such price impacts in this rule. The commission notes that discussions currently are taking place in the Reliability Deployments Task Force of the Wholesale Markets Subcommittee regarding a global approach to mitigating the pricing impact of all reliability measures taken by ERCOT during energy emergencies, including not only ERS, but other services such as Load Resources, Non-Spinning Reserve Service, and Reliability Unit Commitments. The commission believes that that forum is the correct venue to address any pricing impacts of the deployment of ERS, rather than to attempt to codify a solution in this rule.

(3) Issues Relating to the Annual Procurement Cap

CMC supported the elimination of the $50 million annual ERS procurement cap and recommended that the commission allow ERCOT staff to determine how much ERS to procure and the price to be paid for ERS. This would make the ERS program consistent with other ancillary services procured by ERCOT, which are not subject to a cap, and would eliminate the need for future rulemaking proceeding to increase the cap as the ERS program grows.

Chaparral proposed that the current annual procurement cap be replaced with a requirement that ERCOT may spend no more in any year on ERS than ERCOT has spent on responsive reserve service in the preceding calendar year. Chaparral is concerned that elimination of any cap could result in the imposition of a very low procurement limit through the stakeholder process. Adoption of a cap tied to the annual cost of responsive reserves would permit headroom for future growth of the ERS program without requiring a commission rulemaking to periodically lift the cap.

EnerNOC stated that the $50 million cap should be eliminated or replaced with a mechanism for increasing the cap without the need for a rulemaking. EnerNOC stated that the current EILS program is spending about half the cap amount per year and as ERS improvements are phased in, it would be beneficial for ERCOT to have flexibility to procure additional ERS resources.

Nucor supported increasing the $50 million annual procurement cap to $200 million.

TIEC stated that it would oppose the increase or elimination of the $50 million cap on ERS, as this would create uncertainty and risk in the market. Even with the cap in place, TIEC commented that the proposed rule should still require contracts providing for the most beneficial and cost-effective service for the market. The rule should not grant ERCOT the authority to define ERS on a contract-specific basis as long as the cap is observed.

ECI recommended elimination of the annual procurement limit.

The Sierra Club supported elimination of the cap on the amount of ERS procured, but argued for retaining the $50 million annual procurement limit.

Commission Response

The commission declines to change or eliminate the annual procurement cap at this time. In no year since the inception of the EILS program have total expenditures exceeded even half of the existing $50 million annual procurement cap. While the changes to the rule adopted in this order may, and hopefully will, increase participation in the program, it seems unlikely that expenditures for this program will more than double in the near term. As the

ERS program grows, the commission is willing to revisit the size of the cap or the continued need for the cap.

(4) Issues Relating to the Inclusion of Distributed Generation in the ERS Program

Both Public Citizen and Sierra Club expressed concern about expanding the ERS program to allow participation by distributed generation (DG). Public Citizen stated that Texas Commission on Environmental Quality (TCEQ) and federal Environmental Protection Agency (EPA) rules establish strict standards on the emissions of pollutants and limit the number of hours that small generators may operate. Public Citizen also stated that small generators may need to be re-engineered to ensure safe operation if they are to feed power to the grid and that the participation of DG may raise issues of market fairness if the feeders on which they are located are designated as priority feeders in the event of a load shedding event. Public Citizen recommended that if DG units are permitted to participate in ERS, that only the lowest emission (Tier 4) engines be permitted to participate in the program, that guidelines be established for the operation of DG units, that only units that meet TCEQ Chapter 117 rules be permitted to participate, that warnings be required on feeders where DG units participate, and that non-toxic load shedding should be encouraged.

Sierra Club raised similar concerns, noting the TCEQ limits on the number of hours that backup generators may operate, and stating that the TCEQ rules permit backup generators to operate only to meet local power needs, and specifically exclude generators that feed power to the grid. In Sierra Club's view, generators wishing to put power on the grid would not meet TCEQ's narrow definition and would have to apply for a standard permit. Sierra Club recommends that, if DG units are permitted to participate in the ERS program: (1) ERCOT should reject any offer placed on behalf of any resource that is found not to comply with emissions requirements adopted by the EPA and/or the TCEQ, (2) that any resource wishing to participate in ERS must comply with all EPA and TCEQ emissions requirements and provide proof of compliance to the qualified scheduling entity (QSE) representing the resource, (3) that ERCOT limit participation by DG units to no more than 50% of the total ERS program, and (4) that any resource found not to comply with EPA or TCEQ regulations by prohibited from participating in the ERS program until it provides proof that it is in compliance with such regulations.

EnerNOC also proposed that the commission limit the participation of DG in the ERS program to 20% of the total program, expressing concern that participation by DG in the program could "crowd out" loads that are willing to curtail demand.

NRG commented that the inclusion of Distributed Generation (DG) capacity payments in this program is a creative approach but should not be a permanent part of ERS. While including DG payments can help address concerns over the adequacy of resources for the next few years, participation of DG providing ERS/EILS should be limited only until the end of the summer contract period in 2015, at which point direct participation by DGs be "sunsetted." In NRG's view allowing capacity payments for only one group of generators while excluding other generators from receiving such payments is inequitable.

Commission Response

The commission declines to incorporate environmental regulations as part of this rule. Operators of distributed generation units are responsible for being aware of and ensuring their compliance with all applicable rules and regulations pertaining to their operations. If operators of such units are not able to participate in the ERS program in a manner consistent with regulations imposed by other agencies, the commission would expect them to refrain from participating in the program.

The commission also declines to set an arbitrary limitation on the amount of distributed generation that may participate in the program. Given that the rule adopted in this order removes the limitation on the total amount of capacity that may be procured through the ERS program, it is unclear how the participation of DG in the program could act to "crowd out" participation by load resources. If experience gained in the future shows that the participation of DG presents any obstacle to the participation of load resources, the commission may consider the appropriate role of DG in the ERS program at that time.

(5) Issues Relating to ERS Program Design

Several parties argued that the commission's rule should specify various aspects of the ERS program design. Nucor proposed that the rule should require ERCOT to establish separate classes of ERS service, with no-notice (direct control), 10-minute, and 30-minute response times, with appropriate differences in compensation. Frontier had a similar recommendation, arguing that the commission's rule should require ERS classes for instantaneous, 30-minute, and 60-minute response times. ECI proposed ERS classes with 30 and 60-minute response times.

Some parties also recommended that the rule specify details regarding contract renewals, limitations on ERS deployment, and compensation for providing ERS capacity or for deployment during EEA events. Nucor, Frontier, and ECI suggested that the rule be modified to pay ERS participants based on the amount of load actually curtailed in any event. ECI also recommended that the rule be modified to eliminate suspension as a penalty and that loads be compensated upon deployment. EnerNOC requested that ERCOT be required to deploy ERS participants for a minimum of two hours during an EEA event and that ERS resources have the option to decline to renew their contract after being deployed for eight hours.

TIEC recommended that the commission's rule require uniform contract periods and a nondiscriminatory competitive bidding process.

Commission Response

The commission's intent in repealing the existing rule and adopting this new rule is to permit ERCOT additional flexibility in managing the ERS program. The existing rule was, compared to many other commission rules governing the operations of ERCOT, quite prescriptive and detailed. Such detail can present a problem because, as occurred in February of 2011, the rule can have unintended or unforeseen consequences. In February 2011, the EILS resources available to ERCOT for managing energy emergencies were exhausted very early in an EILS contract period, leaving ERCOT vulnerable if another energy emergency were to have occurred between early February and the end of May. ERCOT was forced to petition the commission for an emergency rulemaking to enable it to establish a new contract period to restore EILS until the June-September contract period commenced.

The features of the ERS program design may be implemented by ERCOT staff under the new rule through ERCOT staff's technical requirements document for the ERS program or through input from the stakeholder process. The commission believes that many of the suggestions made by the parties have merit.

The suggestion that ERCOT establish classes of ERS participants with differing response times appears to have merit and could encourage participation in the program by more load resources than currently participate. The commission encourages ERCOT to expeditiously explore the feasibility and usefulness of implementing this feature. If ERCOT determines that the program should include classes of ERS participants with differing response times, the commission encourages ERCOT to implement this feature as soon as possible but not later than the summer of 2013.

The commission, however, declines to adopt in the rule any of the design features suggested by the parties. The commission's rule regarding ERS establishes the broad outlines of the service and expresses the commission's policy regarding the service. The details of the program design are better left to the professional staff at ERCOT rather than set forth more permanently in the commission's rules. ERCOT and the stakeholder process have the ability to change the program design expeditiously if unintended or unforeseen consequences result from features of the program's design.

The commission has, however, modified subsection (d)(7) and (8) of the rule to ensure that ERCOT has the flexibility to develop procedures that would govern the ability of ERS resources to return from deployment after the maximum eight cumulative hours of deployment is reached during a contract period. Some potential ERS participants may not be able to stay offline for more than a given number of hours or may incur unexpected or unreasonable costs with extended deployments, and the commission encourages ERCOT to explore program rules that satisfy ERCOT's reliability needs and also provide participants with certainty about the maximum duration of a deployment and financial feasibility of participation in the program.

One element of the rule, which ECI proposed to be eliminated, is the provision for suspension of an ERS program participant in the event of a failure of that participant to perform the service for which it has contracted. As the commission stated in the earlier rulemakings pertaining to this service in Project Numbers 33457 and 34706, the nature of this service - availability of interruptible load to forestall the need for firm load shed in an energy emergency - makes it absolutely essential that participants in the program perform when called upon. When a program participant fails to fulfill its contracted duties, that participant has demonstrated its inability to deliver this very valuable service and should be excluded from the program until it has demonstrated its ability to do so. The commission declines to make this change in the rule.

(6) Commission Policy Regarding ERS

Some commenters, including Nucor and Frontier, requested that the commission clearly state its policy at the beginning of the rule, where the commission states the purpose of the rule. Nucor suggested that the commission explicitly state in the rule that the commission's policy is to eliminate unnecessary restrictions on the provision of ERS, to assure continued participation of current EILS load, to attract new participants, to increase the value of ERS, and to increase participation to reach an optimal level for system reliability purposes. Frontier recommended that the commission explicitly state that the purpose of the ERS program is to retain and enhance current demand response while attracting additional demand response.

Commission Response

The commission made it clear in the previous rulemakings pertaining to this service that it regards a robust demand response program as an essential tool for ERCOT in fulfilling its responsibilities to ensure reliable operation of the grid. The commission has acted in the past to expand and increase participation in the program. The commission restates here that this continues to be the policy of the commission. EILS has, in the EEA event of February 2011 and in the peak demand periods of the summer of 2011, demonstrated its value in forestalling the need for firm load shedding. The commission will view unfavorably any action taken by ERCOT or by participants in the stakeholder process that would have the effect of limiting the development of or participation in the ERS program.

(7) Rule Clarifications Requested by ERCOT

ERCOT proposed two clarifications to the rule as published by the commission. One proposed change in §25.507(c)(2) would clarify that both loads and distributed generation must be contracted to provide ERS. The second change in §25.507(d)(8) would eliminate the requirement that a renewal of an ERS contract within a contract period is subject to the same contract terms as the expired contract.

Commission Response

The commission agrees that these changes are helpful and has changed the rule accordingly.

All comments, including any not specifically referenced herein, were fully considered by the commission.

16 TAC §25.507

The repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §39.151, which provides the commission with the authority to oversee ERCOT.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

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

Filed with the Office of the Secretary of State on March 23, 2012.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: December 30, 2011
For further information, please call: (512) 936-7223

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16 TAC §25.507

The new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §39.151, which provides the commission with the authority to oversee ERCOT.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.507. Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS).

(a) Purpose. The purpose of this section is to promote reliability during energy emergencies through provisions that provide ERCOT flexibility in the implementation and administration of ERS.

(b) ERS procurement. ERCOT shall procure ERS, a special emergency response service that is intended to be deployed by ERCOT in an Energy Emergency Alert (EEA) event.

(1) ERCOT shall determine the ERS contract periods during which ERS resources shall be obligated to provide ERS, including any additional ERS contract periods ERCOT deems necessary due to the depletion of available ERS.

(2) ERCOT may spend a maximum of $50 million per calendar year on ERS. ERCOT may determine cost limits for each ERS contract period in order to ensure that the ERS cost cap is not exceeded. To minimize the cost of ERS, ERCOT may reject any offer that ERCOT determines to be unreasonable or outside of the parameters of an acceptable offer. ERCOT may also reject any offer placed on behalf of any ERS resource if ERCOT determines that it lacks a sufficient basis to verify whether the ERS resource complied with ERCOT-established performance standards in an EEA during the preceding ERS contract period.

(c) Definitions.

(1) ERS contract period--A period defined by ERCOT for which an ERS resource is obligated to provide ERS.

(2) ERS resource--A resource contracted to provide ERS that meets one of the following descriptions:

(A) A load or aggregation of loads; or

(B) A dispatchable generator that is not registered with ERCOT as a Generation Resource, or an aggregation of such generators.

(3) ERS time period--Sets of hours designated by ERCOT within an ERS contract period.

(4) ERCOT--The staff of the Electric Reliability Council of Texas, Inc.

(d) Participation in ERS. In addition to requirements established by ERCOT, the following requirements shall apply for the provision of ERS:

(1) An ERS resource must be represented by a qualified scheduling entity (QSE).

(2) QSEs shall submit offers to ERCOT on behalf of their ERS resources.

(A) Offers may be submitted for one or more ERS time periods within an ERS contract period.

(B) QSEs representing ERS resources may aggregate multiple loads to reach the minimum capacity offer requirement established by ERCOT. Such aggregations shall be considered a single ERS resource for purposes of submitting offers.

(3) ERCOT shall establish qualifications for QSEs and ERS resources to participate in ERS.

(4) A resource shall not commit to provide ERS if it is separately obligated to provide response with the same capacity during any of the same hours.

(5) ERCOT shall establish performance criteria for QSEs and ERS resources.

(6) When dispatched by ERCOT, ERS resources shall deploy consistent with their obligations and shall remain deployed until recalled by ERCOT.

(7) ERCOT may deploy ERS resources as necessary, subject to the annual expenditure cap. Deployment of an ERS resource shall be limited to a maximum of eight cumulative hours in an ERS contract period. However, if an instruction causes the cumulative total ERS deployment time to exceed eight hours within a contract period, each ERS resource shall remain deployed until permitted by ERCOT procedures or by ERCOT instructions to return from deployment.

(8) Upon exhaustion of an ERS resource's obligation in any contract period, ERCOT shall have the option to renew that obligation, subject to the consent of the ERS resource and its QSE. ERCOT may renew the obligation on each occasion that the resource's obligation is exhausted.

(9) ERCOT shall establish procedures for testing of ERS resources.

(e) ERS Payment and Charges.

(1) ERCOT shall make a payment to each QSE representing an ERS resource on an as-bid basis, a market clearing price mechanism, or such other mechanism as ERCOT deems appropriate, subject to modifications determined by ERCOT based on the ERS resource's availability during an ERS contract period and the ERS resource's performance in any deployment event.

(2) ERCOT shall charge each QSE a charge for ERS based upon its load ratio share during the relevant ERS time period and ERS contract period.

(3) ERCOT shall settle an ERS contract period within 80 days following the completion of the ERS contract period.

(f) Compliance. A QSE representing ERS resources is subject to administrative penalties for non-compliance, by the QSE or the ERS resources it represents, with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards. ERCOT shall establish criteria for reducing a QSE's payment and/or suspending a QSE from participation in ERS for failure to meet its ERS obligations, and shall also establish criteria for subsequent reinstatement. In addition, ERCOT shall establish criteria under which an ERS resource shall be suspended for non-compliance, and shall also establish criteria for subsequent reinstatement. ERCOT shall notify the commission of all instances of non-compliance with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards. ERCOT shall maintain records relating to the alleged non-compliance.

(g) Reporting. Prior to the start of an ERS contract period, ERCOT shall report publicly the number of megawatts (MW) procured per ERS time period, the number and type of ERS resources providing the service, and the projected total cost of the service for that ERS contract period. ERCOT shall review the effectiveness and benefits of ERS and report its findings to the commission annually by April 15 of each calendar year. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EEA events, and the number and duration of deployments.

(h) Implementation. ERCOT shall develop additional procedures, guides, technical requirements, protocols, and/or other standards that are consistent with this section and that ERCOT finds necessary to implement ERS, including but not limited to developing a standard

form ERS Agreement and specific performance guidelines and grace periods for ERS resources.

(i) Self Provision. ERCOT shall establish procedures for self-provision of ERS by any QSE.

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

Filed with the Office of the Secretary of State on March 23, 2012.

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATION

22 TAC §77.5

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §77.5, concerning Misleading Claims. This rule is adopted without changes to the proposed text as published in the January 20, 2012, issue of the *Texas Register* (37 TexReg 181) and will not be republished.

The proposed amendment details additional specific situations that would constitute "false, deceptive, unfair or misleading advertising." Additionally, the proposed amendment makes clear that "claims intended or reasonably likely to create a false expectation of the cost of treatment or the amount of treatment to be provided" are not misleading in circumstances where the cost or amount of treatment varies from an original quotation or advertisement by a reasonable amount. Finally, the proposed amendment establishes a standard of "the generally accepted standards of care within the chiropractic profession in Texas" in determining whether a violation of this rule has occurred.

Two comments were received by the Board during the comment period on the proposed amendment.

One commenter expressed concern that DCs would be prohibited from offering to "relieve pain" when treating patients for conditions within the chiropractic scope of practice. The Board discussed this issue and feels that the adopted rule does not prohibit a DC from offering to relieve pain, as long as the DC does not guarantee relief from pain. No change was made in response to this comment.

The second commenter expressed concern that the standard as to whether a violation of the adopted rule has occurred will be a subjective determination of a Board member. The Board disagrees and directs the commenter's attention to the standard outlined in subsection (c) of the adopted rule. "The standard to be used in determining whether a violation of this rule has taken place is the generally accepted standards of care within the chiropractic profession in Texas." No change was made in response to this comment.

Two additional comments were received outside of the comment period. One commenter suggested that the Board should wait to adopt this rule until pending scope of practice rule amendments are finalized. The Board disagrees, as this adopted rule deals with more than just claims of scope of practice. The rule already includes the paragraph dealing with advertisement of claims that chiropractic services will cure or lessen the effects of ailments, injuries or other disorders which are outside the scope of chiropractic practice; the substance of subsection (a)(5) is not a proposed amendment. Only the numbering of the paragraph was amended. Therefore, whether the proposed amendments are adopted has nothing to do with scope of practice amendments. No change was made in response to this comment.

The second comment was orally presented to the Board at its February 23, 2012, meeting. The commenter expressed concern with paragraph (7) of subsection (a) prohibiting "claims that chiropractic services offer results that are not within the realm of scientific proof beyond testimonial statements or manufacturer's claims." However, this paragraph was already included in the rule; again, the substance of subsection (a)(7) is not a proposed amendment. Only the numbering of the paragraph was amended. The Board believes that it is possible to show that some claims are outside the realm of scientific proof beyond testimonial statements or manufacturer's claims in accordance with the standard outlined in new subsection (c). No change was made in response to this comment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules and §201.155, relating to restrictions on advertising. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.155 states that the Board may adopt rules restricting advertising to prohibit false, misleading or deceptive practices.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201557
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: April 12, 2012
Proposal publication date: January 20, 2012
For further information, please call: (512) 305-6716

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CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §80.1, concerning Delegation of Authority, to make clear what the definition of "on-call" is in this rule. This rule is adopted with changes to the proposed text as published in the January 20, 2012, issue of the *Texas Register* (37 TexReg 182) and will be republished.

Previously the rule stated that a licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated

as being on-call. However, there was no definition of "on-call," and the Board had received several questions from licensees regarding what "on-call" meant in the context of this rule.

One comment was received by the Board during the comment period on the proposed amendment. The commenter expressed concern that fifteen minutes was "cutting it a little quick." However, the Board disagrees. The fifteen-minute window is for the on-call licensee to be available for consultation either in person or by other means of telecommunication. The Board feels that this is a reasonable timeframe for an on-call licensee to consult, especially in the case of an emergency. No change was made in response to this comment.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

§80.1. Delegation of Authority.

(a) The purpose of this section is to encourage the more effective use of the skills of licensees by establishing guidelines for the delegation of health care tasks to a qualified and properly trained person acting under a licensee's supervision consistent with the health and welfare of a patient and with proper diligence and efficient practice of chiropractic. This section provides the standards for credentialing a chiropractic assistant in Texas.

(b) Except as provided in this section, a licensee shall not allow or direct a person who is not licensed by the board to perform procedures or tasks that are within the scope of chiropractic, including:

(1) rendering a diagnosis and prescribing a treatment plan; or

(2) performing a chiropractic adjustment or manipulation.

(c) A licensee may allow or direct a student enrolled in an accredited chiropractic college to perform chiropractic adjustments or manipulations.

(1) For students that have not completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be performed as part of a regular curriculum; and the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who is physically present in the treating room at the time of the adjustment.

(2) For students that have completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation.

(3) The requirement that the supervising licensee must be physically present in the treating room does not apply to chiropractic college clinics.

(d) In delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. "Qualified and properly trained" as used in this section means that the person has the requisite education, training, and skill to perform a specific task or procedure.

(1) Requisite education may be determined by a license, degree, coursework, on-the-job training, or relevant general knowledge.

(2) Requisite training may be determined by instruction in a specific task or procedure, relevant experience, or on-the-job training.

(3) Requisite skill may be determined by a person's talent, ability, and fitness to perform a specific task or procedure.

(4) A licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the board's rules.

(e) A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's supervision, to perform a task or procedure that assists the doctor of chiropractic in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a doctor of chiropractic in order to protect the health or safety of a patient, such as:

(1) taking the patient's medical history;

(2) taking or recording vital signs;

(3) performing radiologic procedures;

(4) taking or recording range of motion measurements;

(5) performing other prescribed clinical tests and measurements;

(6) performing prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology Codebook, the Centers for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system;

(7) demonstrating prescribed exercises or stretches for a patient; or

(8) demonstrating proper uses of dispensed supports and devices.

(f) A licensee may not allow or direct a person:

(1) to perform activities that are outside the licensee's scope of practice;

(2) to perform activities that exceed the education, training, and skill of the person or for which a person is not otherwise qualified and properly trained; or

(3) to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the person to exercise independent clinical judgment.

(g) A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked, in Texas or any other jurisdiction, to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(h) A licensee is responsible for and will participate in each patient's care. A licensee shall conform to the minimal acceptable standards of practice of chiropractic in assessing and evaluating each patient's status.

(i) It is the responsibility of each licensee to determine the number of qualified and properly trained persons that the licensee can safely supervise. A licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated as being on-call. On-call means that the licensee must be available for consultation within 15 minutes either in person or by other means of telecommunication.

(j) A licensee's patient records shall differentiate between services performed by a doctor of chiropractic and the services performed by a person under the licensee's supervision.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201558
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: April 12, 2012
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For further information, please call: (512) 305-6716

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. PROFESSIONAL STANDARDS

22 TAC §501.63

The Texas State Board of Public Accountancy adopts an amendment to §501.63, concerning Reporting Standards, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 447) and will not be republished.

The amendment will clarify the preparation of financial standards when not in the client practice of public accountancy and when in the client practice of public accountancy.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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TRD-201201524
J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
Effective date: April 11, 2012
Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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CHAPTER 505. THE BOARD

22 TAC §505.1

The Texas State Board of Public Accountancy adopts an amendment to §505.1, concerning Board Seal and Headquarters, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 448) and will not be republished.

The amendment will delete unnecessary terms and correct terms that should be lowercase.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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TRD-201201508
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Texas State Board of Public Accountancy
Effective date: April 11, 2012
Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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22 TAC §505.2

The Texas State Board of Public Accountancy adopts an amendment to §505.2, concerning Duties of the Board, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 449) and will not be republished.

The amendment clarifies that the executive director is responsible for administrative responsibilities and deletes unnecessary terms.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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Texas State Board of Public Accountancy
Effective date: April 11, 2012
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For further information, please call: (512) 305-7842

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22 TAC §505.3

The Texas State Board of Public Accountancy adopts an amendment to §505.3, concerning Presiding Officer of the Board, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 450) and will not be republished.

The amendment will replace the term title with chapter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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TRD-201201510
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §505.4

The Texas State Board of Public Accountancy adopts an amendment to §505.4, concerning Assistant Presiding Officer of the Board, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 450) and will not be republished.

The amendment will replace the term title with chapter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §505.5

The Texas State Board of Public Accountancy adopts an amendment to §505.5, concerning Secretary of the Board, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 451) and will not be republished.

The amendment will expand the duties of the board's secretary to include attesting to the accuracy of the board's meetings minutes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §505.7

The Texas State Board of Public Accountancy adopts an amendment to §505.7, concerning Vacancies in the Board, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 452) and will not be republished.

The amendment will replace the term "shall occur" with "occurs".

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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TRD-201201513
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For further information, please call: (512) 305-7842

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22 TAC §505.8

The Texas State Board of Public Accountancy adopts an amendment to §505.8, concerning Board Meetings, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 452) and will not be republished.

The amendment will clarify that the board may designate a meeting place that is convenient for the public and the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, concerning Board Committees, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 453) and will not be republished.

The amendment revises the functions of the executive committee, qualification committee, licensing committee, and behavioral enforcement and technical standards review committees, amends conflicts of interest guidelines, deletes unnecessary words and adds acronyms that have been defined in §501.55.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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TRD-201201515
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General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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22 TAC §505.12

The Texas State Board of Public Accountancy adopts an amendment to §505.12, concerning Enforcement Committees, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 456) and will not be republished.

The amendment will delete the terms for the former TSR I and II committees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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22 TAC §505.13

The Texas State Board of Public Accountancy adopts an amendment to §505.13, concerning Board Committee Member Recusals, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 457) and will not be republished.

The amendment will clarify that board members must recuse themselves when there may be a substantial interest involved or when the appearance of bias may be present.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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CHAPTER 511. ELIGIBILITY
SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.51

The Texas State Board of Public Accountancy adopts new §511.51, concerning Educational Definitions, with changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 457) and will be republished.

The new rule will provide definitions for the terms used in Chapter 511.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§511.51. Educational Definitions.

(a) The following words and terms, when used in this chapter extracted from rules promulgated by the Texas Higher Education Coordinating Board, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Accelerated courses" means courses delivered in shortened semesters which are expected to have the same number of contact hours and the same requirement for out-of-class learning as courses taught in a normal semester.

(2) "Contact hour" means a time unit of instruction used by institutions of higher education consisting of 60 minutes, of which 50 minutes must be direct instruction.

(3) "Distance education" means the formal educational process that occurs when students and instructors are not in the same physical setting for the majority (more than 50 percent) of instruction.

(4) "Distance education course" means a course in which a majority (more than 50 percent) of the instruction occurs when the student(s) and instructor(s) are not in the same place. Two categories of distance education courses are defined:

(A) "Fully distance education course" means a course which may have mandatory face-to-face sessions totaling no more than 15 percent of the instruction time. Examples of face-to-face sessions include orientation, laboratory, exam review, or an in-person test.

(B) "Hybrid/Blended course" means a course in which a majority (more than 50 percent but less than 85 percent), of the planned instruction occurs when the students and the instructor(s) are not in the same place.

(5) "Non-traditionally-delivered course" means a course that is offered in a non-traditional way (for example, over the internet, or through a shortened, intensive format) that does not meet the definition of contact hours, the course may be considered if it has been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(6) "Semester" means and normally shall include 15 weeks for instruction and one week for final examination or a total of 16 weeks instruction and examinations combined.

(7) "Semester credit hour" means a unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(8) "Traditionally-delivered three semester-credit-hour course" or "traditional course" means a course containing 15 weeks of instruction (45 contact hours) plus a week for final examinations so that such a course contains 45-48 contact hours depending on whether there is a final exam.

(b) The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise and shall be considered substantially equivalent to definitions and references in rules promulgated by the Texas Higher Education Coordinating Board.

(1) "AACSB-International" means the Association to Advance Collegiate Schools of Business-International.

(2) "ACBSP" means the Accreditation Council for Business Schools and Programs.

(3) "Accredited community college" means a board-recognized Texas community college that holds the designation 'Qualifying Educational Credit for the CPA Examination' awarded by the board.

(4) "CHEA" means the Council for Higher Education Accreditation.

(5) "Institution" or "Institution of Higher Education" means any U.S. public or private senior college or university which confers a baccalaureate or higher degree to its students completing a program of study required for the degree.

(6) "Quarter credit hour" is the unit of measurement based upon an institution of higher education system that divides the academic year into three equal sessions of 10 to 11 weeks. A quarter hour represents proportionately less work than a semester hour because of the shorter session and is counted as 2/3 of a semester hour for each hour of credit.

(7) "Reporting institution" means the institution of higher education in the state that serves as the clearinghouse for educational institutions of higher education in Texas. Currently, the University of Texas-Austin is the reporting institution for the state of Texas.

(8) "SACS" means the Southern Association of Colleges and Schools-Commission on Colleges.

(9) "Self-paced course" means a course in which a student earns semester/quarter hour credit that is completed in less or more than the time required in subsection (a)(5) of this section.

(10) "THECB" means the Texas Higher Education Coordinating Board.

(11) "UCPAE" means the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants.

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

Filed with the Office of the Secretary of State on March 22, 2012.

TRD-201201518
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 11, 2012
Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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22 TAC §511.52

The Texas State Board of Public Accountancy adopts an amendment to §511.52, concerning Recognized Institutions of Higher Education, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 459) and will not be republished.

The amendment will make it clear that accelerated or self-paced format courses and correspondence courses are not acceptable for the purpose of meeting the minimum qualifications to sit for the CPA exam and it identifies the accrediting associations it recognizes when considering the qualifications of an applicant to sit for the CPA exam.

One comment was received by the Board from Northwood University stating that the proposed rule would create a hardship for students at Northwood University and that Northwood University would appreciate the Board's favorable consideration for an extension of time to obtain accreditation.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §511.56

The Texas State Board of Public Accountancy adopts an amendment to §511.56, concerning Educational Qualifications under the Act, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 460) and will not be republished.

The amendment will replace terms with acronyms where defined, cite the related sections of the rules and non-substantively reword the rule to make it easier to understand.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Qualified Accounting Courses, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 461) and will not be republished.

The amendment will reword some of the language of the rule to make its intent clear, require up to 9 hours of intermediate accounting to qualify to sit for the exam, allow the internship course to qualify as a traditional course, disqualify accelerated or self-paced format or by correspondence and clarify that an ethics course taken for CPE does not qualify for purposes of meeting the accounting course definition to sit for the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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 March 22, 2012.

TRD-201201521

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 11, 2012
Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58, concerning Definitions of Related Business Subjects and Ethics Courses, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 463) and will not be republished.

The amendment will reword the rule to clarify its intent and require a minimum of 2 upper level semester credit hours in accounting communications or business communications in order to qualify to sit for the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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J. Randel (Jerry) Hill
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For further information, please call: (512) 305-7842

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22 TAC §511.59

The Texas State Board of Public Accountancy adopts an amendment to §511.59, concerning Definition of 150 Semester Hours, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 464) and will not be republished.

The amendment will reword the rule for a better understanding of the Board's requirements related to the minimum of 150 semester hours of college coursework necessary in order to qualify to sit for the exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.8

The Texas State Board of Public Accountancy adopts an amendment to §519.8, concerning Administrative Penalties, without changes to the proposed text as published in the December 23, 2011, issue of the *Texas Register* (36 TexReg 8722) and will not be republished.

The amendment will add the term "or certificate holder" after licensee, delete unnecessary words, add reference to the Act and replace accounting terms with acronyms that have been defined in §501.55.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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 March 22, 2012.

TRD-201201525
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 11, 2012
Proposal publication date: December 23, 2011
For further information, please call: (512) 305-7842

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22 TAC §519.9

The Texas State Board of Public Accountancy adopts an amendment to §519.9, concerning Administrative Penalty Guidelines, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 465) and will not be republished.

The amendment clarifies that the act of "possessing" a controlled substance is a violation of the Board's rules, deletes the three-year non-pay (section 39) and the CPE violations (section 38)

as unnecessary sections, amends text to match current rules, and replaces words with acronyms that have been defined in §501.55.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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 March 22, 2012.

TRD-201201526
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 11, 2012
Proposal publication date: February 3, 2012
For further information, please call: (512) 305-7842

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TITLE 28. INSURANCE

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

CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305, concerning medical billing and processing and the dispute of medical bills. The sections are adopted with changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9184) and will be republished. These amendments are necessary to: (1) harmonize these rules with other Division rules and procedures, Chapter 504, Labor Code, and certain provisions of Chapters 1305 and 4201, Insurance Code; (2) clarify the Division's requirements for explanations of benefits submitted in paper format; and (3) make other changes necessary to clarify the implementation and application of these sections. The Division adopts these amendments in conjunction with its amendments to 28 TAC §134.600 (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) published elsewhere in this issue of the *Texas Register.*

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble and rules. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rules, the reasons why the Division agrees or disagrees with some of the comments and recommendations, and all other Division responses to the comments.

No public hearing was requested or held for this proposal. The public comment period closed on January 30, 2012, and the Division received seven public comments.

On December 16, 2011, the Division withdrew its proposed amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305, which were published in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4774). The Division determined this withdrawal was necessary because the primary purpose of those proposed amendments was to harmonize these sections with the amendments to 28 TAC §§19.2001 - 19.2017 and 19.2019 - 19.2021 (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) (Subchapter U) proposed by the Department in the July 8, 2011, issue of the *Texas Register.* On December 2, 2011, however, the Department withdrew these proposed amendments to Subchapter U and announced that it would be issuing new informal draft rules on the same topic at a later date. In light of this withdrawal and announcement, the majority of the Division's proposed amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305 became premature and were, therefore, withdrawn.

The Division also elected, however, to repropose the July 2011 amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305 that did not relate to the Department's proposed amendments to Subchapter U. Those proposed amendments and other new amendments to these sections were published in the December 30, 2011, issue of the *Texas Register.* The amendments, as stated above, are necessary to: (1) harmonize these rules with other Division rules and procedures, Chapter 504, Labor Code, and certain other provisions of Chapters 1305 and 4201, Insurance Code; (2) clarify the Division's requirements for explanations of benefits submitted in paper format; and (3) make other changes necessary to clarify the implementation and application of these sections. Those proposed amendments also made non-substantive changes to these sections to conform to current nomenclature, reformatting, consistency, clarity, and to correct typographical and/or grammatical errors.

The Division adopts these amended sections with changes from the amendments proposed on December 30, 2011. First, the Division has made a non-substantive typographical change to its definition of "Agent" in §133.2(1). Specifically, the Division has deleted "with" before the word "whom."

Second, in response to public comment, the Division has deleted "who submitted the medical bill" from §133.240(e)(1) and added to paragraph (3) of this subsection "if different from the health care provider identified in paragraph (1) of this subsection." This change is necessary to clarify that the requirements of §133.240(e)(1) have not changed as a result of this proposal and to clarify the application of §133.240(e)(3).

Third, the Division has, in response to public comment, changed new §133.240(p) and §133.250(i) to provide that "all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily in-

jury in course and scope of employment." These requirements replace the requirements provided by proposed §133.240 and §133.250, which read: "Additionally, all utilization review agents and registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." These changes are necessary to ensure that this section remains in harmony with any future rules issued by the Department on this topic while still requiring all applicable parties to comply with Labor Code §504.055.

Fourth, the Division, in response to comment, has changed §133.250(f) to provide that an insurance carrier shall provide an explanation of benefits "in accordance with §133.240(e) - (f) of this title (relating to Medical Payments and Denials) for all items included in a reconsideration request in the form and format prescribed by the division when there is a change in the original, final action" or "in accordance with of §133.240(e)(1) and §133.240(f) of this title when there is no change in the original, final action." This change is necessary to clarify to which parties the insurance carrier must send an explanation of benefits when the insurance carrier changes its final action and when it does not.

Lastly, the Division has, in response to public comment, added a delayed effective date for these sections of July 1, 2012 and has incorporated the date into new §§133.2(b), 133.240(q), 133.250(j), 133.270(h), and 133.305(f). This delayed effective date is necessary to ensure that parties have sufficient time to evaluate and implement the new requirements of these amendments.

Amended §133.2. The adopted amendment to §133.2(1) defines "agent" as a "person whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling medical bill processing obligations under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent." This definition is necessary to correspond with the definition of "agent" in §180.1 of this title (relating to Definitions) and to harmonize the definitions of "health care provider agent" and "insurance carrier agent" that are deleted from this section. This amendment also clarifies that "[t]his definition does not apply to 'agent' as used in the term 'pharmacy processing agent.'" This amendment is necessary because "pharmacy processing agent" is a statutorily defined term under Labor Code §413.0111.

Amended §133.240. The adopted amendment to §133.240(b) clarifies that for pharmaceutical services provided to any injured employee, the insurance carrier shall not deny reimbursement based on medical necessity for pharmaceutical services preauthorized or agreed to under Chapter 134, Subchapter F of this title. The clarification harmonizes §133.240 with the Division's amendments to Chapter 134, Subchapter F of this title (relating to Pharmaceutical Benefits). Specifically, it clarifies that pharmaceutical services provided to injured employees, through either network or non-network workers' compensation coverage, cannot be denied based on medical necessity if those services were preauthorized or agreed to under §134.510(c) - (d) of this title (relating to Transition to the Use of the Closed Formulary for Claims with Dates of Injury Prior to September 1, 2011).

The adopted amendment to §133.240(e) requires insurance carriers to send an explanation of benefits in "accordance with the elements required by §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing, respectively) if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier shall send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form." This amendment is necessary to harmonize subsection (e) with §133.500 and §133.501, and with new subsection (f) that prescribes the required elements for explanations of benefits submitted in paper form by an insurance carrier.

The adopted amendment to §133.240(e)(2)(B)(iv) clarifies that §133.240(e)(2)(B)(iv) applies when the doctor is performing a designated doctor examination under Labor Code §408.0041 not simply §130.6 of this title (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings). This amendment is necessary because it updates this provision to reflect the variety of examinations, other than maximum medical improvement and impairment rating examinations, that a designated doctor may perform under Labor Code §408.0041.

The adopted amendment to §133.240(e)(3) provides that insurance carriers must send an explanation of benefits to "the prescribing doctor, if different from the health care provider identified in paragraph (1) of this subsection, when payment is denied for pharmaceutical services because of any reason relating to the compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons relating to the reasonableness or medical necessity of the pharmaceutical services." This amendment is necessary to harmonize proposed §133.240(e) with §134.502(f) of this title (relating to Pharmaceutical Services), which contains the same requirement.

The adopted amendments to §133.240(f) list the required elements of an explanation of benefits sent by an insurance carrier under §133.240(e), §133.250 of this title (relating to Reconsideration for Payment of Medical Bills) and §133.260 of this title (relating to Refunds). These amendments primarily incorporate the elements of the Division's current form DWC-062, and, therefore, provide increased clarity for insurance carriers who must comply with these requirements. Additionally, these amendments also add new requirements to these explanations of benefits. Specifically, amended subsection (f) now requires insurance carriers to include the name of the certified workers' compensation health care network through which the care was provided (if applicable) and the name of any pharmacy informal or voluntary network through which payment was made (if applicable). Amended subsection (f) also requires insurance carriers to include only the last four digits of an injured employee's social security number. Finally, amended subsection (f) permits insurance carriers to use a health care provider's national provider identifier instead of the health care provider federal tax ID number if the health care provider's federal tax ID number is the same as the health care provider's social security number. These new elements are necessary to ensure injured employee and health care provider confidentiality and to provide full disclosure of all network affiliations related to the claim.

The adopted amendment to §133.240(g) provides that when an insurance carrier pays a health care provider for health care for which the Division has not established a maximum allowable reimbursement, the insurance carrier shall explain and document the method it used to calculate the payment in accordance with §134.503 of this title (relating to Pharmacy Fee Guideline), if applicable. This amendment is necessary to harmonize this pro-

posed rule with the Division's recently adopted Pharmacy Fee Guideline, which has a separate requirement for determining fair and reasonable reimbursement in the absence of specified fee than the analogous requirement for other health care services under §134.1 of this title (relating to Medical Reimbursement).

The adopted amendment to §133.240(n) provides when an insurance carrier remits payment to a pharmacy processing agent, "the pharmacy processing agent's reimbursement from the insurance carrier shall be made in accordance with §134.503 of this title (relating to Pharmacy Fee Guideline)." This amendment is necessary to clarify that when an insurance carrier remits payment to a pharmacy processing agent, a pharmacy's reimbursement from a pharmacy processing agent shall be made in accordance with the terms of its contract with the pharmacy processing agent. The insurance carrier's reimbursement to the pharmacy processing agent, however, must be made in accordance with the Division's recently adopted Pharmacy Fee Guideline.

Adopted new §133.240(p) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title." This amendment is necessary to clarify the application of the Insurance Code and Department rules to utilization review under this section. New §133.240(p) further provides that "all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." This provision is necessary to ensure that this section remains in harmony with any future rules issued by the Department on this topic while still requiring all applicable parties to comply with Labor Code §504.055.

Lastly, adopted new §133.240(q) provides a delayed effective date for this section of July 1, 2012. This delayed effective date is necessary to ensure that parties have sufficient time to evaluate and implement the new requirements of these amendments.

Amended §133.250. The adopted amendment to §133.250(b) provides that health care providers must "submit the request for reconsideration no later than 10 months from the date of service." This amendment reduces the time period for health care providers to file a request for reconsideration from 11 months to 10 months. This amendment is necessary to ensure that health care providers who take the maximum amount of time to submit a denied bill for reconsideration still have opportunity to timely file a request for dispute resolution under §133.307(c) of this title (relating to MDR of Fee Disputes) if an insurance carrier also takes the maximum amount of time to take final action on the request for reconsideration. Previously, when an insurance carrier was limited to 21 days to review a request for reconsideration, the 11 months from the date of service deadline to submit a request for reconsideration was sufficient to ensure that a health care provider whose request is denied could still file a request for dispute resolution within one year of the date of service. Because the Division is also extending the time an insurance carrier has to review a request for reconsideration under this section to 30 days, however, the 11 month deadline is no longer sufficient for this purpose and is, therefore, reduced to 10 months from the date of service.

The adopted amendments to §133.250(f) state that an insurance carrier shall provide an explanation of benefits in accordance with §133.240(e) - (f) of this title (relating to Medical Payments and Denials) for all items included in a reconsideration request in the form and format prescribed by the Division when there is a change in the original, final action or in accordance with of §133.240(e)(1) and §133.240(f) of this title when there is no change in the original, final action. This amendment is necessary to correspond with the amendments made to §133.240(e) - (f). The adopted amendments to §133.250(f) also extend the time an insurance carrier has to take final action on a request for reconsideration from 21 days to 30 days. This requirement is necessary to correspond with Insurance Code §4201.359, which states that a utilization review agent's procedures must provide that it will respond to an appeal of an adverse determination "as soon as practicable but not later than the 30th day after receiving a request for reconsideration." This amendment also harmonizes this requirement with the parallel requirement for network claims under Insurance Code §1305.354, which provides insurance carriers the same amount of time to respond to a request for reconsideration.

The adopted amendment to §133.250(g) extends the time required before a health care provider may resubmit a request for reconsideration. The amendment extends the time period from 26 days after the insurance carrier received the original request or took final action on the request to 35 days after the insurance carrier received the request or took final action on the request. This amendment is necessary to harmonize this requirement with the Division's amendment to §133.250(f), which extended the time an insurance carrier has to take final action on a request for reconsideration from 21 days to 30 days.

Adopted new §133.250(i) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title." This amendment is necessary to clarify the application of the Insurance Code and Department rules to utilization review under this section. New §133.250(i) further provides that "all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." This provision is necessary to ensure that this section remains in harmony with any future rules issued by the Department on this topic while still requiring all applicable parties to comply with Labor Code §504.055.

Lastly, adopted new §133.250(j) provides a delayed effective date for this section of July 1, 2012. This delayed effective date is necessary to ensure that parties have sufficient time to evaluate and implement the new requirements of these amendments.

Amended §133.270. The adopted amendment to §133.270(f) provides that an injured employee may request reconsideration of a denied medical bill in accordance with "the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills)." This amendment updates this citation to corre-

spond with other changes the Division has made to Subchapter D of Chapter 133.

The adopted amendment to §133.270(g) provides that insurance carriers shall submit injured employee medical billing and payment data to the Division in accordance with Chapter 134, Subchapter I of this title (relating to Medical Bill Reporting). This amendment is necessary to update the reference in this section to match the Division's current applicable sections regarding medical bill reporting.

Lastly, adopted new §133.270(h) provides a delayed effective date for this section of July 1, 2012. This delayed effective date is necessary to ensure that parties have sufficient time to evaluate and implement the new requirements of these amendments.

Amended §133.305. The adopted amendment to §133.305(a) defines "first responder" and "serious bodily injury" as those terms are defined by Labor Code §504.055(a) and §1.07, Penal Code, respectively. The Division has added these definitions in anticipation of future rulemaking regarding medical dispute resolution.

The adopted amendment to §133.305(c)(3) provides that the Division may assess an administrative fee against an insurance carrier if the Division requests and the insurance carrier fails to provide the Division with the required health care provider notice under Labor Code §408.0281. This amendment is necessary to harmonize §133.305(c) with the requirements of Labor Code §408.0281.

Additionally, the adopted amendment to §133.305(c)(4) provides the Division will not assess an administrative fee against an insurance carrier for a reduced or denied payment based on a contract that indicates the direction or management of health care through a health care provider arrangement authorized under Labor Code §504.053(b)(2). This amendment is necessary to recognize the authority of political subdivisions to contract with health care providers under Labor Code §504.053(b)(2).

Lastly, adopted new §133.305(f) provides a delayed effective date for this section of July 1, 2012. This delayed effective date is necessary to ensure that parties have sufficient time to evaluate and implement the new requirements of these amendments.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES TO COMMENTS.

General: A commenter expresses support for the Division's continued openness and desire to work with system participants to gain perspective on how key rules impact workers' compensation marketplace.

Agency Response: The Division appreciates the supportive comment.

General: A commenter requests the Division consider the changes these amendments will require insurance carriers to implement when determining an effective date for the amendments.

Agency Response: The Division carefully reviewed and considered the additional time for system participants to prepare for implementation of this rule and has determined that July 1, 2012 is the appropriate effective date for these amendments. The Division has incorporated this effective date into new §§133.2(b), 133.240(q), 133.250(j), 133.270(h), and 133.305(f).

§133.2(1): A commenter feels the proposed changes are too vague in relationship to roles and responsibilities for requesting prospective utilization review for the purpose of complying with the Pharmacy Closed Formulary. The commenter seeks clarification as to what role an entity such as a voluntary/informal network or pharmacy benefit manager may play in the utilization review process, such as facilitating utilization review requests to an appropriately licensed entity. The commenter poses the following question to ensure a proper understanding of the role that a voluntary/informal network or pharmacy benefit manager may play in the utilization review process: can a voluntary/informal network or agent acting on behalf of an insurance carrier or other payor initiate the utilization review process and request utilization review on "N" drugs by forwarding the prescription claim for prospective utilization review to a properly licensed insurance carrier or utilization review entity?

Agency Response: The Division disagrees the proposed definition of "agent" is vague in relationship to roles and responsibilities for requesting prospective utilization review for the purpose of complying with the Pharmacy Closed Formulary. Insurance carriers and health care providers may contract with or utilize persons for fulfilling claim services or medical bill processing obligations under Labor Code, Title 5. If an insurance carrier, therefore, has authorized a person to receive preauthorization requests from pharmacies on its behalf and to forward those preauthorization requests to an appropriately certified utilization review agent for utilization review, that person would properly be acting as the insurance carrier's agent in that process. Whether or not that person was also an informal or voluntary network is irrelevant, however, as acting as an informal or voluntary network neither inhibits nor entitles a particular person to operate as an insurance carrier agent in non-informal non-voluntary network contexts, such as the scenario described by the commenter. The Division also notes, however, that in the scenario described above the timeframe to respond to a preauthorization request would begin when the agent receives the request. Additionally, the Division clarifies that only "requestors" under §134.600(a) of this title and injured employees may request preauthorization of a health care treatment or service.

The Division also reminds all system participants that no person may perform utilization review unless that person has been properly certified or registered under Chapter 4201, Insurance Code and otherwise complies with that chapter and all associated Division and Department rules. Lastly, the Division clarifies that both the insurance carrier and its agent are responsible for all administrative violations of that agent.

§133.2(1): A commenter believes that there is a grammatical error in the proposed rule text and it appears that the word "with" between "person" and "whom" is not properly included. The commenter recommends the following substitute language: "A person or entity that a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling medical bill processing obligation under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent. This definition does not apply to 'agent' as used in the term 'pharmacy processing agent'."

Agency Response: The Division disagrees with the commenter's suggestion because the Division's current definition is more appropriate for the purposes of Chapter 133. The Division does, however, acknowledge the grammatical error and has made a change. Specifically, the Division has deleted "with" from the definition.

§133.2(1) and (6): Due to the proposed exclusion of pharmacy processing agent for the definition of agent, a commenter requests the Division's specific clarification of intent regarding pharmacy principal liability for acts or omissions of its agent, consistent with other agency liabilities in the Act and Rules.

Agency Response: The Division clarifies that the modified definition of "agent" only applies to use of the term in Chapter 133. For use of that term in Chapter 180, system participants should apply the definition of "agent" in §180.1 of this title (relating to Definitions).

§133.240(b): A commenter supports this proposed provision to the rule.

Response: The Division appreciates the supportive comment.

§133.240(e): A commenter is concerned these proposed changes (and existing language) do not adequately address market-based practices of insurance carriers and other payors utilizing agents in a variety of contractual, proven cost-effective ways. Without further clarity, participants in the pharmacy marketplace could be confused as to what role(s) various entities can lawfully play since implementation of House Bill (HB) 528 in 2011. The commenter requests this concept be explicitly included by adding: "or their agent" after the words "The insurance carrier" to make clear that either an insurance carrier or an insurance carrier's agent - pursuant to contract - can send the state-mandated explanations of benefits. If not included in the final rule, the commenter requests the Division clarify either in the adoption order or responses to comments of an insurance carrier's agent ability to disseminate an EOB on behalf of the insurance carrier, pursuant to contract, without removing the insurance carrier responsibility.

Agency Response: The Division declines to make the change as adding the phrase "or their agent" after "insurance carrier" in subsection (e) of this section is not necessary. As stated above and in the definition of "agent," an agent of the insurance carrier is the insurance carrier for the purpose of medical bill processing and claims service obligations under the Labor Code, Title 5. If an insurance carrier has authorized a person to issue EOBs on its behalf, then that person may do so. Furthermore, the Division notes that the insurance carrier may not contract away its responsibility for management of a claim and is ultimately responsible for the actions of its agents.

Lastly, the Division clarifies that HB 528 authorized insurance carriers or their authorized agents and health care providers to contract with informal or voluntary networks for reduced fee schedules for pharmaceutical benefits. HB 528 did not modify or in any other way affect the ability of an agent of an insurance carrier to issue EOBs on its behalf. Thus, while an informal or voluntary network may issue EOBs on behalf of an insurance carrier, it may not do so simply because it is an informal or voluntary network. It must otherwise be the agent of the insurance carrier and authorized to perform that action on the insurance carrier's behalf.

§133.240(e)(1): A commenter requests additional language to cover market situations where the health care provider does not directly submit a medical bill to an insurance carrier, which is a frequent occurrence in the pharmacy marketplace. Given that both a pharmacy processing agent's role has been acknowledged in existing law and a voluntary and informal network's role is acknowledged by provisions of HB 528, the commenter feels it important for the Division to clarify which entity is actually responsible for the claim and thus should receive an EOB in the unique process flow and contractual arrangements of the workers' compensation pharmacy marketplace - as frequently the health care provider (pharmacy) is not the ultimate party contractually responsible for submitting the prescription claim for payment.

Additionally, the commenter states that since implementation of HB 528 the pharmacy is already paid at a contractual rate by the processing agent, network, voluntary/informal network, or third party biller and is not subject to a reduction or denial. Thus, sending an EOB to a pharmacy that has been paid regarding a short pay or reduction made in reference to the actual submitter's bill would only cause confusion and increase costs for carriers and their agents. The commenter believes the proper entity to receive the EOB is the entity actually submitting the bill and at risk for payment reduction or denial by the insurance carrier. Thus, depending on the route a particular transaction takes, either the health care provider (pharmacy) or another entity contractually authorized to submit a final bill (and thus at risk for no payment or short payment) for payment to the insurance carrier will receive an EOB.

Agency Response: The Division disagrees with the commenter's requested change. Submission of a medical bill is not synonymous with the right to reimbursement for that medical bill because health care provider agents can contract to submit bills on behalf of a health care provider without acquiring the right to reimbursement for that bill. Insurance carriers, therefore, have no means to verify when a billing entity is simply billing on behalf of a health care provider or when the entity has acquired the rights to the claim, and therefore, insurance carriers would have no means of verifying to which entity it should properly send the EOB. The health care provider and health care provider agent are aware of which entity should receive the EOB, however, and can determine the appropriate means to receive information or transfer information between themselves through their contract.

Furthermore, the Division clarifies that HB 528 authorized insurance carriers or their authorized agents and health care providers to contract with informal or voluntary networks for reduced fee schedules for pharmaceutical benefits. It did not modify or in any other way affect the rights and abilities of a pharmacy processing agent under Labor Code §413.0111 or the ability of a health care provider agent to receive EOBs on behalf of the health care provider.

Lastly, the Division notes it has made a change to this subsection to clarify that these adopted amendments do not change the current requirement of §133.240(e)(1).

§133.240(e)(1): A commenter recommends adding the following text to the subparagraph (e)(1): "...when the insurance carrier makes payment, denies, or reduces payment on a medical bill."

Agency Response: The Division declines to make the change. When an insurance carrier makes a payment as currently provided within the pertinent text, a payment includes one which may have been reduced, and the EOB should provide sufficient explanation of the insurance carrier's reasons for payment action.

§133.240(e)(2): A commenter recommends a new, added element that is (e)(2)(B)(v) as follows: "A treating doctor or referral doctor performing an alternate certification in accordance with Texas Labor Code §408.0041(f-2)." The commenter opines that proposed (e)(2)(B)(i) through (iv) is not a complete list without including the health care providers authorized to give alternate certifications of maximum medical improvement and impairment rating in §408.0041(f-2).

Agency Response: The Division declines the recommended new rule text. Treating doctors and referral doctors are already addressed in subsection (e)(2)(B)(i) and (ii).

§133.240(e)(3): Commenters seek clarification to the following questions: (1) does this proposed requirement apply to payment denials in which only one pharmaceutical service is disputed as well as denials in which all pharmaceutical services are disputed? and (2) does this proposed requirement apply to EOBs issued for the original bill, the request for reconsideration, or both?

Agency Response: In regards to the first question, the Division clarifies the requirement applies to any situation in which there is a denial from the insurance carrier. Regarding the second question, the Division recognizes the requirements as proposed are unclear and has made a change. Specifically, the Division adopts language in §133.250(f) of this title that clarifies when reconsideration EOBs must be sent to all parties identified in §133.240(e).

§133.240(e)(3): A commenter supports the proposed new provision, which expands the mailing requirements for an explanation of benefits to include the prescribing doctor when payment for pharmaceutical services is denied.

Agency Response: The Division appreciates the supportive comments that recognize the inclusion of the prescribing doctor.

§133.240(e)(3): A commenter recognizes the need for the prescribing doctor to receive a copy of the EOB when a pharmacy bill has been denied; however, a prescribing physician's address is not a required field for medical electronic data interchange (EDI) and is not captured from the DWC-066 form even though the health care provider is required to list this information on the DWC-066. It will be cumbersome and require implementation of system changes, as well as workflow changes, in order to locate the correct address to mail the EOB so the prescribing physician will receive a copy of it. A physician can practice at many different locations and there can be multiple physicians with the same name. There would be significant added system wide costs to implement this. The commenter requests a minimum timeframe of six months if this portion of the rule is adopted as proposed.

Agency Response: The Division disagrees that these changes will be cumbersome. The Division notes that insurance carriers are currently required to send an EOB to the prescribing doctor in accordance with §134.502 of this title (relating to Pharmaceutical Services) when payment for a prescription is denied. Therefore, system participants should not incur new costs to comply with the adopted provision of this rule since it has been a long-standing requirement of §134.502 of this title. The Division also notes, however, that for other reasons the Division has determined an effective date of July 1, 2012, is most appropriate for these amendments.

§133.240(e)(3): Commenters believe that this new requirement is unnecessary, cumbersome, and promotes ongoing ineffective medical utilization review processes for pharmaceutical services, and recommends deletion. The proposed rule provision is unnecessary since the prescribing doctor is made aware of those claims issues with the processing of the medical bills for the services rendered by the prescribing doctor. When the reason for denial relates to the reasonableness or necessity of the pharmaceutical services, requiring the pharmaceutical services EOB to be sent to the treating doctor does is ineffective as it is too late to avoid harm to the injured employee that results from the injured employee taking inappropriate and potentially dangerous medication or to a pharmacy that has already filled the prescription. This new requirement will add unnecessary expense to the system. There is no justification for the anticipated system cost increase that would result from the proposed provision of the rule.

Another commenter also requests deletion of proposed language "because of any reason relating to the compensability of, liability of, or relatedness to the compensable injury, or...." because it is too burdensome, broad and will inject unnecessary work and cost into the system. Requiring the insurance carrier or their agent to send an EOB to a physician for reasons other than fostering prescribing compliance with the pharmacy closed formulary is clearly unwarranted. Often an insurance carrier will deny payment on a properly prescribed medication for compensability, liability, extent of injury or relatedness to the compensable injury and a myriad of other reasons which have no bearing on the physician's choice of pharmacy treatment. The commenter believes the treating physician has no desire to receive this EOB and it will have no bearing on future pharmacy prescribing patterns as the medical necessity of the prescribed treatment is not in question. This proposed requirement will only lead to confusion and unnecessary costs on behalf of the insurance carrier and/or their agent, and language should be amended to focus on and drive compliance with the Closed Formulary and avoid unnecessary documentation and costs.

Agency Response: The Division declines to delete the new requirement. This provision originates in existing §134.502 of this title, effective since January 1, 2003, and as such, should not require any new or additional effort on the part of the insurance carrier. Additionally, this information is important so the prescribing doctor may consider these factors in future treatment and prescription decisions.

§133.240(f): A commenter supports the proposed amendment which revises the required data elements for an EOB.

Agency Response: The Division appreciates the supportive comments concerning the revised required data elements for an EOB.

§133.240(f): A commenter states it appears data elements and information required on an electronic EOB, versus newly proposed paper EOB requirements are distinctly different, questions why this type of difference would be proposed, and feels this proposed policy will create confusing and costly bifurcated billing, EOB and EDI system processes. If electronic and paper requirements are different and all system stakeholders are required to implement and maintain two different processes and systems for the creation, dissemination, handling and possible subsequent EDI reporting of paper and electronic EOBs, this will be overly burdensome on all system stakeholders. Most pharmacies, payors, pharmacy processing agents, voluntary/informal networks and health care provider billing/EDI systems are established to operate within a single set of parameters for capture and dissemination of billing and EOB data elements (and subsequent EDI reporting); any mandate which requires separate processes and procedures to ensure compliant billing and EDI state reporting actions will be costly and extremely time consuming to implement. For these reasons, the commenter requests further clarification on the following: (1) does the proposed rule language negate or limit the ability to utilize "mutually agreed upon formats," so long as the required state reporting information is contained? and (2) why has the Division created a bifurcated EOB data element requirement, and what is the expected impact on all system stakeholders and subsequently EDI reporting entities?

Agency Response: The Division disagrees that its new paper EOB requirements will create a confusing, bifurcated billing process. The Division's requirements for the paper EOB addresses the situations when the electronic remittance advice (ERA) cannot be sent. These situations include when a health care provider submits a paper medical bill or when the insurance carrier must send a copy to the injured employee or prescribing doctor. Moreover, the Division notes that the majority of these requirements already exist on the current DWC-062 and that these amendments only add a small number of additional elements. The additional data elements contained on the paper EOB are necessary, in part, to correspond with the paper billing requirements of §133.10 of this title (relating to Required Billing Forms/Formats) and, in part, to help the recipient understand the action taken by the insurance carrier, ensure injured employee and health care provider confidentiality, and to provide full disclosure of all network affiliations related to the claim.

Furthermore, the Division notes that this adopted rule provision does not amend or modify the provisions of §133.501(f) of this title, which allows for the use of non-prescribed electronic formats by mutual agreement. However, the Division clarifies that the non-prescribed electronic formats must contain the data elements and content prescribed by the adopted standards in §133.501 of this title, not those related to insurance carrier medical electronic data interchange reporting to the Division.

§133.240(f): Commenters seek clarification to the following question: do the required elements of proposed §133.240(f) apply to EOBs issued for the original bill, the request for reconsideration, or both?

Agency Response: The Division clarifies that required elements of an EOB apply equally in all cases.

§133.240(f)(7): A commenter asks if the insurance carrier can use the last four numbers of the health care provider's social security number instead of the national provider identifier?

Agency Response: The Division declines to adopt the commenter's recommended substitution. The National Provider Identifier (NPI), adopted by 45 Code of Federal Regulations (CFR) §162.406, is the standard unique health identifier for health care providers. The NPI is required to be contained on the medical bill and the use of the NPI is a more efficient and effective means to ensure the appropriate review of services.

§133.240(f)(8): A commenter requests clarification for, or a rule definition of, "patient control number" because it appears unnecessary and cumbersome for pharmacy processing agents, voluntary/informal networks, and subsequently state reporting agents to capture and disseminate.

Agency Response: The Division clarifies that this data element is defined in the electronic transaction sets adopted by reference under §133.501 of this title and the medical state reporting EDI implementation guide adopted by reference under §134.803 of this title (relating to Reporting Standards). Accordingly, further definition of this data element does not appear necessary.

§133.240(f)(9), (13) and (14): A commenter asks if an insurance carrier is providing claims administration services for a self-insured entity, would the self-insured entity be listed as the "insurance carrier" under paragraph (9) of this subsection, and the insurance carrier listed under paragraphs (13) and (14) as the company performing bill review and bill review contact? Also, if an insurance carrier is providing claims administration services for another insurance carrier, would the insurance carrier issuing the insurance policy be listed under paragraph (9) and the carrier performing claims administration services be listed under paragraphs (13) and (14)?

Agency Response: The Division clarifies that the term "insurance carrier" is specifically defined in Labor Code §401.011(27). The Division also clarifies and notes that the commenter's suggested population of the paper EOB appears consistent with this statutory definition, and the intent of the adopted rules.

§133.240(f)(10): A commenter requests clarification for or a rule definition of "insurance carrier control number" because it appears unnecessary and cumbersome for pharmacy processing agents, voluntary/informal networks, and subsequently state reporting agents to capture and disseminate.

Agency Response: The Division clarifies that this data element is defined in the electronic transaction sets adopted by reference under §133.501 of this title and the medical state reporting EDI implementation guide adopted by reference under §134.803 of this title. Accordingly, further definition of this data element does not appear necessary.

§133.240(f)(12): A commenter requests clarification for, or a rule definition of, this data element as the commenter is uncertain if this data element is the ICD-9 code or soon-to-be implemented ICD-10 codes. The commenter further inquires if it is the intent that requirements for provision of "Diagnosis Codes" should synergize with CMS requirements for usage of ICD-9 codes and eventually ICD-10 codes? Is a paper EOB submitted with older/previous ICD code(s) considered to be incomplete, and will it subject the submitter to possible administrative action? Are EOB-submitting entities required to use ICD-9 codes until implementation of ICD-10 codes, and when implementation transition takes effect should ICD-9 codes be used on EOBs sent for claims which were submitted prior to transition to ICD-10 codes?

Agency Response: The Division clarifies that use of the term "diagnosis code(s)" is general in order to accommodate the use of either ICD-9-CM or ICD-10-CM codes. The Division also notes that Labor Code §413.011, in pertinent part, requires the Division to adopt the most current reimbursement methodologies used by the federal Centers for Medicare and Medicaid Services (CMS), including applicable coding policies. In addition, §§134.203, 134.402, 134.403, and 134.404 adopt Medicare payment policies relating to coding, except where otherwise provided by rule. Therefore, when the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) (including The Official ICD-10-CM Guidelines for Coding and Reporting), as maintained and distributed by HHS becomes effective for CMS coding, those ICD-10-CM codes will be required for use on Texas workers' compensation medical bills and EOB for dates of service on and after that effective date not the date an ERA transaction or paper EOB is generated.

§133.240(f)(20): The proposed rule specifies use of an unspecified product or service code when paying interest; however, §134.806(b) of this title (relating to Records Excluded from Reporting) states, "Insurance carriers shall not report interest and penalty payments paid on health care service...." It is confusing that the Division does not want the interest reported via medical bill state reporting, which contains the information from the DWC-062 (EOB), but provides instruction on what code to use on the DWC-062 (EOB) when paying interest.

Agency Response: The Division clarifies that §133.240 and §134.806 of this title serve different purposes, and the different requirements of these two rules noted by the commenter reflect

those different purposes. Specifically, the Division notes that while the Division does not have a need to know interest paid to a health care provider for the purpose of its medical state reporting rules, a health care provider will need to know what portion of the payment is being provided to pay interest when the provider receives payment from an insurance carrier.

§133.240(f) and §134.250(f): A commenter objects to the proposed changes by stating that it adds additional parties and change elements of the EOB. The implementation of these changes will increase costs to the state.

Agency Response: The Division acknowledges that these adopted sections will impose new costs on insurance carriers based on new elements in the paper EOB under §133.240(f), but the Division has addressed both the necessity of these changes and the costs of the changes in the reasoned justification section of this adoption order and in the cost analysis of the formal proposal of these adopted amendments. Furthermore, the Division notes that no additional parties are required to receive the EOB. Insurance carriers are currently required to send an EOB to the prescribing doctor in accordance with §134.502 of this title when payment for a prescription is denied for certain reasons. Therefore, system participants should not incur new costs to comply with the adopted provision of this rule, because it is a long-standing requirement of §134.502 of this title.

§133.240(p) and §133.250(i): A commenter is unsure what proposed language, "expedited provision of medical benefits" means in regards to timeframes for paying or denying medical bills. This verbiage is vague and subjective.

Agency Response: The Division notes that the concept of "expedited provision of medical benefits" is included in Labor Code §504.055. Section 504.055(c) specifically directs the political subdivision, Division, and insurance carrier to accelerate and give priority to an injured first responder's claim for medical benefits.

§133.240(p): A commenter notes that the provisions of Labor Code §504.011(c), as added by HB 2605, applies to specific insurance carriers that handle political subdivision first responder serious bodily injury claims, as opposed to all insurance carriers in the State of Texas. Requiring all utilization review agents and insurance carriers in the state to have written policies to comply with provisions of Chapter 504 appears to exceed the statutory scope.

Agency Response: The Division disagrees that these provisions exceed the statutory scope. The Division has, nonetheless, made a change to this subsection in order to ensure that the Division's rules harmonize with any future amendments to the Department's rules regarding this issue.

§133.250(f): A commenter supports the extended time to 30 days from 21 for final action on a request for reconsideration.

Agency Response: The Division appreciates the supportive comment.

§133.305(a)(3): Commenters opine the term "life-threatening" appears to be appropriately defined but should not be placed in the workers' compensation rules. Interjecting that term into the workers' compensation rules could mislead stakeholders into believing that the expedited utilization review and appeal provisions for life-threatening conditions covered by health insurance and health benefit plans also applies to workers' compensation.

Agency Response: The Division notes that this is an existing definition, and other than number reformatting, is not amended. The definition of life-threatening was originally adopted in this rule to be effective December 31, 2006 without any noted disruption or confusion reported to the Division by system participants.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: none.

For, with changes: Insurance Council of Texas, PMSI, State Office of Risk Management, and Texas Mutual Insurance Company

Against: none.

Neither for or against, with changes: Office of Injured Employee Counsel, Property and Casualty Insurers Association of America, and Texas Association of School Boards.

SUBCHAPTER A. GENERAL RULES FOR MEDICAL BILLING AND PROCESSING

28 TAC §133.2

This section is adopted under the Labor Code §408.027 and Government Code §2001.036 and under the general authority of §402.00128 and §402.061. Labor Code §408.027, concerning payment of health care provider, provides that the Commissioner shall adopt rules as necessary to implement §408.027. Government Code §2001.036 provides, in relevant part, a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State, except that if a later date is specified in the rule, the late date is the effective date.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

§133.2. Definitions.

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

(1) Agent--A person whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling medical bill processing obligations under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent. This definition does not apply to "agent" as used in the term "pharmacy processing agent."

(2) Bill review--Review of any aspect of a medical bill, including retrospective review, in accordance with the Labor Code, the Insurance Code, Division or Department rules, and the appropriate fee and treatment guidelines.

(3) Complete medical bill--A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter (relating to Required Billing Forms/Formats), or as specified for electronic medical bills in §133.500 of this chapter (relating to Electronic Formats for Electronic Medical Bill Processing).

(4) Emergency--Either a medical or mental health emergency as follows:

(A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, in-

cluding severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

(i) placing the patient's health or bodily functions in serious jeopardy, or

(ii) serious dysfunction of any body organ or part;

(B) a mental health emergency is a condition that could reasonably be expected to present danger to the person experiencing the mental health condition or another person.

(5) Final action on a medical bill--

(A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or

(B) denying a charge on the medical bill.

(6) Pharmacy processing agent--A person or entity that contracts with a pharmacy in accordance with Labor Code §413.0111, establishing an agent or assignee relationship, to process claims and act on behalf of the pharmacy under the terms and conditions of a contract related to services being billed. Such contracts may permit the agent or assignee to submit billings, request reconsideration, receive reimbursement, and seek medical dispute resolution for the pharmacy services billed.

(7) Retrospective review--The process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(8) In this chapter, the following terms have the meanings assigned by Labor Code §413.0115:

(A) Voluntary networks; and

(B) Informal networks.

(b) This section is effective July 1, 2012.

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

Filed with the Office of the Secretary of State on March 26, 2012.

TRD-201201577
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 1, 2012
Proposal publication date: December 30, 2011
For further information, please call: (512) 804-4703

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SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §§133.240, 133.250, 133.270

These sections are adopted under the Labor Code §§408.027, 413.031, 504.055, Insurance Code §§1305.354, 4201.054 and 4201.359, and Government Code §2001.036 and under the general authority of §402.00128 and §402.061. In relevant part, Labor Code §408.027, concerning payment of health care provider, provides that the Commissioner shall adopt rules as necessary to implement §408.027. Labor Code §413.031 provides that the commissioner by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. Labor Code §504.055 provides, in relevant part, that insurance carriers and political subdivisions shall accelerate and give priority to an injured first responder's claim for medical benefits. Insurance Code §1305.354 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification to the requesting party of the determination of the request for reconsideration as soon as practicable, but not later than the 30th day after the utilization review agent received the request. Insurance Code §4201.054 provides that the requirements of Chapter 4201 apply to utilization review of a health care services provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. Insurance Code §4201.359 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification of determination of the appeal to the requesting party as soon as practicable, but not later than the 30th day after the utilization review agent received the request. Government Code §2001.036 provides, in relevant part, a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State, except that if a later date is specified in the rule, the late date is the effective date.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

§133.240. Medical Payment and Denials.

(a) An insurance carrier shall take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this chapter (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation.

(b) For health care provided to injured employees not subject to a workers' compensation health care network established under Insurance Code Chapter 1305, the insurance carrier shall not deny reimbursement based on medical necessity for health care preauthorized or voluntarily certified under Chapter 134 of this title (relating to Benefits--Guidelines for Medical Services, Charges, and Payments). For pharmaceutical services provided to any injured employee, the insurance carrier shall not deny reimbursement based on medical necessity for pharmaceutical services preauthorized or agreed to under Chapter 134, Subchapter F of this title (relating to Pharmaceutical Benefits).

(c) The insurance carrier shall not change a billing code on a medical bill or reimburse health care at another billing code's value.

(d) The insurance carrier may request additional documentation, in accordance with §133.210 of this chapter (relating to Medical Documentation), not later than the 45th day after receipt of the medical bill to clarify the health care provider's charges.

(e) The insurance carrier shall send the explanation of benefits in accordance with the elements required by §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing, respectively) if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier shall send an explanation of benefits in accordance with subsection (f) of this section if the in-

surance carrier submits the explanation of benefits in paper form. The explanation of benefits shall be sent to:

(1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill; and

(2) the injured employee when payment is denied because the health care was:

(A) determined to be unreasonable and/or unnecessary;

(B) provided by a health care provider other than:

(i) the treating doctor selected in accordance with Labor Code §408.022;

(ii) a health care provider that the treating doctor has chosen as a consulting or referral health care provider;

(iii) a doctor performing a required medical examination in accordance with §126.5 of this title (relating to Entitlement and Procedure for Requesting Required Medical Examinations) and §126.6 of this title (relating to Required Medical Examination);

(iv) a doctor performing a designated doctor examination in accordance with Labor Code §408.0041; or

(C) unrelated to the compensable injury, in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(3) the prescribing doctor, if different from the health care provider identified in paragraph (1) of this subsection, when payment is denied for pharmaceutical services because of any reason relating to the compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons relating to the reasonableness or medical necessity of the pharmaceutical services.

(f) The paper form of an explanation of benefits under subsection (e) of this section, §133.250 of this title (relating to Reconsideration for Payment of Medical Bills), or §133.260 of this title (relating to Refunds) shall include the following elements:

(1) division claim number, if known;

(2) insurance carrier claim number;

(3) injured employee's name;

(4) last four digits of injured employee's social security number;

(5) date of injury;

(6) health care provider's name and address;

(7) health care provider's federal tax ID or national provider identifier if the health care provider's federal tax ID is the same as the health care provider's social security number;

(8) patient control number if included on the submitted medical bill;

(9) insurance carrier's name and address;

(10) insurance carrier control number;

(11) date of bill review/refund request;

(12) diagnosis code(s);

(13) name and address of company performing bill review;

(14) name and telephone number of bill review contact;

(15) workers' compensation health care network name (if applicable);

(16) pharmacy informal or voluntary network name (if applicable);

(17) health care service information for each billed health care service, to include:

(A) date of service;

(B) the CPT, HCPCS, NDC, or other applicable product or service code;

(C) CPT, HCPCS, NDC, or other applicable product or service code description;

(D) amount charged;

(E) unit(s) of service;

(F) amount paid;

(G) adjustment reason code that conforms to the standards described in §133.500 and §133.501 of this title if total amount paid does not equal total amount charged;

(H) explanation of the reason for reduction/denial if the adjustment reason code was included under subparagraph (G) of this paragraph and if applicable;

(18) a statement that contains the following text: "Health care providers shall not bill any unpaid amounts to the injured employee or the employer, or make any attempt to collect the unpaid amount from the injured employee or the employer unless the injury is finally adjudicated not to be compensable, or the insurance carrier is relieved of the liability under Labor Code §408.024. However, pursuant to §133.250 of this title, the health care provider may file an appeal with the insurance carrier if the health care provider disagrees with the insurance carrier's determination";

(19) if the insurance carrier is requesting a refund, the refund amount being requested and an explanation of why the refund is being requested; and

(20) if the insurance carrier is paying interest in accordance with §134.130 of this title (relating to Interest for Late Payment on Medical Bills and Refunds), the interest amount paid through use of an unspecified product or service code and the number of days on which interest was calculated by using a unit per day.

(g) When the insurance carrier pays a health care provider for health care for which the division has not established a maximum allowable reimbursement, the insurance carrier shall explain and document the method it used to calculate the payment in accordance with §134.1 of this title (relating to Medical Reimbursement) or §134.503 of this title (relating to Pharmacy Fee Guideline).

(h) An insurance carrier shall have filed, or shall concurrently file, the applicable notice required by Labor Code §409.021, and §124.2 and §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) if the insurance carrier reduces or denies payment for health care provided based solely on the insurance carrier's belief that:

(1) the injury is not compensable;

(2) the insurance carrier is not liable for the injury due to lack of insurance coverage; or

(3) the condition for which the health care was provided was not related to the compensable injury.

(i) If dissatisfied with the insurance carrier's final action, the health care provider may request reconsideration of the bill in accordance with §133.250 of this title.

(j) If dissatisfied with the reconsideration outcome, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills).

(k) Health care providers, injured employees, employers, attorneys, and other participants in the system shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except as provided in §133.250 and Chapter 133, Subchapter D of this title.

(l) All payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in accordance with §134.130 of this title without any action taken by the division. The interest payment shall be paid at the same time as the medical bill payment.

(m) When an insurance carrier remits payment to a health care provider agent, the agent shall remit to the health care provider the full amount that the insurance carrier reimburses.

(n) When an insurance carrier remits payment to a pharmacy processing agent, the pharmacy processing agent's reimbursement from the insurance carrier shall be made in accordance with §134.503 of this title. The pharmacy's reimbursement shall be made in accordance with the terms of its contract with the pharmacy processing agent.

(o) An insurance carrier commits an administrative violation if the insurance carrier fails to pay, reduce, deny, or notify the health care provider of the intent to audit a medical bill in accordance with Labor Code §408.027 and division rules.

(p) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

(q) This section is effective July 1, 2012.

§133.250. Reconsideration for Payment of Medical Bills.

(a) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill, the health care provider may request that the insurance carrier reconsider its action.

(b) The health care provider shall submit the request for reconsideration no later than 10 months from the date of service.

(c) A health care provider shall not submit a request for reconsideration until:

(1) the insurance carrier has taken final action on a medical bill; or

(2) the health care provider has not received an explanation of benefits within 50 days from submitting the medical bill to the insurance carrier.

(d) The request for reconsideration shall:

(1) reference the original bill and include the same billing codes, date(s) of service, and dollar amounts as the original bill;

(2) include a copy of the original explanation of benefits, if received, or documentation that a request for an explanation of benefits was submitted to the insurance carrier;

(3) include any necessary and related documentation not submitted with the original medical bill to support the health care provider's position; and

(4) include a bill-specific, substantive explanation in accordance with §133.3 of this title (relating to Communication Between Health Care Providers and Insurance Carriers) that provides a rational basis to modify the previous denial or payment.

(e) An insurance carrier shall review all reconsideration requests for completeness in accordance with subsection (d) of this section and may return an incomplete reconsideration request no later than seven days from the date of receipt. A health care provider may complete and resubmit its request to the insurance carrier.

(f) The insurance carrier shall take final action on a reconsideration request within 30 days of receiving the request for reconsideration. The insurance carrier shall provide an explanation of benefits:

(1) in accordance with §133.240(e) - (f) of this title (relating to Medical Payments and Denials) for all items included in a reconsideration request in the form and format prescribed by the division when there is a change in the original, final action; or

(2) in accordance with of §133.240(e)(1) and §133.240(f) of this title when there is no change in the original, final action.

(g) A health care provider shall not resubmit a request for reconsideration earlier than 35 days from the date the insurance carrier received the original request for reconsideration or after the insurance carrier has taken final action on the reconsideration request.

(h) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill after reconsideration, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills).

(i) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

(j) This section is effective July 1, 2012.

§133.270. Injured Employee Reimbursement for Health Care Paid.

(a) An injured employee may request reimbursement from the insurance carrier when the injured employee has paid for health care provided for a compensable injury, unless the injured employee is liable for payment as specified in:

(1) Insurance Code §1305.451, or

(2) Section 134.504 of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

(b) The injured employee's request for reimbursement shall be legible and shall include documentation or evidence (such as item-

ized receipts) of the amount the injured employee paid the health care provider.

(c) The insurance carrier shall pay or deny the request for reimbursement within 45 days of the request. Reimbursement shall be made in accordance with §134.1 of this title (relating to Medical Reimbursement).

(d) The injured employee may seek reimbursement for any payment made above the division fee guideline or contract amount from the health care provider who received the overpayment.

(e) Within 45 days of a request, the health care provider shall reimburse the injured employee the amount paid above the applicable division fee guideline or contract amount.

(f) The injured employee may request, but is not required to request, reconsideration prior to requesting medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills).

(g) The insurance carrier shall submit injured employee medical billing and payment data to the division in accordance with Chapter 134, Subchapter I of this title (relating to Medical Bill Reporting).

(h) This section is effective July 1, 2012.

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

Filed with the Office of the Secretary of State on March 26, 2012.

TRD-201201578
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 1, 2012
Proposal publication date: December 30, 2011
For further information, please call: (512) 804-4703

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SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.305

These sections are adopted under Labor Code §504.055 and Government Code §2001.036 and under the general authority of §402.00128 and §402.061. Section 504.055 defines "first responder" and "serious bodily injury." Government Code §2001.036 provides, in relevant part, a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State, except that if a later date is specified in the rule, the late date is the effective date.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

§133.305. MDR--General.

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

(1) Adverse determination--A determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary, as defined in Insurance Code §4201.002.

(2) First responder--As defined in Labor Code §504.055(a).

(3) Life-threatening--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted, as defined in Insurance Code §4201.002.

(4) Medical dispute resolution (MDR)--A process for resolution of one or more of the following disputes:

(A) a medical fee dispute; or

(B) a medical necessity dispute, which may be:

(i) a preauthorization or concurrent medical necessity dispute; or

(ii) a retrospective medical necessity dispute.

(5) Medical fee dispute--A dispute that involves an amount of payment for non-network health care rendered to an injured employee that has been determined to be medically necessary and appropriate for treatment of that injured employee's compensable injury. The dispute is resolved by the division pursuant to division rules, including §133.307 of this title (relating to MDR of Fee Disputes). The following types of disputes can be a medical fee dispute:

(A) a health care provider, or a qualified pharmacy processing agent as described in Labor Code §413.0111, dispute of an insurance carrier reduction or denial of a medical bill;

(B) an injured employee dispute of reduction or denial of a refund request for health care charges paid by the injured employee; and

(C) a health care provider dispute regarding the results of a division or insurance carrier audit or review which requires the health care provider to refund an amount for health care services previously paid by the insurance carrier.

(6) Network health care--Health care delivered or arranged by a certified workers' compensation health care network, including authorized out-of-network care, as defined in Insurance Code Chapter 1305 and related rules.

(7) Non-network health care--Health care not delivered or arranged by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules. "Non-network health care" includes health care delivered pursuant to Labor Code §413.011(d-1) and §413.0115.

(8) Preauthorization or concurrent medical necessity dispute--A dispute that involves a review of adverse determination of network or non-network health care requiring preauthorization or concurrent review. The dispute is reviewed by an independent review organization (IRO) pursuant to the Insurance Code, the Labor Code and related rules, including §133.308 of this title (relating to MDR by Independent Review Organizations).

(9) Requestor--The party that timely files a request for medical dispute resolution with the division; the party seeking relief in medical dispute resolution.

(10) Respondent--The party against whom relief is sought.

(11) Retrospective medical necessity dispute--A dispute that involves a review of the medical necessity of health care already provided. The dispute is reviewed by an IRO pursuant to the Insurance Code, Labor Code and related rules, including §133.308 of this title.

(12) Serious bodily injury--As defined by §1.07, Penal Code.

(b) Dispute Sequence. If a dispute regarding compensability, extent of injury, liability, or medical necessity exists for the same service for which there is a medical fee dispute, the disputes regarding compensability, extent of injury, liability, or medical necessity shall be resolved prior to the submission of a medical fee dispute for the same services in accordance with Labor Code §413.031 and §408.021.

(c) Division Administrative Fee. The division may assess a fee, as published on the division's website, in accordance with Labor Code §413.020 when resolving disputes pursuant to §133.307 and §133.308 of this title if the decision indicates the following:

(1) the health care provider billed an amount in conflict with division rules, including billing rules, fee guidelines or treatment guidelines;

(2) the insurance carrier denied or reduced payment in conflict with division rules, including reimbursement or audit rules, fee guidelines or treatment guidelines;

(3) the insurance carrier has reduced the payment based on a contracted discount rate with the health care provider but has not made the contract or the health care provider notice required under Labor Code §408.0281 available upon the division's request;

(4) the insurance carrier has reduced or denied payment based on a contract that indicates the direction or management of health care through a health care provider arrangement that has not been certified as a workers' compensation network, in accordance with Insurance Code Chapter 1305 or through a health care provider arrangement authorized under Labor Code §504.053(b)(2); or

(5) the insurance carrier or healthcare provider did not comply with a provision of the Insurance Code, Labor Code or related rules.

(d) Confidentiality. Any documentation exchanged by the parties during MDR that contains information regarding a patient other than the injured employee for that claim must be redacted by the party submitting the documentation to remove any information that identifies that patient.

(e) Severability. If a court of competent jurisdiction holds that any provision of §§133.305, 133.307, or 133.308 of this title is inconsistent with any statutes of this state, unconstitutional, or invalid for any reason, the remaining provisions of these sections remain in full effect.

(f) This section is effective July 1, 2012.

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

Filed with the Office of the Secretary of State on March 26, 2012.

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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to 28 TAC §134.600, concerning preauthorization, concurrent review, and voluntary certification of health care. The amendments are adopted with changes to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9192).

These amendments are necessary: (1) to harmonize §134.600 with other Division rules and policies, Chapter 504, Labor Code, and certain provisions of Chapters 1305 and 4201, Insurance Code; and (2) to make other changes necessary to clarify the implementation and application of this section. The Division adopts these amendments in conjunction with its adopted amendments to 28 TAC Chapter 133 (relating to General Medical Provisions) published elsewhere in this issue of the *Texas Register.*

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for this rule is set out in this order, which includes the preamble and rule. The preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rule, the reasons why the Division agrees or disagrees with some of the comments and recommendations, and all other Division responses to the comments.

No public hearing was requested or held for this proposal. The public comment period closed on January 30, 2012, and the Division received 12 public comments.

On December 5, 2011, the Division withdrew its proposed amendments to §134.600, which were published in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4783). The Division determined this withdrawal was necessary because the primary purpose of those proposed amendments was to harmonize §134.600 with the amendments to 28 TAC §§19.2001 - 19.2017 and §§19.2019 - 19.2021 (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) (Subchapter U) proposed by the Department in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4344). On November 21, 2011, however, the Department withdrew these proposed amendments to Subchapter U and announced that it would be issuing new informal draft rules on the same topic at a later date. In light of this withdrawal and announcement, the majority of the Division's proposed amendments to §134.600 became premature and were, therefore, withdrawn.

The Division also elected, however, to repropose the July 2011 amendments to §134.600 that did not relate to the Department's proposed amendments to Subchapter U. Those proposed amendments and other new amendments to this section were published in the December 30, 2011, issue of the *Texas Register.* The amendments, as stated above, are necessary to: (1) harmonize §134.600 with other Division rules and procedures, Chapter 504, Labor Code, and certain provisions of Chapters 1305 and 4201, Insurance Code; and (2) make other changes

necessary to clarify the implementation and application of this section. The amendments also make non-substantive changes to this section to conform to current nomenclature, reformatting, consistency, clarity, and to correct typographical and/or grammatical errors.

The Division adopts these amendments with changes from the December 30, 2011 formal proposal. First, the Division has, in response to comment, amended subsection (u) to provide that "all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." This change is necessary to ensure that this section remains in harmony with any future rules issued by the Department on this topic while still requiring all applicable parties to comply with Labor Code §504.055.

Second, the Division has, in response to comment, added new §134.600(v) that incorporates a delayed effective date for this section of July 1, 2012. This delayed effective date is necessary to ensure that parties have sufficient time to evaluate and implement the new requirements of these amendments.

Amended §134.600(a). The adopted amendment to §134.600(a)(4) clarifies that a Division granted exemption for work hardening or work conditioning programs from preauthorization and concurrent review requirements only extends to services that are consistent with the Division's treatment guidelines. This amendment is necessary to harmonize this definition with the Division's clarifying amendments to §134.600(p)(4) and (q)(2), which provide, respectively, that preauthorization or concurrent review is required for all exempted work hardening or work conditioning programs if the proposed services will exceed or are not addressed by the Division's treatment guidelines.

Amended §134.600(f). The adopted amendments to §134.600(f) provide that requests for preauthorization must now also include the name of the injured employee; the name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting the preauthorization; the name and professional license number or national provider identifier of the health care provider who will render the health care if different than the requestor; and the facility name and the facility's national provider identifier, if applicable. These amendments are necessary for proper identification of all parties to the request and to ensure the appropriate review of the request.

Amended §134.600(o). The adopted amendment to §134.600(o)(1) extends the deadline for a requestor to submit a request for reconsideration after receiving denial of a preauthorization request from 15 working days to 30 days. This amendment is necessary to harmonize this requirement with the parallel requirement for network claims under Insurance Code §1305.354, which provides requestors 30 days to submit a request for reconsideration.

The adopted amendment to §134.600(o)(2) extends the deadline for an insurance carrier to respond to a request for reconsideration of a denial of a preauthorization request. The deadline is extended from "within 5 working days of receipt of the request" to "as soon as practicable but not later than the 30th day after receiving a request for reconsideration." This requirement is necessary to comply with Insurance Code §4201.359, which provides that a utilization review agent's procedures must provide that it will respond to an appeal of an adverse determination "as soon as practicable but not later than the 30th day after receiving a request for reconsideration." This amendment also harmonizes this requirement with an analogous requirement for network claims under Insurance Code §1305.354, which provides insurance carriers the same amount of time to respond to a request for reconsideration of an adverse determination.

The adopted amendment to §134.600(o)(3) provides that "[i]n addition to the requirements in this section, the insurance carrier's reconsideration procedures shall include a provision that the period during which the reconsideration is to be completed shall be based on the medical or clinical immediacy of the condition, procedure, or treatment." This amendment is necessary to harmonize §134.600 with §10.103(b)(3) of this title (relating to Reconsideration of Adverse Determination) and to help ensure timely processing of reconsideration requests.

The adopted amendment to §134.600(o)(5) provides that a request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the injured employee's medical condition or objective clinical documentation that demonstrates that the injured employee has met clinical prerequisites for the requested health care that had not been met before submission of the previous request. This amendment is necessary to clarify that requestors may resubmit a preauthorization request when an injured employee's medical condition has not substantially changed, but the injured employee has now met certain clinical prerequisites for the requested procedure that the injured employee had not met before submission of the previous request that would now make review of the medical necessity of the requested procedure appropriate. These substantial changes in course of treatment or other health care services could include, for instance, obtaining necessary psychological evaluations or an additional period of conservative care. The Division has also adopted an amendment to §134.600(o)(5) that makes it an administrative violation to frivolously resubmit a request for preauthorization for the same health care.

Amended §134.600(p). The adopted amendment to §134.600(p)(4) provides that preauthorization is required for all work hardening or work conditioning services if the proposed services are requested by a non-exempted work hardening or work conditioning program or by a Division exempted program if the services will exceed or are not addressed by the Division's treatment guidelines as described in subsection (p)(12). This amendment is necessary to clarify that the exemption provided by subsection (a)(4) only extends to work hardening or work conditioning program services insofar as those services are consistent with the Division's treatment guidelines. Amended §134.600(p) also provides that the preauthorization requirement of subsection (p)(12) does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits). This clarifying amendment is necessary because the Division's recent amendments to §134.506 and newly adopted §134.530 and §134.540 provide that drugs prescribed under either the Division's open or closed formulary only require preauthorization as provided by those sections.

Amended §134.600(q). The adopted amendment to §134.600(q)(2) provides that concurrent review is required for all work hardening or work conditioning services if the proposed services are requested by a non-exempted work hardening or work conditioning program or by a Division exempted program if the services will exceed or are not addressed by the Division's treatment guidelines as described in subsection (p)(12). This amendment is necessary to clarify that the exemption provided by §134.600(a)(4) only extends to work hardening or work conditioning program services insofar as those services are consistent with the Division's treatment guidelines.

Amended §134.600(t). The adopted amendment to §134.600(t) provides that an insurance carrier must maintain accurate records to reflect information regarding requests for reconsideration and requests for medical dispute resolution, in addition to information regarding requests for preauthorization or concurrent utilization, review approval/denial decisions, and appeals. This amendment is necessary to assist the Division in complying with its duties of monitoring, compilation and maintenance of statistical data, review of insurance carrier records, maintenance of an investigation unit, and medical review as required by Labor Code §§414.002, 414.003, 414.004, 414.005, and 414.007.

New §134.600(u). New §134.600(u) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title." This amendment is necessary to clarify the application of the Insurance Code and Department rules to utilization review under this section. New §134.600(u) also provides that "all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." This provision is necessary to ensure that this section remains in harmony with any future rules issued by the Department on this topic while still requiring all applicable parties to comply with Labor Code §504.055.

New §134.600(v). New §134.600(v) provides a delayed effective date for this section of July 1, 2012. This delayed effective date is necessary to ensure that parties have sufficient time to evaluate and implement the new requirements of these amendments.

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

General: A commenter applauds the Division's rulemaking process in an attempt to ensure Labor Code and House Bills are achieved as intended and agrees with many of the Division's recommendations. Another commenter states the Division is to be commended for its effort in ensuring that rules are updated to reflect the interest of various stakeholders.

Agency Response: The Division appreciates the supportive comments.

General: A commenter remarks that when treatment, service and/or medication have been identified during the retrospective review process as not medically reasonable and necessary, any continuation of that treatment, service and/or medication should be required to go through the preauthorization or concurrent review process to ensure that the appropriate step down, transition of care, and weaning or transition is handled in the safest possible way for the injured employee.

Agency Response: The Division disagrees. Requiring health care providers to preauthorize treatments or services because an insurance carrier denied those services retrospectively for lack of medical necessity or reasonableness is administratively infeasible. If the health care provider elects to dispute the insurance carrier's retrospective denial of the medical necessity of the service(s) in question, the commenter's proposed amendment to this section would either require a health care provider to seek preauthorization for subsequent treatments on the basis of that disputed denial, which could unnecessarily delay treatment, or would delay the application of this proposed new requirement until the dispute is fully resolved by which time the course of treatment would often be complete. Furthermore, the Division notes that an insurance carrier seeking to wean or transition an injured employee's health care should be mindful that, in accordance with §134.600(n), an insurance carrier shall not condition an approval or change any elements of a preauthorization request unless the health care provider and insurance carrier mutually agree to these changes or conditions.

General: A commenter requests the Division consider the changes these amendments will require insurance carriers to implement when determining an effective date for the amendments.

Agency Response: The Division carefully reviewed and considered the additional time for system participants to prepare for implementation of this rule. The Division has determined that July 1, 2012 is the appropriate effective date for these amendments and has incorporated this delayed effective date into new subsection (v).

General: A commenter notes that the Division has made a typographical error in its description of the proposed amendments.

Agency Response: The Division acknowledges the error.

§134.600(a)(4), (p)(4) and (q)(2): A commenter requests the requirement by rule that health care providers of work hardening certify compliance with the Division guidelines when submitting a bill or a preauthorization request.

Agency Response: The Division declines to make the suggested change for two reasons. First, comments regarding the submission of a medical bill by a health care provider are outside the scope of these amendments. Second, regarding preauthorization requests, insurance carriers already review the medical necessity of a requested service. Requiring health care providers that provide work hardening to certify compliance with the Division's treatment guidelines is, therefore, either redundant with this requirement (i.e., for services to which the Division's treatment guidelines apply) or inapplicable (i.e., for services which the health care provider asserts appropriately deviate from the Division's treatment guidelines).

§134.600(a)(7): A commenter supports the decision to change the definition of "preauthorization" in §134.600(a)(7). This definition properly reflects that preauthorization is the approval of treatment as opposed to the process of prospective utilization review.

Agency Response: The Division appreciates the supportive comment but notes there is no substantive change to the existing definition. The adopted amendments from the previous text merely reflects current Department and Division terminology

relevant to "insurance carrier," "injured employee," and "health care provider."

§134.600(a)(8): A commenter recommends that injured employees be added to the definition of requestor in §134.600(a)(8). The commenter acknowledges that injured employees are permitted to pursue preauthorization in the rules as proposed; however, in those instances where the injured employee pursues preauthorization it is because the health care provider requestor is not doing so. Therefore, it is more accurate and straightforward to include the injured employee as the requestor because he or she is acting in that capacity.

Agency Response: The Division declines to make the suggested change. The change is unnecessary for reasons stated by the commenter, specifically that injured employees are currently permitted to pursue preauthorization under §134.600.

§134.600(f): A commenter recommends that rule language incorporate an express requirement for all health care providers and all other requestors to submit a physical and electronic address where correspondence and explanations of benefits (EOBs) should be sent when submitting any bill, preauthorization, concurrent/retrospective request or bill for review.

Agency Response: The Division declines to make the suggested changes. Any changes regarding medical bills submitted by a health care provider are outside the scope of this rule, which only addresses preauthorization and concurrent review. Additionally, the Division finds no persuasive rationale for requiring requestors under §134.600(f) to include a physical address in their preauthorization, concurrent review, and voluntary certification, and physical correspondence at this time appears infeasible in light of the deadlines for preauthorization and concurrent review determinations and notices.

§134.600(f): Commenters recommend an amendment stating that in the absence of the required data elements, the insurance carrier shall process the preauthorization request, or in the alternative, amend the rule to address what action an insurance carrier should take if a required element is not included in the request for preauthorization or concurrent review. It is recommended that the Division promulgate a standard request for preauthorization or concurrent review form that is pre-populated with blanks for the required elements. A commenter believes a standardized format will assist the requestor in providing all necessary information and will help the insurance carrier identify the communication as a request for preauthorization or concurrent review.

Agency Response: The Division declines to make the suggested change or to promulgate a new form. Pursuant to §134.600, insurance carriers must review all preauthorization requests solely on the basis of the medical necessity of the services. Insurance carriers do not review preauthorization requests on the basis of compliance with §134.600(f). If the insurance carrier, therefore, determines that the request fails to substantiate the medical necessity of the requested service and cannot remedy these defects through discussion with the health care provider under §134.600(m), the insurance carrier should deny the request. Furthermore, if the insurance carrier believes the requestor has failed to comply with §134.600, the insurance carrier may submit a complaint to the Division regarding this noncompliance.

§134.600(f)(6): A commenter states that including the requestor and requestor's professional license number or national provider identifier or injured employee's name if the injured employee is requesting preauthorization on a preauthorization request is of great help to the utilization review agent. The commenter notes, however, that this amendment will delay requests, and when the requestor is not the same as the proposed health care provider, the requestor may not have this information. The commenter also inquires if this then will limit the responsibility of the treating doctor who is required to be the ultimate responsible party for the injured employee's care, and coordination of said care as stated in the Division's Chapter 180 rules.

Agency Response: The Division disagrees that this amendment will lead to delayed requests beyond minimal initial delays while requestors adapt to the Division's new requirements for preauthorization requests. Further, the Division clarifies that these amendments are necessary for proper identification of all parties to the request and to ensure the appropriate review of the request. The Division also notes that this additional information aids the utilization review agent in the approval process, because it identifies who the direct health care provider is and provides more detail as to the service or treatment. Lastly, the Division additionally clarifies that this new data element does nothing to modify the responsibilities of any health care provider in the workers' compensation system. The roles and responsibilities of the various health care providers in the Texas workers' compensation system are detailed in §180.22 of this title (relating to Health Care Provider Roles and Responsibilities) and other applicable provisions of the Act and Division rules.

§134.600(f)(6) and (7): A commenter is concerned that the proposed addition to add the requestor's professional license number or national provider identifier (NPI) and the facility's NPI to the request will require capturing that information for reporting purposes later. The commenter states that currently the commenter's system only has a field for the requesting health care provider's federal employer identification number (FEIN). It is particularly concerning that it appears the Division is moving away from the FEIN number. If it is the intent of the rule that the Division will require insurance carriers to capture that information, then consideration of adequate time to implement the changes would be necessary to ensure compliance. In addition, the commenter would like it noted that this would cause additional costs for re-programming an existing system.

Agency Response: The Division clarifies that a health care provider's FEIN has never been a required element of a preauthorization request, and, therefore, the Division is not moving away from this element. Furthermore, the Division clarifies that the new requirement for a health care provider identifier is intended to specifically identify the health care provider requesting preauthorization. The Division notes that Labor Code §413.011, in pertinent part, requires the Division to adopt the most current reimbursement methodologies used by the federal Centers for Medicare and Medicaid Services (CMS), including applicable coding policies. Title 45, Code of Federal Regulations (CFR) §162.406 specifically adopts the NPI as the standard unique health identifier for health care providers. Individual health care providers may not have a federal employer identification number FEIN and their tax identification number may not appear on the medical bill submitted after the health care services are rendered. The NPI is required to be contained on the medical bill and the use of the NPI is a more efficient and effective means to ensure the appropriate review of services subject to preauthorization.

Lastly, the Division notes that a health care provider's NPI number is already required to be reported for medical state reporting

purposes in accordance with Subchapter I of Chapter 134 of this title (relating to Medical Bill Reporting).

§134.600(h): A commenter recommends that subsection (h) be modified to require the insurance carrier to specifically consider unresolved issues of compensability, extent of or relatedness to the compensable injury, and the insurance carrier's liability for the injury in reviewing preauthorization requests. The commenter recommends that the insurance carrier be required to raise challenges to compensability and relatedness in addition to raising any challenge to whether the proposed treatment is health care reasonably required in the preauthorization process. This would make a preauthorization determination more closely mirror a preauthorization determination in group health and would help reduce the hassle factor that is often cited by health care providers as a reason for their reluctance to participate in the Texas workers' compensation system.

Agency Response: The Division disagrees with the commenter's suggested change. The timelines for an insurance carrier to deny a claim or medical bill on the basis of compensability or extent of injury are governed by Labor Code §409.021 and §408.027, respectively, and cannot be modified by the preauthorization process. The Division does clarify, however, that subsection (l)(3) requires an insurance carrier to include in an approval a notice of any unresolved dispute regarding the denial of compensability or liability or an unresolved dispute of extent or relatedness to the compensable injury.

§134.600(o): Commenters state that the Division's amendments to this subsection effectively extend the preauthorization process to 60 days, which could delay care and require physicians to deviate from the required clinical timeframes of the *Official Disability Guidelines.*

Agency Response: The Division disagrees with the commenter's predicted results of the effective extension of the preauthorization process to 60 days. The preauthorization and request for reconsideration process could only extend to 60 days if both the health care provider takes 30 days to submit a request for reconsideration and the insurance carrier takes 30 days to process the request. In some cases, however, these durations may be appropriate, and Insurance Code §4201.359 provides insurance carriers this timeframe to respond to request for reconsideration, if necessary. If a health care provider believes, however, that an insurance carrier has unnecessarily delayed review of a request for reconsideration, the health care provider should file a complaint with the Division.

§134.600(o)(2)(A): Commenters object to extending the deadline for an insurance carrier to respond to a request for reconsideration from 5 days to 30 days and question the Division justification for this change. The commenters provide various rationales for their disagreement, including but not limited to: (1) objecting to the Division's stated reason of harmonization with certified network rules, because health care providers who agree to join a network do so with an agreement to abide by the network's rules; (2) the relatively short timeframe it takes to review a request; and (3) most requests already take the maximum amount of time to respond and this deadline extension will only exacerbate this practice and further delay treatments and services for injured employees.

Agency Response: The Division disagrees with commenters' objections and does not modify the proposed extended deadline for review of a request of reconsideration of a denied preauthorization request. As stated in the Division's proposal of this amended section, this amendment is necessary to comply with Insurance Code §4201.359. Furthermore, the Division notes that this deadline also harmonizes non-network and network care and that this deadline has been successfully implemented in the network context.

§134.600(o)(2)(A): A commenter states that the wording "as soon as practicable" is ambiguous. The commenter asks how this will be measured and who decides what is practicable.

Agency Response: The Division declines to define the term because what is "as soon as practicable" must be determined on a case-by-case basis. The Division also clarifies that the ultimate 30 day deadline to review all requests for reconsideration provides an objective deadline that will limit disputes as to the practicality of a particular review. If a health care provider believes, however, that an insurance carrier has unnecessarily delayed review of a request for reconsideration, the health care provider should file a complaint with the Division.

§134.600(o)(3): A commenter notes that there is no definition of "clinical immediacy." This could cause conflicts in interpretation of how long a particular preauthorization reconsideration request should take.

Agency Response: The Division acknowledges that parties could potentially disagree over "clinical immediacy" of a particular request for reconsideration, but this disagreement would not necessarily be cured by a definition of the term. Furthermore, because this term originates in Insurance Code, Chapters 1305 and 4201, it is more properly defined, if necessary, in the context of rule proposals directly relating to that chapter. Lastly, the Division notes that if a health care provider believes that an insurance carrier has unnecessarily delayed review of a request for reconsideration, the health care provider should file a complaint with the Division.

§134.600(o)(3): A commenter states the Legislature has created only one factor to consider regarding the necessity of expedited utilization review for Chapter 1305 networks: whether or not the review pertains to an emergency and thus requires no preauthorization. Creating additional factors for networks based on "immediacy" applies non-applicable Chapter 4201 standards onto Chapter 1305 networks, in violation of §1305.351(a).

Agency Response: The commenter's concerns are directed to the Insurance Code and its applicability to Certified Workers' Compensation Health Care Networks. Section 134.600 does not apply to Certified Workers' Compensation Health Care Networks.

§134.600(o)(5): Commenters support this change and believe it will be beneficial to all system participants. A commenter states this inclusion is an important change that will serve to ameliorate the unintended consequences of the requirement to prove a substantial change in the injured employee's medical condition before a preauthorization request can be resubmitted and will result in additional necessary health care being provided to injured employees.

Agency Response: The Division appreciates the supportive comment.

§134.600(o)(5): A commenter recommends that the Division clarify that if the requestor submits the additional information to the insurance carrier during the 30 day reconsideration period the insurance carrier may process the documents as a request for reconsideration rather than a resubmission.

Agency Response: The Division declines to make the commenter's suggested clarification. A resubmission of a preauthorization request on the basis of a change in clinical circumstances is not requesting an insurance carrier to reconsider its previous adverse determination or disputing that adverse determination but instead is requesting an insurance carrier to issue a new decision based on the clinical prerequisites met that had not been met before the previous request. The Division further clarifies that resubmission of a preauthorization under this exception is distinct from a scenario in which a health care provider had met all applicable clinical prerequisites for a requested procedure before submitting a preauthorization request but failed to document that these prerequisites had been met. In this scenario, it would be appropriate to submit the additional documentation of the already completed prerequisites through the reconsideration process.

§134.600(o)(5): A commenter states this additional information is much appreciated, and requests clarification as to what constitutes a "frivolous resubmission."

Agency Response: The Division notes that any determination of frivolity must be made on a case-by-case basis but also points the commenter to §180.1(12) of this title (relating to Definitions), which defines "frivolous" as "that which does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law."

§134.600(p)(4)(B): A commenter commends the clarification provided ensuring that services that will exceed or are not addressed by the Division's treatment guidelines be a requirement for preauthorization.

Agency Response: The Division appreciates the supportive comment but notes that this is an existing requirement not modified by these amendments.

§134.600(p)(11): Regarding chronic injuries, a commenter recommends where the procedure summary differs from the formulary determination of "Yes" or "No" for a drug, clarification of whether the formulary or body part chapter procedure summary recommendation for a drug takes precedence would be beneficial. The commenter further suggests that consideration be given to eliminating possible discrepancies by designating all such drugs as "No" drugs in the formulary.

Agency Response: The Division notes that these comments pertaining to the Division's pharmacy closed formulary are outside the scope of the proposed rules.

§134.600(p)(12): A commenter suggests the addition of this requirement of not applying to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits) will potentially create confusion.

Agency Response: The Division disagrees. The clarifying amendment is necessary because the Division's recent amendments to §134.506 and adopted new §134.530 and §134.540 of this title provide that drugs prescribed under either the Division's open or closed formulary only require preauthorization as provided by those sections. Without such a provided reference in this subchapter pertaining to prospective and concurrent review of health care, a system participant might not realize that separate and more specific preauthorization requirements exist in a separate subchapter pertaining to pharmaceutical benefits.

§134.600(p)(12): Commenters recommend deletion of the last sentence of the proposed rule. This prescription drug exemption is inappropriate in the closed formulary rules and is inappropriate in the preauthorization rule. The purpose of preauthorization is to protect the injured employee from adverse health outcomes that result from inappropriate medical care and to alleviate the Texas workers' compensation system from unnecessary costs. Pharmaceutical services including prescription drugs should be subject to preauthorization if the prescription exceeds or is not addressed by the adopted treatment guidelines.

Agency Response: The Division disagrees and declines to make the recommended changes because these adopted changes to subsection (p)(12) are specifically made for the purpose of conforming to the existing requirement of adopted pharmacy formulary rules and cannot be modified without modification of those rules as well. For further explanation of the rationale for this preauthorization policy, the Division directs the commenters to the Division's rationale preamble to the adoption of the pharmacy formulary published at 35 TexReg 11344. The Division also clarifies, however, that regardless of the preauthorization requirements, current Division rules require pharmaceutical services to be provided in accordance with the Division's treatment guidelines. All current prescribing practices, therefore, should be conforming to these treatment guidelines.

§134.600(u): A commenter notes that the provisions of Labor Code §504.011(c), as added by House Bill 2605, applies to specific insurance carriers that handle political subdivision first responder serious bodily injury claims, as opposed to all carriers in the State of Texas. Requiring all utilization review agents and insurance carriers in the state to have written policies to comply with provisions of Chapter 504 appears to exceed the statutory scope.

Agency Response: The Division disagrees that these provisions exceed the statutory scope. The Division has, nonetheless, made a change to this proposed subsection in order to ensure that this rule harmonizes with any future amendments to the Department's rules regarding this issue.

§134.600(u): A commenter is unsure what proposed language, "expedited provision of medical benefits" means in regards to timeframes for reviewing preauthorization, concurrent review, and reconsideration requests. This verbiage is vague and subjective.

Agency Response: The Division notes that the concept of "expedited provision of medical benefits" is included in Labor Code §504.055, and declines to further define the terms. Section 504.055(c) specifically directs the political subdivision, Division, and insurance carrier to accelerate and give priority to an injured first responder's claim for medical benefits.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For: none.

For, with changes: Coventry Workers' Comp. Services, Insurance Council of Texas, Review Med, and Texas Mutual Insurance Company.

Against: none

Neither for or against, with changes: Office of Injured Employee Counsel, Property Casualty Insurers Association of America, State Office of Risk Management, and Texas Association of School Boards Risk Management Fund.

The amendments are adopted under the Labor Code §§408.021, 413.014, and 504.055, Insurance Code §§1305.354, 4201.054, and 4201.359, and Government Code §2001.036 and under

the general authority of §402.00128 and §402.061. In relevant part, Labor Code §408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed and is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or maintain employment. Labor Code §413.014 provides that the commissioner by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Labor Code §504.055 provides, in relevant part, that insurance carriers and political subdivisions shall accelerate and give priority to an injured first responder's claim for medical benefits. Insurance Code §1305.354 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification to the requesting party of the determination of the request for reconsideration as soon as practicable, but not later than the 30th day after the utilization review agent received the request. Insurance Code §4201.054 provides that the requirements of Chapter 4201 apply to utilization review of a health care services provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. Insurance Code §4201.359 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification of determination of the appeal to the requesting party as soon as practicable, but not later than the 30th day after the utilization review agent received the request. Government Code §2001.036 provides, in relevant part, a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state, except that if a later date is specified in the rule, the late date is the effective date.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

§134.600. Preauthorization, Concurrent Review, and Voluntary Certification of Health Care.

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

(1) Ambulatory surgical services: surgical services provided in a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(2) Concurrent review: a review of on-going health care listed in subsection (q) of this section for an extension of treatment beyond previously approved health care listed in subsection (p) of this section.

(3) Diagnostic study: any test used to help establish or exclude the presence of disease/injury in symptomatic individuals. The test may help determine the diagnosis, screen for specific disease/injury, guide the management of an established disease/injury, and formulate a prognosis.

(4) Division exempted program: a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited work conditioning or work hardening program that has requested and been granted an exemption by the division from preauthorization and concurrent review requirements except for those provided by subsections (p)(4) and (q)(2) of this section.

(5) Final adjudication: the commissioner has issued a final decision or order that is no longer subject to appeal by either party.

(6) Outpatient surgical services: surgical services provided in a freestanding surgical center or a hospital outpatient department to patients who do not require overnight hospital care.

(7) Preauthorization: prospective approval obtained from the insurance carrier by the requestor or injured employee prior to providing the health care treatment or services (health care).

(8) Requestor: the health care provider or designated representative, including office staff or a referral health care provider/health care facility that requests preauthorization, concurrent review, or voluntary certification.

(9) Work conditioning and work hardening: return-to-work rehabilitation programs as defined in this chapter.

(b) When division-adopted treatment guidelines conflict with this section, this section prevails.

(c) The insurance carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (p) or (q) of this section only when the following situations occur:

(A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);

(B) preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care;

(C) concurrent review of any health care listed in subsection (q) of this section that was approved prior to providing the health care; or

(D) when ordered by the commissioner;

(2) or per subsection (r) of this section when voluntary certification was requested and payment agreed upon prior to providing the health care for any health care not listed in subsection (p) of this section.

(d) The insurance carrier is not liable under subsection (c)(1)(B) or (C) of this section if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

(e) The insurance carrier shall designate accessible direct telephone and facsimile numbers and may designate an electronic transmission address for use by the requestor or injured employee to request preauthorization or concurrent review during normal business hours. The direct number shall be answered or the facsimile or electronic transmission address responded to by the insurance carrier within the time limits established in subsection (i) of this section.

(f) The requestor or injured employee shall request and obtain preauthorization from the insurance carrier prior to providing or receiving health care listed in subsection (p) of this section. Concurrent review shall be requested prior to the conclusion of the specific number of treatments or period of time preauthorized and approval must be obtained prior to extending the health care listed in subsection (q) of this section. The request for preauthorization or concurrent review shall be sent to the insurance carrier by telephone, facsimile, or electronic transmission and, include the:

(1) name of the injured employee;

(2) specific health care listed in subsection (p) or (q) of this section;

(3) number of specific health care treatments and the specific period of time requested to complete the treatments;

(4) information to substantiate the medical necessity of the health care requested;

(5) accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the insurance carrier;

(6) name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting preauthorization;

(7) name, professional license number or national provider identifier of the health care provider who will render the health care if different than paragraph (6) of this subsection and if known;

(8) facility name, and the facility's national provider identifier if the proposed health care is to be rendered in a facility; and

(9) estimated date of proposed health care.

(g) A health care provider may submit a request for health care to treat an injury or diagnosis that is not accepted by the insurance carrier in accordance with Labor Code §408.0042.

(1) The request shall be in the form of a treatment plan for a 60 day timeframe.

(2) The insurance carrier shall review requests submitted in accordance with this subsection for both medical necessity and relatedness.

(3) If denying the request, the insurance carrier shall indicate whether the denial is based on medical necessity and/or unrelated injury/diagnosis in accordance with subsection (m) of this section.

(4) The requestor or injured employee may file an extent of injury dispute upon receipt of an insurance carrier's response which includes a denial due to unrelated injury/diagnosis, regardless of the issue of medical necessity.

(5) Requests which include a denial due to unrelated injury/diagnosis may not proceed to medical dispute resolution based on the denial of unrelatedness. However, requests which include a denial based on medical necessity may proceed to medical dispute resolution for the issue of medical necessity in accordance with subsection (o) of this section.

(h) Except for requests submitted in accordance with subsection (g) of this section, the insurance carrier shall approve or deny requests based solely upon the medical necessity of the health care required to treat the injury, regardless of:

(1) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(2) the insurance carrier's liability for the injury; or

(3) the fact that the injured employee has reached maximum medical improvement.

(i) The insurance carrier shall contact the requestor or injured employee by telephone, facsimile, or electronic transmission with the decision to approve or deny the request as follows:

(1) within three working days of receipt of a request for preauthorization; or

(2) within three working days of receipt of a request for concurrent review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(j) The insurance carrier shall send written notification of the approval or denial of the request within one working day of the decision to the:

(1) injured employee;

(2) injured employee's representative; and

(3) requestor, if not previously sent by facsimile or electronic transmission.

(k) The insurance carrier's failure to comply with any timeframe requirements of this section shall result in an administrative violation.

(l) The insurance carrier shall not withdraw a preauthorization or concurrent review approval once issued. The approval shall include:

(1) the specific health care;

(2) the approved number of health care treatments and specific period of time to complete the treatments; and

(3) a notice of any unresolved dispute regarding the denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury.

(m) The insurance carrier shall afford the requestor a reasonable opportunity to discuss the clinical basis for a denial with the appropriate doctor or health care provider performing the review prior to the issuance of a preauthorization or concurrent review denial. The denial shall include:

(1) the clinical basis for the denial;

(2) a description or the source of the screening criteria that were utilized as guidelines in making the denial;

(3) the principle reasons for the denial, if applicable;

(4) a plain language description of the complaint and appeal processes, if denial was based on Labor Code §408.0042, include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference); and

(5) after reconsideration of a denial, the notification of the availability of an independent review.

(n) The insurance carrier shall not condition an approval or change any elements of the request as listed in subsection (f) of this section, unless the condition or change is mutually agreed to by the health care provider and insurance carrier and is documented.

(o) If the initial response is a denial of preauthorization or concurrent review, the requestor or injured employee may request reconsideration.

(1) The requestor or injured employee may within 30 days of receipt of a written initial denial request the insurance carrier to reconsider the denial and shall document the reconsideration request.

(2) The insurance carrier shall respond to the request for reconsideration of the denial:

(A) as soon as practicable but not later than the 30th day after receiving a request for reconsideration of denied preauthorization; or

(B) within three working days of receipt of a request for reconsideration of denied concurrent review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(3) In addition to the requirements in this section, the insurance carrier's reconsideration procedures shall include a provision that the period during which the reconsideration is to be completed shall be based on the medical or clinical immediacy of the condition, procedure, or treatment.

(4) The requestor or injured employee may appeal the denial of a reconsideration request regarding medical necessity by filing a dispute in accordance with Labor Code §413.031 and related division rules.

(5) A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the injured employee's medical condition or that demonstrates that the injured employee has met clinical prerequisites for the requested health care that had not been previously met before submission of the previous request. The insurance carrier shall review the documentation and determine if any substantial change in the injured employee's medical condition has occurred or if all necessary clinical prerequisites have been met. A frivolous resubmission of a preauthorization request for the same health care constitutes an administrative violation.

(p) Non-emergency health care requiring preauthorization includes:

(1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay;

(2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section;

(3) spinal surgery;

(4) all work hardening or work conditioning services requested by:

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in paragraph (12) of this subsection;

(5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels:

(A) Level I code range for Physical Medicine and Rehabilitation, but limited to:

(i) Modalities, both supervised and constant attendance;

(ii) Therapeutic procedures, excluding work hardening and work conditioning;

(iii) Orthotics/Prosthetics Management;

(iv) Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code; and

(B) Level II temporary code(s) for physical and occupational therapy services provided in a home setting;

(C) except for the first six visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

(i) the date of injury; or

(ii) a surgical intervention previously preauthorized by the insurance carrier;

(6) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care;

(7) all psychological testing and psychotherapy, repeat interviews, and biofeedback, except when any service is part of a preauthorized or division exempted return-to-work rehabilitation program;

(8) unless otherwise specified in this subsection, a repeat individual diagnostic study:

(A) with a reimbursement rate of greater than $350 as established in the current Medical Fee Guideline; or

(B) without a reimbursement rate established in the current Medical Fee Guideline;

(9) all durable medical equipment (DME) in excess of $500 billed charges per item (either purchase or expected cumulative rental);

(10) chronic pain management/interdisciplinary pain rehabilitation;

(11) drugs not included in the applicable division formulary;

(12) treatments and services that exceed or are not addressed by the commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the insurance carrier. This requirement does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits);

(13) required treatment plans; and

(14) any treatment for an injury or diagnosis that is not accepted by the insurance carrier pursuant to Labor Code §408.0042 and §126.14 of this title (relating to Treating Doctor Examination to Define the Compensable Injury).

(q) The health care requiring concurrent review for an extension for previously approved services includes:

(1) inpatient length of stay;

(2) all work hardening or work conditioning services requested by:

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in subsection (p)(12) of this section;

(3) physical and occupational therapy services as referenced in subsection (p)(5) of this section;

(4) investigational or experimental services or use of devices;

(5) chronic pain management/interdisciplinary pain rehabilitation; and

(6) required treatment plans.

(r) The requestor and insurance carrier may voluntarily discuss health care that does not require preauthorization or concurrent review under subsections (p) and (q) of this section respectively.

(1) Denial of a request for voluntary certification is not subject to dispute resolution for prospective review of medical necessity.

(2) The insurance carrier may certify health care requested. The carrier and requestor shall document the agreement. Health care provided as a result of the agreement is not subject to retrospective review of medical necessity.

(3) If there is no agreement between the insurance carrier and requestor, health care provided is subject to retrospective review of medical necessity.

(s) An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims, by the division in accordance with Labor Code §408.0231(b)(4) and other sections of this title.

(t) The insurance carrier shall maintain accurate records to reflect information regarding requests for preauthorization, or concurrent review approval/denial decisions, and appeals, including requests for reconsideration and requests for medical dispute resolution, if any. The insurance carrier shall also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the division, the insurance carrier shall submit such information in the form and manner prescribed by the division.

(u) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title (relating to Agents' Licensing). Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

(v) This section is effective July 1, 2012.

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

Filed with the Office of the Secretary of State on March 26, 2012.

TRD-201201576
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 1, 2012
Proposal publication date: December 30, 2011
For further information, please call: (512) 804-4703

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) adopts amendments to §15.25, concerning Address. This section is adopted without changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 649) and will not be republished.

These amendments are required by the 82nd Texas Legislature, 2011, Senate Bill 1292, which added Texas Transportation Code, §521.1211, requiring the department to issue driver licenses displaying an alternate address for eligible peace officers. The amendments to §15.25 inform the public of what will be required of applicants for issuance of an eligible peace officer's driver license with an alternate address.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.1211, which authorizes the department to adopt rules for the issuance of a driver license to a peace officer that omits the license holder's actual residence address and includes, as an alternative, an address that is in the municipality or county of the peace officer's residence and is acceptable to the department.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201552
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 12, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 424-5848

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37 TAC §15.38

The Texas Department of Public Safety (the department) adopts amendments to §15.38, concerning Fee Exemption. This section is adopted without changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 650) and will not be republished.

These amendments are required by the 82nd Texas Legislature, 2011, House Bill 1148, which amended Texas Transportation Code, §521.426(a), requiring the department to waive the issuance fee for identification certificates to qualified disabled veterans. The amendments to §15.38 inform the public of what will be required of applicants for issuance of a no-cost identification certificate and also clarify the rule language for easier understanding.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.426(b),

which authorizes the department to adopt rules relating to the proof of entitlement to a no-cost driver license or election identification certificate to eligible applicants.

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

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TRD-201201553
D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

37 TAC §§21.1 - 21.7, 21.9

The Texas Department of Public Safety (the department) adopts amendments to §21.1 and new §§21.2 - 21.7 and 21.9, concerning Equipment and Vehicle Safety Standards. These sections are adopted without changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 651) and will not be republished.

The amendments to §21.1 and the simultaneous repeal of and adoption of new §§21.2 - 21.7 and 21.9 are necessary to reorganize existing language and improve the clarity of Chapter 21. The chapter title is also changed from "Equipment and Vehicle Standards" to "Equipment and Vehicle Safety Standards" to better describe the contents of Chapter 21.

The amendments to §21.1 are necessary to improve clarity by renaming the section from "Standards for Vehicle Equipment" to "Standards for Vehicle Safety" and by moving existing language relating to the Standards for Vehicle Performance (originally §21.1(d) and (e)) to new §21.2, by moving the Standards for Sunscreening (originally §21.1(f)) to new §21.3, and by moving the Standards for Safety Guards or Flaps (originally §21.1(g)) to new §21.4. Additional amendments to §21.1 are necessary to clarify that the "Standards" and "Terms and/or Definitions" apply to Chapter 21, rather than only §21.1.

Except for the following revisions, the original language from former §21.1(d) - (g) is transferred to new §§21.2 - 21.4.

Language from §21.1(g)(9) which relates to sunscreening devices and vehicle inspection is moved for clarity, ensuring references to sunscreening devices are located in the appropriate subsection of new §21.3, concerning Standards for Sunscreening.

New §21.4, Standards for Safety Guards or Flaps, incorporates language added to Texas Transportation Code, §547.606 as a result of 82nd Legislature, 2011, House Bill 1330, relating to safety guards or flaps. The statutory changes, effective September 1, 2011, provide that safety guards or flaps also apply to certain vehicles with at least two super single tires and provide the definition for a "super single tire."

New language has been added to new §21.4 to provide that safety guards or flaps may be held in place by structure as well as by weight, clarifying that a safety guard or flap held in place by a frame or other device is in compliance with the regulation. Additional new language to §21.4 clarifies that the 12-inch tolerance for safety guards or flaps only applies when the vehicle is standing still or otherwise not in motion and that safety guards or flaps, which are designed to be flexible, may swing with the wind currents created by the motion of a commercial motor vehicle, so long as they continue to perform the function for which they were designed, that is, blocking particles thrown backward by the rear tires.

Collectively, these additions to new §21.4 ensure that laws related to safety guards or flaps are enforced in a more uniform manner.

Language from former §21.7, concerning Safety Chains, is moved to new §21.5, concerning Standards for Safety Chains. The following revision has been made to the original text. The effective date referenced in new §21.7(b)(3) is clearly stated and language clarifying that safety chains are not required to be crossed, but in all cases must be connected in a manner to ensure the tow-bar does not drop to the ground if it fails or become disconnected from the towing vehicle has been added.

Language from previously existing §21.2 is transferred to new §21.6, concerning Motorcycle Operator and Passengers Protective Headgear Minimum Safety Standards and Exemption for Motorcycle Protective Headgear. The original language is modified to remove the specific requirement of $10,000 of medical benefits and clarify that the amount of benefits required by Texas Transportation Code, §661.003 will be determined by the Texas Department of Insurance. The original language from former §21.2(f) - (i) is deleted and is not included in the new §21.6.

Language from §21.3 is transferred to new §21.7, concerning Certification of Certain Vehicles. No changes were made to the original text.

Language from §21.4 is transferred to new §21.9, concerning Slow-Moving Vehicle Emblem Standards. Again, no changes were made to the original text.

No comments were received regarding the adoption of these amendments and new sections.

These amendments and new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §547.101, which authorizes the Department of Public Safety to adopt standards for vehicle equipment.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201554
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 12, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 424-5848

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CHAPTER 21. EQUIPMENT AND VEHICLE STANDARDS

37 TAC §§21.2 - 21.4, 21.7

The Texas Department of Public Safety (the department) adopts the repeal of §§21.2 - 21.4 and 21.7, concerning Equipment and Vehicle Standards. These repeals are adopted without changes to the proposal as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 659) and will not be republished.

The repeal of these sections is filed simultaneously with the adoption of amendments to §21.1 and new §§21.2 - 21.7 and 21.9 and is necessary to reorganize existing language and improve the clarity of Chapter 21.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §547.101, which authorizes the Department of Public Safety to adopt standards for vehicle equipment.

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201555
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 12, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. ADMINISTRATIVE RESPONSIBILITIES OF STATE FACILITIES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §3.101 and adopts new §§3.401 - 3.404, in Chapter 3, Administrative Responsibilities of State Facilities, with changes to the proposed text published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7495).

The amendment and new sections are adopted, in part, to implement Senate Bill (SB) 643, 81st Legislature, Regular Session, 2009. SB 643 requires HHSC, on behalf of DADS, to promulgate rules concerning annual refresher training for state supported living center (SSLC) direct care staff. SB 643 also details specific requirements for orientation training of SSLC staff. The adoption consolidates, in Chapter 3, rules pertaining to SSLC staff training requirements that are currently in Chapters 4 and 5. The adopted amendment to Chapter 4 and repeal in Chapter 5 are published elsewhere in this issue of the *Texas Register.*

In §3.101(17), the acronym for "Texas Health and Safety Code" was added to allow for abbreviation of the code throughout the chapter.

In §3.101(19), the definition of "high-risk alleged offender" was corrected by adding a statutory reference that allows an individual to request an administrative hearing and to bring suit to appeal a determination that the individual is a high-risk alleged offender.

In §3.101(22) and (23), the terms "personal support plan" and "personal support team" were changed to "individual support plan" and "interdisciplinary team" to reflect current terminology. The definitions were also modified to provide greater emphasis on the central role of the individual in development of the plan and on the role of the team in determining living options.

In §3.401(b)(1), a grammatical error was corrected.

In §3.401(b)(2), integration, independence, and person-directed choices were added as topics to be included in basic orientation of an employee.

In §3.401(c)(5), an individual's right to receive services in the most integrated appropriate setting was added as an example of one of the rights included in orientation on rights in general.

In §3.402(a)(1), data collection, as part of implementing an individual support plan, was added to the topics to be covered in training of a direct support professional.

In §3.402(a)(2), a requirement to train direct support staff on individuals' communication styles and strategies was added.

In §3.402(a)(7), the wording was clarified to indicate that training on individual support plans includes training on the development of the plan.

In §3.403(b), an error was corrected to require refresher training on unusual incidents to occur annually.

In §3.404, four specific topics for training provided to staff at a forensic facility were added.

DADS received written comments from Disability Rights Texas.

Comment: The commenter suggested changing the definition of "confirmed" at §3.101(7) to use the same definition used by the Department of Family and Protective Services (DFPS).

Response: In 40 TAC §711.421, DFPS rule states that an investigator makes a finding of "confirmed" if there is credible evidence to support that abuse, neglect, or exploitation occurred. The current definition is consistent with that rule and no changes to the definition were proposed. The agency will consider the comment in connection with future amendments to Chapter 3, but made no changes in response to the comment.

Comment: The commenter stated that the definition of "high-risk alleged offender" at §3.101(19) only addresses the role of the interdisciplinary team in determining risk status and that the definition is incomplete because an optional administrative hearing may also play a role in determining status.

Response: The agency agrees with this comment and notes that an individual may also bring suit in court to appeal a determination. Therefore, the definition was changed to read: "An alleged offender who has been determined to be at risk of inflicting

substantial physical harm to another person in accordance with THSC §555.003."

Comment: The commenter suggested adding "person-directed" to the definition of personal support plan (now individual support plan) at §3.101(22).

Response: The agency agrees with this comment and made the suggested change.

Comment: The commenter suggested changing the definition of personal support plan (now interdisciplinary team) in §3.101(23) to emphasize the critical role of the individual in the team and to highlight one of the interdisciplinary team's roles regarding community placement.

Response: The agency agrees that both of these roles are important and revised the definition.

Comment: Concerning §3.401, the commenter suggested adding integration, independence, and person-directed choices to the list of topics that the new employee orientation should include.

Response: The agency agrees with the comment and changed the rule accordingly.

Comment: Concerning §3.401, the commenter suggested adding a training requirement that new employees receive information and instruction on the right to services in the most integrated setting appropriate to each individual.

Response: The agency agrees that this is an important topic and has added it as one of the rights covered by §3.401(c)(5).

Comment: Concerning §3.402(a), the commenter suggested adding development and data collection to the training requirements regarding individual support plans and a requirement that staff be trained on communication styles and strategies for each individual with whom the direct support professional will work.

Response: The agency agrees with the comment and changed §3.402(a)(1) to require a direct support professional to be trained on data collection for the individual support plan for each individual with whom the employee will work. In addition, §3.402(a)(7) was changed to specifically provide that a direct support professional must be trained on the development of individual support plans.

Comment: Concerning §3.402(b), the commenter suggested adding the word "above" to the lead-in sentence so that it reads, "If training on any of the above or following topics is relevant...."

Response: All of the topics listed in §3.402(a) are required; therefore, the addition of the word "above" is unnecessary and potentially confusing. No changes were made to the rule.

Comment: Concerning §3.404, the commenter suggested that the rule further clarify the concept of training in regards to the service delivery system.

Response: The agency agrees with the comment and has listed specific topics of training to be provided to a direct support professional at a forensic facility.

SUBCHAPTER A. DEFINITIONS

40 TAC §3.101

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, §555.024, which provides that the HHSC executive commissioner shall adopt rules requiring a state supported living center to provide refresher courses to direct care employees on a regular basis.

§3.101. Definitions.

The following words and terms, when used in this chapter (relating to Administrative Responsibilities of State Facilities), have the following meanings, unless the context clearly indicates otherwise:

(1) Alleged offender--An individual who was committed or transferred to a facility:

(A) under Code of Criminal Procedure, Chapters 46B or 46C, as a result of being charged with or convicted of a criminal offense; or

(B) under Family Code, Chapter 55, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) Allegation--A report by a person suspecting or having knowledge that an individual has been or is in a state of abuse, neglect, or exploitation as defined in this chapter.

(3) Applicant--A person who has applied to be an employee, volunteer, or unpaid professional intern.

(4) CANRS--The client abuse and neglect reporting system maintained by DADS Consumer Rights and Services.

(5) Child--An individual less than 18 years of age who is not and has not been married and who has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(6) Clinical practice--The demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the relevant chapter of the Texas Occupations Code.

(7) Confirmed--Term used to describe an allegation that DFPS determines is supported by a preponderance of the evidence.

(8) Contractor--A person who contracts with a facility to provide services to an individual, including an independent school district that provides educational services at the facility.

(9) Conviction--The adjudication of guilt for a criminal offense.

(10) DADS--Department of Aging and Disability Services.

(11) Direct support professional--An unlicensed employee who directly provides services to an individual.

(12) Deferred adjudication--Has the meaning given to "community supervision" in Texas Code of Criminal Procedure, §42.12, Section 2.

(13) DFPS--Department of Family and Protective Services.

(14) Director--The director of a facility or the director's designee.

(15) Employee--A person employed by DADS whose assigned duty station is at a facility.

(16) Facility--A state supported living center or the ICF/MR component of the Rio Grande State Center.

(17) Forensic facility--A facility designated under Texas Health and Safety Code (THSC), §555.002(a) for the care of high-risk alleged offenders.

(18) Guardian--An individual appointed and qualified as a guardian of the person under the Texas Probate Code, Chapter XII.

(19) High-risk alleged offender--An alleged offender who has been determined to be at risk of inflicting substantial physical harm to another person in accordance with THSC §555.003.

(20) Inconclusive--Term used to describe an allegation leading to no conclusion or definite result by DFPS due to lack of witnesses or other relevant evidence.

(21) Individual--A person with a developmental disability receiving services from a facility.

(22) Individual support plan--An integrated, coherent, person-directed plan that reflects an individual's preferences, strengths, needs, and personal vision, as well as the protections, supports, and services the individual will receive to accomplish identified goals and objectives.

(23) Interdisciplinary team--An interdisciplinary team with the active participation of the individual and LAR, that is responsible for assessing the individual's treatment, training, and habilitation needs and making recommendations for services based on the personal goals and preferences of the individual using a person-directed planning process, including recommendations on whether the individual is best served in a facility or community setting.

(24) Mental health services provider--Has the meaning assigned in the Texas Civil Practice and Remedies Code, Chapter 81.

(25) Peer review--A review of clinical or professional practice of a doctor, pharmacist, licensed vocational nurse, or registered nurse conducted by his or her professional peers.

(26) Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.

(27) Person--Includes a corporation, organization, governmental subdivision or agency, or any other legal entity.

(28) Positive behavior support plan--A comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies.

(29) Preponderance of the evidence--The greater weight of evidence, or evidence that is more credible and convincing to the mind.

(30) Primary contact--The person designated as the primary contact of an alleged victim of abuse, neglect, or exploitation, if the alleged victim is an adult with an intellectual disability who is unable to authorize the disclosure of protected health information and does not have a guardian.

(31) Registries--

(A) the Nurse Aide Registry maintained by DADS in accordance with 40 Texas Administrative Code (TAC) §94.10 (relating to Registry, Findings, and Inquiries); and

(B) the Employee Misconduct Registry maintained by DADS in accordance with 40 TAC Chapter 93 (relating to Employee Misconduct Registry (EMR)).

(32) Reporter--A person who reports an allegation of abuse, neglect, or exploitation.

(33) Retaliation--An action intended to inflict emotional or physical harm or inconvenience on a person that is taken because the person has reported abuse, neglect, or exploitation, including harassment, disciplinary action, discrimination, reprimand, threat, and criticism.

(34) SSLC--A state supported living center.

(35) Unconfirmed--Term used to describe an allegation that DFPS determines is not supported by the preponderance of evidence.

(36) Unfounded--Term used to describe an allegation that DFPS determines is spurious or patently without factual basis.

(37) Unusual incident--An event or situation that seriously threatens the health, safety, or life of an individual.

(38) Volunteer--A person who is not part of a visiting group, who has active, direct contact with an individual, and who does not receive compensation from DADS other than reimbursement for actual expenses.

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

Filed with the Office of the Secretary of State on March 21, 2012.

TRD-201201489
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 10, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 438-3734

SUBCHAPTER D. TRAINING

40 TAC §§3.401 - 3.404

The new sections are 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, §555.024, which provides that the HHSC executive commissioner shall adopt rules requiring a state supported living center to provide refresher courses to direct care employees on a regular basis.

§3.401. Training for New Employees.

(a) Before an employee performs employment duties without direct supervision, a facility must provide the employee with basic orientation.

(b) The focus of the basic orientation must be on:

(1) the uniqueness of each individual with whom the employee will work;

(2) techniques for improving the quality of life and promoting the integration, independence, person-directed choices, and health and safety of individuals; and

(3) the conduct expected of employees.

(c) The basic orientation must include instruction and information on the following topics:

(1) the general operation and layout of the facility, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), including the right to live in the least restrictive setting appropriate to the individual's needs and abilities;

(6) respecting personal choices made by individuals;

(7) the safe and proper use of restraints;

(8) abuse, neglect, and exploitation of individuals;

(9) unusual incidents;

(10) illegal drug use in the workplace;

(11) workplace violence;

(12) sexual harassment in the workplace;

(13) preventing and treating infection;

(14) responding to emergencies, including information about first aid and cardiopulmonary resuscitation procedures;

(15) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(16) the rights of facility employees.

§3.402. Additional Training for Direct Support Professionals.

(a) Before a direct support professional performs employment duties without direct supervision, a facility must provide relevant training that covers at least the following topics to the direct support professional:

(1) implementation and data collection requirements for the individual support plan for each individual with whom the direct support professional will work;

(2) communication styles and strategies for each individual with whom the direct support professional will work;

(3) prevention and management of aggressive or violent behavior;

(4) observing and reporting changes in behavior, appearance, or health of individuals;

(5) positive behavior support;

(6) emergency response;

(7) development of individual support plans;

(8) self-determination;

(9) seizure safety;

(10) working with aging individuals;

(11) assisting individuals with personal hygiene;

(12) physical and nutritional management plans;

(13) home and community-based services, including the principles of community inclusion and participation in the community living options information process; and

(14) procedures for securing evidence following an incident of suspected abuse, neglect, or exploitation.

(b) If training on any of the following topics is relevant to working with a particular individual, a facility must provide that training to the direct support professional before performing duties related to that individual without direct supervision:

(1) using techniques for lifting, positioning, moving and increasing mobility;

(2) assisting individuals with visual, hearing, or communication impairments or who require adaptive devices and specialized equipment;

(3) recognizing appropriate food textures; and

(4) using proper feeding techniques to assist individuals with meals.

§3.403. Refresher Training.

(a) A facility must provide training on abuse, neglect, and exploitation to an employee annually.

(b) A facility must provide training on unusual incidents to an employee annually.

(c) A facility must provide training on the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability) to a direct care professional annually and to an employee who is not a direct care professional every two years.

(d) A facility must provide training on restraints to a direct support professional annually.

§3.404. Specialized Training for of a Forensic Facility Employee.

Before a direct support professional performs employment duties at a forensic facility without direct supervision, the forensic facility must provide training regarding the service delivery system for high-risk alleged offenders to the direct support professional on the following topics:

(1) types of commitments;

(2) observing, communicating, and preventing problems;

(3) working with various types of high-risk alleged offenders; and

(4) an interdisciplinary approach to meeting the specialized needs of high-risk alleged offenders.

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

Filed with the Office of the Secretary of State on March 21, 2012.

TRD-201201490

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 10, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 438-3734

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CHAPTER 4. RIGHTS AND PROTECTION OF INDIVIDUALS RECEIVING INTELLECTUAL DISABILITY SERVICES

SUBCHAPTER C. RIGHTS OF INDIVIDUALS WITH AN INTELLECTUAL DISABILITY

40 TAC §4.121

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §4.121, in Chapter 4, Rights and Protection of Individuals Receiving Mental Retardation Services, without changes to the proposed text published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7498).

The amendment is adopted to delete training requirements for State Supported Living Center (SSLC) staff currently in Chapter 4. New rules in Chapter 3, published elsewhere in this issue of the *Texas Register,* incorporate the same requirements.

Government Code, §531.0227, requires health and human service agencies to use the preferred terms of "person first respectful language," as added by Government Code, Chapter 392. To meet this requirement, the titles of the chapter and subchapter are being amended. The title of Chapter 4 is changed to "Rights and Protection of Individuals Receiving Intellectual Disability Services," and the title of Subchapter C is changed to "Rights of Individuals with an Intellectual Disability."

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, §555.024, which provides that the HHSC executive commissioner shall adopt rules requiring a state supported living center to provide refresher courses to direct care employees on a regular basis.

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

Filed with the Office of the Secretary of State on March 21, 2012.

TRD-201201491

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 10, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 438-3734

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CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL RETARDATION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §5.363 and §5.410 in Chapter 5, Provider Clinical Responsibilities--Mental Retardation Services, without changes to the proposed text published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7499).

The repeal is adopted to delete training requirements for State Supported Living Center (SSLC) staff currently in Chapter 5. New rules in Chapter 3, published elsewhere in this issue of the *Texas Register,* address training requirements.

Government Code, §531.0227, requires health and human service agencies to use the preferred terms of "person first respectful language," as added by Government Code, Chapter 392. To meet this requirement, the title of the chapter and Subchapters H and I are being amended. The title of Chapter 5 is changed to "Provider Clinical Responsibilities--Intellectual Disability Services," and the title of Subchapters H and I are changed to "Use of Restraint in State Facilities" and "Behavior Therapy in State Facilities," respectively.

DADS received written comments from Disability Rights Texas.

Comment: The commenter opposed the repeal of §5.363 and §5.410, stating that there is concern about a potential gap between the repeal of rules and the development of operational policies and about the possibility of repealing rules governing the use of restraint and staff training on behavior therapy, and replacing them with operational policy.

Response: The agency disagrees with this comment. There is no gap between repeal of the rule at §5.363 and the adoption of §§3.401 - 3.404, as the repeal and adoption will have the same effective dates. Further, the agency is not proposing to repeal the rules and replace them with operational policy but to repeal and replace them with new rules. Finally, the repealed sections do not govern the use of restraint or the implementation of behavior therapy, but rather staff training regarding these topics, which is addressed in the new rules. No changes were made in response to this comment.

SUBCHAPTER H. USE OF RESTRAINT IN STATE MENTAL RETARDATION FACILITIES

40 TAC §5.363

The repeal 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 commis-

sioner 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, §555.024, which provides that the HHSC executive commissioner shall adopt rules requiring a state supported living center to provide refresher courses to direct care employees on a regular basis.

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

Filed with the Office of the Secretary of State on March 21, 2012.

TRD-201201492
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 10, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 438-3734

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SUBCHAPTER I. BEHAVIOR THERAPY IN STATE MENTAL RETARDATION FACILITIES

40 TAC §5.410

The repeal 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, §555.024, which provides that the HHSC executive commissioner shall adopt rules requiring a state supported living center to provide refresher courses to direct care employees on a regular basis.

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

Filed with the Office of the Secretary of State on March 21, 2012.

TRD-201201493
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 10, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.36

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts amendments to §57.36, concerning the level of funding for projects receiving ABTPA grant funds, without changes as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 670).

The adopted rule amendments would include a provision for grantees to expend the 20 percent cash match contribution before the end of the current grant period. Expended match contributions should enable a grant project to operate effectively throughout the year and not have a significant adverse effect on the financial status of the entire county or city in which the project resides.

No written comments were received regarding amendments to the rule.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a). The ABTPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties, which include determining levels of funding and conditions for ABTPA grant projects as part of its plan for providing financial support to combat automobile theft and economic automobile theft as required by §7 and §8 of Article 4413(37).

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

Filed with the Office of the Secretary of State on March 23, 2012.

TRD-201201561
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Effective date: April 12, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 374-5101

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Texas Administrative Code, Title 4, Part 1, Chapter 18, concerning Organic Standards and Certification, pursuant to Texas Government Code §2001.039. Section 2001.039 requires state agencies to review and consider for re-adoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Chapter 18, §18.700, concerning Complaints, and §18.705, concerning Registration. The proposal may be found in the proposed rule section of the March 30, 2012, publication of the *Texas Register* (37 TexReg 2135).

The assessment by the department of Chapter 18 indicates that, with the exception of the proposed amendments to §18.700 and §18.705, the reason for re-adopting without changes all remaining sections in Chapter 18 continues to exist.

The department is accepting comments on the review of Chapter 18. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments on Chapter 18 may be submitted to David Kostroun, Chief Administrator, Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-201201560
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: March 23, 2012

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Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapters contained in Title 22, Part 11, of the Texas Administrative Code:

Chapter 213, Practice and Procedure, §§213.1 - 213.34.

Chapter 216, Continuing Competency, §§216.1 - 216.11.

Chapter 221, Advanced Practice Nurses, §§221.1 - 221.4 and §§221.6 - 221-17.

In conducting its review, the Board will assess whether the reasons for originally adopting these chapters continue to exist. Each section of these chapters will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance with Chapter 2001 of the Government Code (The Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. No action is required by the Board. Written comments may be submitted to Lance Brenton, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, by e-mail to lance.brenton@bon.texas.gov, or by fax to Lance Brenton at (512) 305-8101. Any proposed changes to the rules as a result of this review will be published separately in the Proposed Rule section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

This rule review is undertaken pursuant to the Board's 2011-2013 rule review plan that is available on the Secretary of State's website.

TRD-201201505
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: March 22, 2012

♦ ♦ ♦

Adopted Rule Reviews

Automobile Burglary and Theft Prevention Authority

Title 43, Part 3

The Automobile Burglary and Theft Prevention Authority (ABTPA) has completed its review of Chapter 57, relating to the ABTPA. The notice of review was published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 503).

In accordance with Texas Government Code §2001.039, the ABTPA readopts Chapter 57 and finds that the reason for adopting this chapter continues to exist. As part of this review process, the ABTPA will propose changes to §57.3 and §57.23 in a future issue of the *Texas Register.*

No comments were received on the proposed review for Chapter 57 as to whether the reason for adopting the rules continues to exist.

TRD-201201601

Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Filed: March 27, 2012

♦ ♦ ♦

Texas Board of Nursing

Title 22, Part 11

The Texas Board of Nursing (Board) filed a notice of intent to review and consider for re-adopting, revision, or repeal 22 Texas Administrative Code Chapter 226, relating to Patient Safety Pilot Programs on Nurse Reporting Systems. The Notice of Intent to Review was published in the January 27, 2012, issue of the *Texas Register* (37 TexReg 363).

Government Code §2001.039 requires each state agency to review its rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules in Chapter 226 were scheduled for this four-year review. No comments were received concerning the Board's proposed rule review.

The Board has completed its review of the rules in Chapter 226 and has determined that the reasons for originally adopting these rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Chapter 2001 of the Government Code (Administrative Procedure Act).

The Board re-adopts the rules in Chapter 226 without changes, pursuant to Government Code §2001.039 and Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 226 under the implementation of the Board's rule review plan for 2011-2013 that is published on the Secretary of State's website.

TRD-201201501
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: March 22, 2012

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §1.191(b)

Category 1: Pre-Design	**Minimum Training Hours Required**
Programming	80
Site and Building Analysis	80
Project Cost and Feasibility	40
Planning and Zoning Regulations	60
Core Minimum Hours	**260**

Figure: 22 TAC §1.191(c)

Category 2: Design	**Minimum Training Hours Required**
Schematic Design	320
Engineering Systems	360
Construction Cost	120
Codes and Regulations	120
Design Development	320
Construction Documents	1,200
Material Selection and Specification	160
Core Minimum Hours	**2,600**

Figure: 22 TAC §1.191(d)

Category 3: Project Management	**Minimum Training Hours Required**
Bidding and Contract Negotiation	120
Construction Administration	240
Construction Phase: Observation	120
General Project Management	240
Core Minimum Hours	**720**

Figure: 22 TAC §1.191(e)

Category 4: Practice Management	**Minimum Training Hours Required**
Business Operations	80
Leadership and Service	80
Core Minimum Hours	**160**

Figure: 22 TAC §1.191(g)

Experience Setting	Maximum Training Hours Awarded
Experience Setting A: Practice of Architecture Training under the Supervision and Control of an IDP supervisor licensed as an architect in Texas or another jurisdiction with substantially similar licensing requirements who works in an organization lawfully engaged in the Practice of Architecture	No limit Every Applicant must earn at least 1,860 Training Hours in Experience Setting A.
Academic Internships Must meet durational requirements and internship must be completed training in Experience Setting A or Experience Setting O	Maximum of 930 hours which count toward Minimum Training Hours in Experience Setting A or Experience Setting O
Training Setting O: Other Work Settings Supervision and Control by an IDP supervisor licensed as an architect in Texas or another jurisdiction with substantially similar licensing requirements who is employed in an organization not engaged in the Practice of Architecture. Supervision and Control by an IDP supervisor who is not licensed in the United States or Canada but who is engaged in the Practice of Architecture outside of the United States or Canada Supervision and Control by a landscape architect or licensed professional engineer (practicing as a structural, civil, mechanical, fire protection, or electrical engineer in the field of building construction.)	1860 Training Hours
Training Setting S: Supplemental Experience **Supplemental Experience for Core Hours** Core hours earned through supplemental experience are applied to specific IDP experience areas. **Design or Construction Related Employment** Design or construction related activities under the direct supervision of a person experienced in the activity (e.g. analysis of existing buildings; planning; programming; design of interior space; review of technical submissions; engaging in building construction activities). **Leadership and Service** Qualifying experience is pro bono, in support of an organized activity or in support of a specific	930 Training Hours (Maximum) 80 Training Hours (Minimum) 320 Training Hours (Maximum)

organization. There must be an individual who can certify to NCARB that you have performed services in support of the organization.	
Additional Opportunities for Core Hours A maximum of 40 core hours in each of the IDP experience areas may be earned by completing any combination of these experience opportunities: 1.NCARB Emerging Professional's Companion (EPC): Activities 2. NCARB's Professional Conduct Monograph 3. Construction Specifications Institute (CSI) Certificate Program: Certified Construction Specifier (CCS) & Certified Construction Contract Administrator (CCCA) 4. Community-Based Design Center/Collaborative 5. Design Competitions 6. Site Visit with Mentor	600 Training Hours (Maximum)
Supplemental Experience for Elective Hours Elective hours earned through supplemental experience are not applied to any specific IDP experience area.	1,860 Elective Hours
Teaching or Research Teaching or research in a NAAB- or CACB-accredited program under the direct supervision of a person experienced in the activity.	
Additional Opportunities for Elective Hours 1. The Emerging Professional's Companion (EPC): Exercises 2. Green Building Certification Institute (GBCI) Leadership in Energy and Environmental Design Accredited Professional (LEED AP) Certification 3. Advanced Degrees 4. American Institute of Architects (AIA) Continuing Education 5. Construction Specifications Institute Certificate Program (CSI): Construction Documents Technologist (CDT)	

Figure: 37 TAC §35.93

VIOLATION	VIOLATION DESCRIPTION	FINE AMOUNT
UNI - Uniform violation	Failed to have last name identification on outermost garment except plastic raingear	$25.00
UNI - Uniform violation	Failed to have the word "Security" on outermost garment except plastic raingear	$50.00
UNI - Uniform violation	Failed to have company name on outermost garment except plastic raingear	$50.00
FPPC- Failure to present pocket card	Failure to present pocket card upon request	$100.00
PCV - Pocket card violation	Failed to have a color photograph affixed to the pocket card	$50.00
PCV - Pocket card violation	Failed to have signature on the back of the pocket card	$25.00
RECV - Employee records violation	Full name of employee	$25.00
RECV - Employee records violation	Position of employee	$25.00
RECV - Employee records violation	Current residence of the security officer as reported by security officer	$25.00
RECV - Employee records violation	Date of employment when performing a regulated service	$25.00
RECV - Employee records violation	Address of employee as reported by employee	$25.00
RECV - Employee records violation	Social Security number	$25.00
RECV - Employee records violation	Last date of employment	$25.00
RECV - Employee records violation	Date of birth	$25.00
RECV - Employee records violation	Place of birth	$25.00
RECV - Employee records violation	One color photograph	$25.00
RECV - Employee records violation	Failed to keep employee records two years from termination	$100.00
RECV - Employee records violation	Commission only - Current duty assignment and location	$50.00
DT - RECV - Drug testing record violation	Failure to comply with drug free workplace policy within 10 working days of notice from Private Security Bureau (PSB)	$500.00 per quarter
OPSL - Operating while license suspended	Failure to maintain current insurance	$500.00 every 14 days
OPSI - Operating outside scope insurance	Operating outside the scope of insurance coverage	$500 per violation
OPWI - Operating without insurance	Operating without insurance	$500 per violation
FPPI- Failure to provide proof of insurance	Failure to provide requested proof of insurance within 10 working days of notice from PSB	$100 per day
OPEL -Operating while license expired	Operating with an expired license	$500.00 every 14 days
REG - Registration violation	Failure to register employee within 5 days of employee actually beginning work	$200.00
ADDR - Address change violation	Failure to notify PSB within 14 days of change of address	$350.00
CON - Other Contract Violation	Licensee failure to provide requested written report within 7 days	$500.00
DISP - Consumer sign Violation	Failure to display the consumer sign in a prominent place	$100.00
POST - Failure to post license	Failed to post the license	$100.00
CON - Other contract	Licensee failure to provide requested written contract within 7 days	$500.00
ADV - Advertising violation	Failed to have company name as stated in board records	$100.00
ADV - Advertising violation	Failed to have company address as stated in board records	$100.00
ADV - Advertising violation	Failed to have license number as issued by the board	$100.00
PRNT - Fingerprint violation	Failed to obtain fingerprints prior to placing on post	$250.00
BRNC - Failure to notify establishment of branch office	Failed to notify board within 14 days of opening branch office	$500.00
BRNT - Failure to notify closing of branch office	Failed to notify board within 14 days of closing of branch office	$350.00
CHNG - Failure to notify board of change of license name	Failure to notify board of a change in business name	$500.00
FLAG - Business use of flag of Texas	Licensee using the State flag of Texas	$500.00
MGRQ - Failure to qualify a manager	Failed to qualify a manager within 60 days	$500.00 every 14 days
MGRS - Manager failing to control business	Manager failing to control business	$3,000.00
MGRT - Failing to notify board of manager term within 14 days	Failed to notify board of manager term withing 14 days	$500.00
OPS - Failure to notify board of a change of ownership	Failed to notify change of ownership within 14 days	$500.00 every 14 days
SEAL - Using State seal or DPS seal	Using State seal of Texas	$500.00
MGRS - Manager controlling excessive businesses	Manager controlling more than 3 companies and 2 schools	$3,000.00
RSOL - Residential solitication violation	Violation of §35.47 of this title by company	$500.00 per violation
	Violation of §35.47 of this title by individual	$100.00 per violation

Figure: 40 TAC §92.551(d)

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§92.3 Types of Assisted Living Facilities	$300	$450	$500	$650
§92.4. License Fees	$300	$400	$500	$600
§92.11. Criteria for Licensing	$300	$450	$500	$650
§92.16. Change of Ownership	$300	$400	$500	$600
§92.18. Increase in Capacity	$300	$400	$500	$600
§92.41. Standards for Type A, Type B, and Type E Assisted Living Facilities				
(a) employees	$350	$550	$750	$950
(b) social services	$200	$300	$400	$500
(c) resident assessment	$400	$550	$600	$750
(d) resident policies	$250	$350	$450	$550
(e) admission policies	$300	$400	$500	$600
(f) inappropriate placement in Type A or Type B facilities	$700	$800	$900	$1,000
(g) advance directives	$500	$500	$500	$500
(h) resident records	$200	$300	$400	$500
(i) personnel records	$200	$300	$400	$500
(j) medications	$400	$500	$600	$700
(k) accident, injury, or acute illness	$400	$500	$600	$700
(l) resident finances	$200	$300	$400	$500
(m) food and nutrition services	$400	$550	$700	$850
(n) infection control	$400	$550	$700	$850
(o) access to residents	$150	$200	$250	$300
(p) restraints	$700	$800	$900	$1,000
(q) accreditation status	$700	$800	$900	$1,000
§92.51. Licensure of Facilities for Persons with Alzheimer's Disease	$200	$300	$400	$500
§92.53. Standards for Certified Alzheimer's Assisted Living Facilities	$400	$500	$600	$700
§92.54. Advertisements, Solicitations, and Promotional Material	$250	$350	$450	$550
§92.61. Facility Construction-Introduction and Application	$300	$400	$500	$600
§92.62. General Requirements	$350	$450	$550	$650
§92.71. Introduction and Application: Type E Facilities	$300	$400	--	--
§92.72. General Requirements: Type E Facilities	$300	$400	--	--

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§92.81. Inspections and Surveys	$300	$400	$500	$600
§92.82. Determinations and Actions Pursuant to Inspections	$200	$300	$400	$500
§92.102. Abuse, Neglect, Exploitation Reportable to DADS by Facilities	$700	$800	$900	$1,000
§92.123. Investigation of Facility Employees	$450	$550	$650	$750
§92.125. Resident's Bill of Rights and Provider Bill of Rights				
(a) resident's bill of rights	--	--	--	--
(1) post and provide copy of bill	$100	$150	$200	$250
(2) right to exercise civil rights	$150	$200	$250	$300
(3) each resident has the right to:	--	--	--	--
(A) be free from physical, mental abuse, corporal punishment, physical, chemical restraints for discipline/convenience	$700	$800	$900	$1,000
(B) participate in activities	$150	$200	$250	$300
(C) religion of choice	$150	$200	$250	$300
(D) if MR, participate in behavior modification with guardian consent	$150	$200	$250	$300
(E)(i) - (iii)--be treated with respect, consideration, dignity	$200	$250	$300	$350
(F) safe, decent living environment	$100	$150	$200	$250
(G) communicate in native language	$100	$150	$200	$250
(H) complain about care, treatment	$200	$250	$300	$350
(I) receive and send mail	$100	$150	$200	$250
(J) unrestricted communication	$150	$200	$250	$300
(K) make community contacts	$100	$150	$200	$250
(L) manage financial affairs	$100	$150	$200	$250
(M)(i) - (ii) access resident records	$100	$150	$200	$250
(N) choose physician and be informed about treatment and care	$100	$150	$200	$250
(O) help develop individual service plan	$100	$150	$200	$250
(P)(i) - (ii) opportunity to refuse medical treatment or services	$100	$150	$200	$250

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
(Q) unaccompanied access to telephone	$100	$150	$200	$250
(R) privacy	$100	$150	$200	$250
(S) retain and use personal possessions	$100	$150	$200	$250
(T) determine personal preference in dress, hair style, personal effects	$100	$150	$200	$250
(U) retain and use personal property	$100	$150	$200	$250
(V) refuse to perform services	$100	$150	$200	$250
(W)(i) - (ii) be informed about Medicare, Medicaid, and covered items/services	$100	$150	$200	$250
(X)(i) - (v) not be transferred/discharged except under specific conditions	$300	$350	$400	$450
(Y)(i) - (v) not be transferred/discharged except in an emergency without specific written notice	$300	$350	$400	$450
(Z) leave facility temporarily or permanently	$100	$150	$200	$250
(AA) access the Ombudsman program	$100	$150	$200	$250
(BB) execute an advance directive or designate a guardian for decisions	$200	$250	$300	$350
§92.127. Required Posting	$250	$350	$450	$550
§92.129. Authorized Electronic Monitoring (AEM)	$100	$150	$200	$250
§§92.351 - 92.374. Emergency License Suspension and Closing Order	$150	$250	$350	$450
§§92.551 - 92.595. Administrative Penalties	$400	$500	$600	$700

Cancer Prevention and Research Institute of Texas

Request for Applications R-13-CFSA-1 Core Facilities Support Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for the development or enhancement of core facilities that will provide valuable services to enhance the outcomes of scientifically meritorious cancer research projects. Successful applicants should be working in a research environment capable of supporting potentially high-impact cancer studies. The maximum duration of the award is 5 years. The maximum amount that may be requested is $2 million for the first year and up to $1 million for each subsequent year.

A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on April 12, 2012, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on May 31, 2012. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201201588
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: March 26, 2012

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Request for Applications R-13-HIHR-1 High-Impact/High-Risk Research Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for relatively short-term high-impact/high-risk projects that are innovative, developmental, or exploratory in nature targeting new avenues of cancer research that, if successful, would contribute major new insights into the etiology, diagnosis, treatment, or prevention of cancers. Successful applicants would be eligible for a grant award of $200,000 for up to 24 months.

A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on April 12, 2012, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on May 31, 2012. There is a cap on the number of High-Impact/High-Risk Research Award applications that may be submitted per institution. Applicants are advised to consult with their institution's Office of Research and Sponsored Programs (or equivalent). CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201201585
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: March 26, 2012

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Request for Applications R-13-IIRA-1 Individual Investigator Research Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for innovative research proposals that will significantly advance knowledge of the causes, prevention, and/or treatment of cancer. Successful applicants are eligible for a grant award of up to $500,000 annually for up to 3 years. Competitive renewal applications will be accepted. In addition, the request for applications also includes a request for targeted applications for new CPRIT partnerships with The Carson Leslie Foundation and Hoffman-La Roche.

A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on April 12, 2012, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on May 31, 2012. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201201589
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: March 26, 2012

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

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

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/02/12 - 04/08/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/02/12 - 04/08/12 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201201592
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 27, 2012

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Employees Retirement System of Texas

Request for Proposals

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposals ("RFP") for qualified Pharmacy Benefit Managers ("PBM") to provide a Medicare Part D Employer Group Waiver Plan with a commercial Wrap Prescription Drug Program ("PDP") services to Medicare eligible Participants and their dependents under the Texas Employees Group Benefits Program ("GBP"), with an initial term beginning January 1, 2013 through December 31, 2016. The PBM shall provide the level of benefits required in the RFP and meet other requirements that are in the best interest of ERS, the GBP, its Participants and the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

A PBM wishing to respond to this Request shall:

1) Maintain its principal place of business and provide all products and/or services including, but not limited to: call center, billing, eligibility, and programming, etc. within the United States of America, and shall have a Certificate of Authority and/or current license to do business in Texas as a PBM from the Texas Department of Insurance;

2) Have been providing prescription benefit management services for an organization with a member participation of no less than 10,000 or an aggregate of 50,000 covered lives for a minimum of three (3) years;

3) Reflect a pharmacy network capable of servicing the GBP Medicare eligible members that reside within the United States (approximately 74,000 lives) without member access disruption; and

4) Have a current net worth of $25 million as evidenced by a 2011 audited financial statement. Since the PBM would be required to advance up to two (2) weeks of claim payments totaling approximately $3 million before being reimbursed by ERS, the PBM must have at least $6 million of cash and cash equivalents available, on average, throughout its 2011 financial period.

The RFP will be available on or after April 12, 2012 from ERS' website and will include documents for PBM's review and response. To access the secured portion of the RFP website, an interested PBM shall email its request to the attention of iVendor Mailbox at: **ivendorquestions@ers.state.tx.us.** The email request shall reflect:

1) PBM's legal name;

2) Point of contact's full name;

3) Point of contact's physical address;

4) Point of contact's phone and fax numbers; and

5) Point of contact's email address.

Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP.

General questions concerning the RFP and/or ancillary bid materials should be sent to the iVendor Mailbox where the responses, if applicable, are updated frequently. Submission deadline for all RFP questions submitted to the iVendor Mailbox are due on April 27, 2012 at 4:00 p.m. CT. The RFP will be discussed at a Bidders Web Conference on May 1, 2012, beginning at 2:00 p.m. (CT). A PBM wishing to participate is required to register for participation in the Bidders Web Conference no later than 4:00 p.m. (CT) on April 19, 2012, by emailing an acknowledgement to the iVendor Mailbox as referenced above.

To be eligible for consideration, the PBM is required to submit a total of eight (8) sets of the Proposal in a sealed container. One (1) printed original shall be labeled as an "Original" and include fully executed documents, as appropriate, **signed in blue ink** and without amendment or revision. Five (5) additional duplicates of the Proposal, including all required exhibits, shall be provided in printed format. Finally, two (2) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of sample GBP-specific marketing materials, financial statements and audited financial materials) may be reflected on the CD-ROMs. All materials shall be received by ERS no later than 12:00 Noon (CT) on May 10, 2012.

ERS will base its evaluation and selection of a PBM on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with the RFP, operating requirements, pharmacy network, and experience serving large group programs, past experience, administrative quality, program fees and other relevant criteria. Each Proposal will be evaluated both individually and relative to the Proposal of other qualified PBMs. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the GBP, its Participants and the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation thereof. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interest of ERS, the GBP, its Participants and the state of Texas.

TRD-201201494
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: March 22, 2012

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 7, 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 ap-

plicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 7, 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: Amindus Service, LLC dba Mobil Fry Road; DOCKET NUMBER: 2011-1957-PST-E; IDENTIFIER: RN102059870; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $1,754; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: ANN, INCORPORATED dba Kiest Shell; DOCKET NUMBER: 2011-1851-PST-E; IDENTIFIER: RN102645058; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $8,750; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Arturo Ulloa dba JEA Tires; DOCKET NUMBER: 2011-1971-MSW-E; IDENTIFIER: RN106211733; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: tire repair shop with retail sales of new and used tires; RULE VIOLATED: 30 TAC §328.58(a), by failing to use manifests or other approved documentation to document the removal of all scrap tires generated at the facility; and 30 TAC §328.56(d)(2) and §328.60(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers at the facility; PENALTY: $6,375; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: BK GOLDEN SILVER, INCORPORATED dba Lucky One Stop; DOCKET NUMBER: 2011-2219-PST-E; IDENTIFIER: RN104105200; LOCATION: Tool, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: $2,387; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: BOND ENTERPRISES, INCORPORATED dba Fairpark Grocery; DOCKET NUMBER: 2012-0255-PST-E; IDENTIFIER: RN101675841; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the USTs; PENALTY: $2,754; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Braden Exploration, LLC; DOCKET NUMBER: 2011-2113-AIR-E; IDENTIFIER: RN106022320; LOCATION: Decatur, Wise County; TYPE OF FACILITY: gas well site; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent the discharge from any source whatsoever, one or more air contaminants or combinations thereof, in such concentration and of such duration as to interfere with the normal use and enjoyment of animal life, vegetation, or property; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain an authorization for the site; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Charles Busbey dba Clinnons Grocery; DOCKET NUMBER: 2012-0120-PST-E; IDENTIFIER: RN101565943; LOCATION: Whitesboro, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tank; PENALTY: $2,004; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Ennis; DOCKET NUMBER: 2012-0156-PST-E; IDENTIFIER: RN102777562; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the UST; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: CJ CHARLES DEVELOPMENT INCORPORATED dba Daily Stop; DOCKET NUMBER: 2012-0010-PST-E; IDENTIFIER: RN102715638; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(B)(ii), by failing to timely obtain an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $4,013; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Eufrocina Merino dba Roslyn Food Mart; DOCKET NUMBER: 2011-2297-PST-E; IDENTIFIER: RN101809184; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon

major system replacement or modification, whichever occurs first; PENALTY: $2,923; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Federal Express Corporation; DOCKET NUMBER: 2012-0290-PST-E; IDENTIFIER: RN102272416; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every twelve months; PENALTY: $3,342; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: FUEL DEPOT, LLC; DOCKET NUMBER: 2011-2127-PST-E; IDENTIFIER: RN100814714; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $3,416; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2011-1788-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2327, Special Terms and Conditions Number 2.F., Flexible Air Permit Numbers 95 and PSD-TX-854M2, by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: J&S Water Company, L.L.C.; DOCKET NUMBER: 2011-0599-MWD-E; IDENTIFIER: RN102361458 (Facility 1) and RN102361862 (Facility 2); LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012342001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with the permitted effluent limits at Facility 1; 30 TAC §305.125(1), and TPDES Permit Number WQ0012342001, Monitoring and Reporting Requirements Number 7.c., by failing to submit noncompliance notification reports for effluent violations which deviate from the permitted effluent limitation by more than 40% for Facility 1; 30 TAC §305.125(5) and TPDES Permit Number WQ0012342001, Operational Requirements Number 1, by failing to ensure that Facility 1 and all of its systems of collection, treatment, and disposal are properly operated and maintained; and TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0012342001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits at Facility 2; PENALTY: $27,434; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: KENMARK HOMES, LP; DOCKET NUMBER: 2011-2359-WQ-E; IDENTIFIER: RN106270572; LOCATION: Aledo, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $2,500; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: LOS CAMPEONES, INCORPORATED dba Valley International Country Club; DOCKET NUMBER: 2011-2276-MSW-E; IDENTIFIER: RN106103690; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: golf course; RULE VIOLATED: 30 TAC §324.4(1), Texas Health and Safety Code, §371.041 and 40 Code of Federal Regulations (CFR) §279.22(a), by failing to prevent the storage of used oil in a manner that does not endanger the public health or welfare or the environment and by failing to perform response action upon detection of a release of used oil; and 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words Used Oil; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Metroplex Quarry's Incorporated; DOCKET NUMBER: 2011-2112-IWD-E; IDENTIFIER: RN101915148; LOCATION: Mineral Wells, Palo Pinto County; TYPE OF FACILITY: stone quarry; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ000482000, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $1,848; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Momentum Investment, Incorporated dba Angels Gas & Grocery; DOCKET NUMBER: 2011-2124-PST-E; IDENTIFIER: RN102011566; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide a release detection method for the USTs by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons and also by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.72(3), by failing to report a suspected release to the TCEQ within 24 hours of the discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; and 30 TAC §334.48(a) and TWC, §26.121, by failing to prevent an unauthorized release of petroleum substance from the UST system; PENALTY: $38,725; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Montgomery County Water Control and Improvement District Number 1; DOCKET NUMBER: 2011-2332-MWD-E; IDENTIFIER: RN102095205; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment facility with an associated collection system; RULE VIOLATED: TWC, §26.121, 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit (TPDES) Number WQ0010857001, Permit Condition Number 2, by failing to prevent unauthorized discharges of wastewater from a collection system into water in the state; and TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Number WQ0010857001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits; PENALTY: $13,800; ENFORCEMENT COORDINATOR: Stephen Thompson, (512)

239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Munson Point Property Owners Association; DOCKET NUMBER: 2011-1986-PWS-E; IDENTIFIER: RN103128161; LOCATION: Denison, Grayson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: $1,055; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Nita Corporation dba George's Food and Fuel; DOCKET NUMBER: 2011-2043-PST-E; IDENTIFIER: RN100796911; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,750; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: North Orange Water & Sewer, LLC; DOCKET NUMBER: 2011-2100-MWD-E; IDENTIFIER: RN102078896; LOCATION: Orange, Orange County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011155001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; and 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0011155001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze samples for required parameters at the intervals specified in the permit; PENALTY: $4,708; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Prue Bend Homeowner's Association, Incorporated; DOCKET NUMBER: 2011-2103-EAQ-E; IDENTIFIER: RN102751377; LOCATION: Bexar County; TYPE OF FACILITY: single family residential subdivision; RULE VIOLATED: 30 TAC §213.4(k) and Edwards Aquifer Water Pollution Abatement Plan (WPAP) Number 13-02060601B, Standard Condition (SC) Number 17, by failing to maintain the water quality basin in accordance with the approved WPAP; 30 TAC §213.4(g) and Edwards Aquifer WPAP Number 13-02060601B, SC Number 2, by failing to submit proof of recordation notice in the county deed records within 60 days after approval for the WPAP; and 30 TAC §213.5(b)(4)(D)(ii)(II) and Edwards Aquifer WPAP Number 13-02060601B, SC Number 16, by failing to submit to the TCEQ a Texas Licensed Professional Engineer Certification, stating that the permanent best management practice for the Aqualogic basin was constructed as designed within 30 days of site completion; PENALTY: $3,050; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Susser Petroleum Company LLC dba Quick Stuff 384 Stripes; DOCKET NUMBER: 2012-0198-PST-E; IDENTIFIER: RN104744206; LOCATION: Katy, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Susser Petroleum Company, LLC dba QS 318; DOCKET NUMBER: 2011-2029-PST-E; IDENTIFIER: RN101861979; LOCATION: San Antonio, Bexar 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 tank system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: TAKHAR & SON, L.L.C. dba Texas Oasis; DOCKET NUMBER: 2011-0875-PST-E; IDENTIFIER: RN102036878; LOCATION: Tioga, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $12,012; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Tri Gaz 6, Incorporated dba Tiger Mart 36; DOCKET NUMBER: 2011-2037-PST-E; IDENTIFIER: RN102287455; LOCATION: Wilmer, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Tri Gaz, Incorporated dba Tri Gaz 1; DOCKET NUMBER: 2011-2036-PST-E; IDENTIFIER: RN102832276; LOCA-

TION: Wilmer, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: TRINITY PINES CONFERENCE CENTER, INCORPORATED; DOCKET NUMBER: 2012-0047-MWD-E; IDENTIFIER: RN103014494; LOCATION: Trinity, Trinity 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 WQ0014842001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; PENALTY: $9,450; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: U.S. Army Corps of Engineers; DOCKET NUMBER: 2011-1599-MWD-E; IDENTIFIER: RN101715522 (Friendship Park Facility), RN101701688 (Granger Lake Project Facility), RN102185097 (Wilson H. Fox Park Number 1 Facility), and RN101715456 (Wilson H. Fox Park Number 2 Facility); LOCATION: Williamson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §30.350(d) and §305.125(1) and TCEQ Permit Number WQ0012254001, Special Provisions (SP) Number 2, by failing to employ or contract a wastewater treatment facility operator holding the appropriate level of license at the Friendship Park Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254001, Effluent Limitations and Monitoring Requirements B, by failing to collect and analyze effluent samples at the frequency required by the permit at the Friendship Park Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254001, SP Number 9, by failing to monitor and dispose of sludge at the frequency required by the permit at the Friendship Park Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254001, SP Number 3, by failing to maintain the evaporation pond at the Friendship Park Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254001, Effluent Limitations and Monitoring Requirements B, by failing to monitor effluent flow five times per week at the Friendship Park Facility; 30 TAC §30.350(d) and §305.125(1) and TCEQ Permit Number WQ0012090001, SP Number 2, by failing to employ or contract a wastewater treatment facility operator holding the appropriate level of license at the Granger Lake Project Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012090001, Effluent Limitations and Monitoring Requirements B, by failing to collect and analyze effluent samples at the frequency required by the permit at the Granger Lake Project Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012090001, SP Number 9, by failing to monitor and dispose of sludge at the frequency required by the permit at the Granger Lake Project Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012090001, SP Number 3, by failing to maintain the evaporation pond at the Granger Lake Project Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012090001, Effluent Limitations and Monitoring Requirements B, by failing to monitor effluent flow five times per week at the Granger Lake Project Facility; 30 TAC §30.350(d) and §305.125(1) and TCEQ Permit Number WQ0012254002, SP Number 2, by failing to employ or contract a wastewater treatment facility operator holding the appropriate level of license at the Wilson H. Fox Park Number 1 Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254002, Monitoring Requirements Number 7(c), by failing to submit a noncompliance notification to the executive director when a permit limit is exceeded by more than 40% at the Wilson H. Fox Park Number 1 Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254002, SP Number 9, by failing to monitor and dispose of sludge at the frequency required by the permit at the Wilson H. Fox Park Number 1 Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254002, Effluent Limitations and Monitoring Requirements B, by failing to monitor effluent flow five times per week at the Wilson H. Fox Park Number 1 Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254002, Effluent Limitations and Monitoring Requirements B, by failing to collect and analyze effluent samples at the frequency required by the permit at the Wilson H. Fox Park Number 1 Facility; TWC, §26.121(a)(1) and 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254002, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limits at the Wilson H. Fox Park Number 1 Facility; 30 TAC §30.350(d) and §305.125(1) and TCEQ Permit Number WQ0012254003, SP Number 2, by failing to employ or contract a wastewater treatment facility operator holding the appropriate level of license at the Wilson H. Fox Park Number 2 Facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254003, Effluent Limitations and Monitoring Requirements B, by failing to collect and analyze effluent samples at the frequency required by the permit at the Wilson H. Fox Park Number 2 Facility; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0012254003, SP Number 9, by failing to monitor and dispose of sludge at the frequency required by the permit at the Wilson H. Fox Park Number 2 Facility; PENALTY: $53,400; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

TRD-201201590
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 27, 2012

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Notice of Water Quality Applications

The following notices were issued on March 16, 2012, through March 23, 2012.

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

AQUA UTILITIES INC has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014728001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located approximately 2,500 feet west of Farm-to-Market Road 565 and approximately 3,500 feet north of Interstate Highway 10 in Chambers County, Texas 77523.

LUCITE INTERNATIONAL INC which operates Lucite Beaumont Facility, has applied for a renewal of TPDES Permit No. WQ0000473000, which authorizes the discharge of process wastewater, remediated groundwater, utility wastewater, storm water, and previously monitored effluent at a daily average flow of effluent not to exceed 9.99 million gallons per day (MGD) and a daily maximum flow of effluent not to exceed 39.0 MGD via Outfall 001; domestic wastewater and process wastewater from the Bio-Ox Unit at a flow

variable rate via Outfall 101; storm water from various plant areas and utility wastewater at an intermittent and flow variable rate via Outfalls 002, 006, 008, and 021; and storm water from various areas of the plant on an intermittent and flow variable basis via Outfalls 004, 005, 011, 015, 018, and 020. The facility is located at 6350 North Twin City Highway (State Highway 347), on the west bank of the Neches River at the McFadden Bend Cutoff, eight miles north of Sabine Lake, and six miles south of the City of Beaumont, Jefferson County, Texas 77627.

TXI OPERATIONS LP which operates the Streetman Expanded Shale and Clay Plant, a lightweight aggregate production facility, has applied for a renewal of TPDES Permit No. WQ0001691000, which authorizes the discharge of process water (cooling water and wet scrubber water) commingled with storm water at a daily average flow not to exceed 600,000 gallons per day via Outfall 001; and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 14885 South Interstate Highway 45 East, approximately 1.5 miles north of the Wortham/Streetman exit and 2.25 miles northwest of the City of Streetman, in Navarro County, Texas 75859.

UNIVAR USA INC which operates the Houston FM 529 Facility, a bulk chemical distribution facility, has applied for a renewal of TPDES Permit No. WQ0002449000, which authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001, wash water and storm water on an intermittent and flow variable basis via Outfall 002, and storm water on a continuous and flow-restricted basis via Outfall 003. The draft permit authorizes the discharge of storm water on an intermittent and flow variable basis via Outfalls 001, 002, and 003. The facility is located at 11235 Farm-to-Market Road 529, approximately 0.5 mile southwest of the intersection of U.S. Highway 290 and Farm-to-Market Road 529, near the City of Jersey Village, Harris County, Texas 77041.

SOUTHERN CLAY PRODUCTS INC which operates the Gonzales Mill Facility and the Helms and Burleson Mining sites, has applied for an amendment to TPDES Permit No. WQ0002655000 to authorize the addition of wastewater treatment units and to reduce the acreage available for irrigation at the Burleson site from 86 acres to 40 acres. The current permit authorizes the disposal of process wastewater generated during the washing and separating of bentonite from sand and other clays via evaporation and irrigation at a daily average flow not to exceed 130,000 gallons per day, and a daily maximum flow not to exceed 260,000 gallons per day. This permit will not authorize a discharge of pollutants into water in the state. The plant site (Gonzales Mill site) is located at 1212 Church Street, Gonzales, Texas 78629. The disposal sites are located adjacent to U.S. Highway 90A, five miles east of the plant site (Helms site) and four miles east of the plant site (Burleson site), Gonzales County, Texas. The facility and land application sites are located in the drainage area Guadalupe River Below San Marcos River, in Segment No. 1803 of the Guadalupe River Basin.

INFINITY CONSTRUCTION SERVICES which proposes to operate Infinity Construction Services, a pipe fabrication facility, has applied for a new permit, proposed TPDES Permit No. WQ0004971000, to authorize the discharge of treated wash water and treated storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 622 Commerce Street, Clute, Brazoria County, Texas 77531. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

MONTGOMERY COUNTY UTILITY DISTRICT NO 3 has applied for a renewal of TPDES Permit No. WQ0011203001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 15663 Highway 105 West in Montgomery County, Texas 77356. The treated effluent is discharged directly to Lake Conroe in Segment No. 1012 of the San Jacinto River Basin.

STANLEY LAKE MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011367001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 972,000 gallons per day. The facility is located approximately 2,000 feet north of State Highway 105 and adjacent to Lake Conroe, approximately 10 miles west of the City of Conroe in Montgomery County, Texas 77356.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 102 has applied for a renewal of TPDES Permit No. WQ0011523001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located on the north bank of Langham Creek; approximately 2,400 feet east of State Highway 6 and 1.2 miles south of Farm-to-Market Road 529 (Spencer Road) in Harris County, Texas 77084.

WEST CEDAR CREEK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011839001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 684,000 gallons per day. The facility is located approximately 2,200 feet north of the State Highway 274 Bridge crossing over the Cedar Creek Reservoir Spillway, on the west side of State Highway 274 in Henderson County, Texas 75143.

MEMORIAL MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011893001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 2811 South Fry Road, west of the west property line of Barker Reservoir, which is south of a Harris County Flood Control District Ditch and approximately 14 miles south of Fry Road and Interstate Highway 10 in Harris County, Texas 77450.

LAKE SOUTH WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0012439001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 700 feet north of State Highway 105 and 1,600 feet east of McCaleb Road in Montgomery County, Texas 77304.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 18 has applied for a renewal of TPDES Permit No. WQ0013273001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located adjacent to Lake Conroe and Rusty Creek; approximately 1.0 mile southwest of the intersection of Farm-to-Market Road 1097 and Bentwater Drive in Montgomery County, Texas 77356.

KAMPGROUNDS OF AMERICA INC has applied for a renewal of TPDES Permit No. WQ0014210001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 19785 Highway 105 West, approximately 0.35 mile southeast of the intersection of Highway 105 and Keenan Road, 1.8 miles northwest of the intersection of Highway 105 and River Road, and east of the Community of Montgomery in Montgomery County, Texas 77356.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 151 has applied for a major amendment to TPDES Permit No. WQ0014528001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 900,000 gallons per day to an annual average flow not to exceed 1,200,000 gallons per day. The facility is located approximately two miles west

and 1.1 miles south of the intersection of Interstate Highway 10 and Farm-to-Market Road 1463 in Fort Bend County, Texas 77494.

VAM USA LLC has applied for a major amendment to TPDES Permit No. WQ0003420000 (EPA I.D. No. TX0084093) to authorize the removal of all waste streams with the exception of treated domestic wastewater, which converts the permit to Municipal Wastewater Permit No. WQ0015026001 (EPA I.D. No. TX0084093) and a decrease in the discharge of treated domestic and industrial wastewater from a daily average flow not to exceed 20,000 gallons per day to a daily average flow of domestic wastewater not to exceed 10,000 gallons per day. The facility is located at 19210 East Hardy Road, approximately 0.5 mile east of the intersection of Hardy Road and Richey Road, and approximately two miles south of Farm-to-Market Road 1960 in Harris County, Texas 77073.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001515000 issued to City Public Service of San Antonio, P.O. Box 1771, San Antonio, Texas 78296-1771, which operates the V. H. Braunig Steam Electric Station, to change language in the other requirements section regarding Cooling Water Intake Structure operations that was approved during the last permit action but was not included in the final issued permit. The existing permit authorizes the discharge of once-through cooling water, previously monitored effluents, and storm water runoff at a daily average flow not to exceed 1,320,000,000 gallons per day via Outfall 001; the discharge of storm water runoff at an intermittent and flow variable basis via Outfalls 003, 006, 007, 008, 011, 013, and 015; and the discharge of storm water runoff and car wash water at an intermittent and flow variable basis via Outfall 012. The facility is located at 15290 Streich Road, approximately two miles east of Interstate Highway 37 South, adjacent to Braunig Lake, approximately 2.75 miles northwest of the City of Elmendorf and 17 miles southeast of the City of San Antonio, Bexar County, Texas 78112.

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.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201201611
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 28, 2012

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Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five-year CFSP for the period from October 1, 2009, through September 30, 2014.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2012 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for fiscal year 2012 funds for the Chafee Foster Care Independence Program. The annual report referenced above must be submitted by June 30, 2012.

The purpose of this notice is to solicit input in the development of the APSR. This input will enable DFPS to consider and include any changes to the Title IV-B State Plan in order to best meet the needs of the children and families that DFPS serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS Web site at: http://www.dfps.state.tx.us. The Web site includes a copy of last year's Title IV-B report. After you go to the Web site, click "About DFPS," "Reports, Plans, Statistics, and Presentations," and then "Title IV-B State Plan."

Written comments regarding the annual update may be faxed or mailed to: Texas Department of Family and Protective Services, Attention: Max Villarreal; P.O. Box 149030, MC Y-934; Austin, Texas 78714-9030; telephone (512) 919-7868; fax (512) 339-5927. The comments must be received no later than May 1, 2012.

TRD-201201594
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: March 27, 2012

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General Land Office

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 March 14, 2012, through March 21, 2012. 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 web site. The notice was published on the web site on March 28, 2012. The public comment period for this project will close at 5:00 p.m. on April 27, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Samson Lone Star, LLC; Location: The project site is located in wetlands adjacent to Willie Slough Marsh, 12 miles west of Sabine Pass, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Big Hill Bayou, Texas. NAD 83, Latitude: 29.7531 North; Longitude: -94.11800 West. Project Description: The applicant proposes to construct a natural gas well by discharging 12,294 cubic yards of fill material to construct a 425-foot by 450-foot well pad (4.39 acres) impacting 3.81 acres of wetlands. Access to the constructed well pad will be from an existing access road. The applicant proposed to mitigate for the proposed impacts by

performing permittee-responsible mitigation through preservation of a suitable sized tract at Edwin Arnaud Rose City Marsh. CMP Project No.: 12-0690-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00025 is being evaluated under §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).

Applicant: Oiltanking Texas City, LP; Location: The project site is located in the Texas City Industrial Turning Basin, at Dock 65, within the Port of Texas City, Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. NAD 83, Latitude: 29.362 North; Longitude: -94.917 West. Project Description: The applicant proposes to demolish the existing Dock 65 to construct a new alternate barge dock configuration that will accommodate two barges. The construction of the new dock involves removal of 5 existing monopile structures and installation of 4 barge breasting dolphins and 4 barge mooring dolphins. The applicant has stated that they have avoided and minimized the environmental impacts by constructing the new barge dock in the similar footprint of the existing barge dock. In addition, no wetlands will be impacted by the construction of this project. CMP Project No.: 12-0692-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-01176 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).

Applicant: Oiltanking Houston, LP; Location: The project site is located in the Houston Ship Channel/ Buffalo Bayou, near Deep Park in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Porte, Texas. NAD 83, Latitude: 29.738 North; Longitude: -95.123 West. Project Description: The applicant proposes to create a new Dock 9 adjacent to the existing Dock 8 located within the applicant's facility. The existing ship dock for Dock 8 will remain in place but the applicant proposes to install a new pile-supported pipe support with approachway, a new mooring tower, a new breasting dolphin, and a new mooring dolphin for the created Dock 9. The applicant proposes to mitigate for proposed impacts by purchasing the applicable number of mitigation credits from Spellbottom Mitigation Bank. CMP Project No.: 12-0693-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00073 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).

Applicant: Tnegras Corporation; Location: The project site is located in Dead Caney Lake at the end of Gulfview Road, south of Sargent, in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: CEDAR LAKES WEST, Texas. NAD 83, Latitude: 28.778 North; Longitude: -95.626 West. Project Description: The applicant proposes to mechanically excavate approximately 28,500 cubic yards of uplands and 1,200 cubic yards of wetlands to a depth of 10 feet below mean sea level to create a canal community and flushing channel. Approximately 0.60 acre of estuarine wetlands will be displaced. Dredged material will be contained on adjacent uplands behind earthen berms. The canal will be bulkheaded. The applicant proposes to compensate for wetland losses at a 2:1 ratio by grading down adjoining uplands and planting with native estuarine species. The 1.3 acre mitigation site will be vegetated by transplanting native wetland species from the proposed impact site, and supplementing these plantings with additional native species, as needed. CMP Project No.: 12-0695-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00580 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).

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 Ms. Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201201616
Larry L. Laine
Chief Clerk
General Land Office
Filed: March 28, 2012

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Notice of Funds Availability - Texas Coastal Management Program

The General Land Office and the Coastal Coordination Advisory Committee (CCAC) file this Notice of Funds Availability to announce the availability of §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and to ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately $2 million in §306/§306A funding is expected in October 2013. The General Land Office, which oversees the implementation of the CMP with the advice of the CCAC, passes through approximately 90% of the available §306/§306A funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

Eligible Applicants

The following entities are eligible to receive grants under the CMP:

1) Incorporated cities within the coastal zone boundary;

2) County governments within the coastal zone boundary;

3) Texas state agencies;

4) Texas public colleges/universities;

5) Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone);

6) Councils of governments and other regional governmental entities within the coastal zone boundary;

7) The Galveston Bay Estuary Program;

8) The Coastal Bend Bays and Estuaries Program; and

9) Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above.

(A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.)

Funding Categories

The General Land Office and the CCAC will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference:

1) Coastal Natural Hazards Response;

2) Critical Areas Enhancement;

3) Public Access;

4) Water Sediment Quantity and Quality Improvements;

5) Waterfront Revitalization and Ecotourism Development; and

6) Permit Streamlining/Assistance, Governmental Coordination & Local Government Planning Assistance.

Grant workshops will be held in three coastal cities to help potential applicants through the Guidance and Application Package. Grant workshops are opportunities for potential applicants to learn about the changes made to the grant program and to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process.

May 8, 2012, 9:00 a.m., Port Isabel, Port Isabel Public Library, 213 North Yturria St.

May 15, 2012, 9:30 a.m., Corpus Christi, Texas A&M University - Natural Resources Center, 6300 Ocean Drive, Room 1003.

May 24, 2012, 9:30 a.m., Galveston, County Courthouse, 722 Moody, Workshop Room.

The requirements to receive federal grant funds are outlined in the CMP Cycle #18 Grant Guidance and Application Packet. To download the electronic version, the grant guidance and application packet is available at http://www.glo.texas.gov/what-we-do/caring-for-the-coast/grants-funding/cmp/index.html.

In order to submit pre-proposals or final applications, you must register to receive a user ID and password.

Applicants must submit electronically. Facsimiles or hard copies of pre-proposals and final applications will not be accepted.

The deadline to submit pre-proposals is Wednesday, June 20, 2012, by 5:00 p.m. Submission of a pre-proposal is optional but is strongly recommended for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process, applicants who have an idea for a new and/or innovative project, applicants who are uncertain if a project is eligible under this grant program, or applicants submitting research projects. Written comments will only be provided to applicants who submit pre-proposals by June 20, 2012, by 5:00 p.m. The deadline to submit final grant applications is Wednesday, September 26, 2012, by 5:00 p.m.

TRD-201201617
Larry L. Laine
Chief Clerk
General Land Office
Filed: March 28, 2012

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for a renewal to the Medically Dependent Children Program (MDCP) waiver program, under the authority of §1915(c) of the Social Security Act. The Medically Dependent Children Program waiver program is currently approved for the five-year period beginning September 1, 2007, and ending August 31, 2012. The proposed effective date for the renewal is September 1, 2012.

The Medically Dependent Children Program provides home and community-based services to persons under age 21 who are medically fragile and meet the requirements for nursing facility care. Services include respite, adaptive aids, minor home modifications, financial management services, transition assistance services, and adjunct support services. Texas uses the Medically Dependent Children Program waiver to provide services to Texans in the least restrictive environment possible. These environments include the individual's or a family member's home, or a foster family's home.

The State has requested, under §1915(i) of the Social Security Act, an amendment to the Medicaid State Plan which adds Day Activity and Health Services for individuals meeting a certain income limit. To ensure continuity of Day Activity and Health Services for those individuals who need these services but do not meet the income limit, these services are being added to the Medically Dependent Children Program waiver program and will be part of the individual plan of care and budget.

Additionally, the State is requesting a change to the name of "Adjunct Support Services" to "Flexible Family Support Services." The definition of "Flexible Family Support Services" is being revised to add that additional supports may be provided during participation in in-home or outside of the home child care. Routine child-care expenses are not reimbursed through this waiver.

The Texas Health and Human Services Commission is requesting that the waiver renewal be approved for the period beginning September 1, 2012, through August 31, 2017. This renewal maintains cost neutrality for waiver years 2012 through 2017.

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.

TRD-201201591
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 27, 2012

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for a renewal to the Community-Based Alternatives waiver program, under the authority of §1915(c) of the Social Security Act. The Community-Based Alternatives waiver program is currently approved for the five-year period beginning September 1, 2007, and ending August 31, 2012. The proposed effective date for this renewal is September 1, 2012.

The Community-Based Alternatives program provides home and community-based services to persons age 21 and older who meet the requirements for nursing facility care and do not reside in STAR+PLUS §1915(c) waiver service areas. Services are offered in the participant's home, an adult foster care home, or a licensed assisted living facility. Services include personal assistance services; nursing; physical therapy; occupational therapy; speech, hearing, and language therapy; support consultation; respite care; prescribed drugs; financial manage-

ment services; adaptive aids and medical supplies; dental; emergency response services; home delivered meals; minor home modifications; and transition assistance services.

The State has requested, under §1915(i) of the Social Security Act, an amendment to the Medicaid State Plan which adds Day Activity and Health Services for individuals meeting a certain income limit. To ensure continuity of Day Activity and Health Services for those individuals who need these services but do not meet the income limit, these services are being added to the Community-Based Alternatives waiver program and will be part of the individual plan of care and budget. Also as part of this renewal, the nursing facility risk criteria are being eliminated from the level of care evaluation.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2012, through August 31, 2017. This renewal maintains cost neutrality for waiver years 2012 through 2017.

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.

TRD-201201593
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 27, 2012

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 12-007 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add tobacco cessation counseling services for pregnant women. The proposed amendment is effective January 1, 2012.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $229,918 for federal fiscal year (FFY) 2012, consisting of $133,858 in federal funds and $96,060 in state general revenue. For FFY 2013, the estimated cost is $317,257 consisting of $188,133 in federal funds and $129,124 in state general revenue. For FFY 2014, the estimated cost is $490,876 consisting of $291,089 in federal funds and $199,787 in state general revenue. To obtain copies of the proposed amendment, interested parties may contact Tania Colon by mail at: Texas Health and Human Services Commission, Mail Code H-200, P.O. Box 85200, Austin, Texas 78708-5200; by telephone at (512) 491-1744; by facsimile at (512) 491-1957; or by e-mail at Tania.Colon@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201201599
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 27, 2012

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 12-001 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment updates the Medicaid State Plan section titled "Section One - Single State Agency Organization" to include current information on agency names and organizational structure. The requested effective date for the proposed amendment is March 1, 2012. The proposed amendment has no anticipated fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact Brian Dees by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H600, Austin, Texas 78711; by telephone at (512) 491-1382; by facsimile at (512) 491-1953; or by e-mail at brian.dees@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201201550
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 23, 2012

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Texas Department of Insurance

Company Licensing

Application to change the name of ADMIRAL LIFE INSURANCE COMPANY OF AMERICA to PURITAN LIFE INSURANCE COMPANY OF AMERICA, a foreign life, accident and/or health company. The home office is in Scottsdale, Arizona.

Application for admission to the State of Texas by PAN-AMERICAN ASSURANCE COMPANY INTERNATIONAL, INC., a foreign life, accident and/or health company. The home office is in the Cayman Islands.

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-201201610
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: March 28, 2012

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7210). The selected consultant will perform technical and professional work for the LBJ/Skillman Urban Planning Initiative Sustainable Development Planning Project.

The consultant selected for this project is Omniplan, 1845 Woodall Rodgers Freeway, Suite 1500, Dallas, Texas 75201. The amount of the contract is not to exceed $125,000.

TRD-201201613

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 28, 2012

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Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7210). The selected consultant will perform technical and professional work for the Dallas/Fort Worth International Airport Transit Service Planning Study.

The consultant selected for this project is Nelson/Nygaard, 116 New Montgomery Street, Suite 500, San Francisco, CA 94105. The amount of the contract is not to exceed $100,000.

TRD-201201614
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 28, 2012

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Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5241). The selected consultant will perform technical and professional work for the City of Cedar Hill City Center Transit Oriented Development Plan.

The consultant selected for this project is Freese and Nichols, Inc., 1701 N. Market Street, Suite 500, LB 51, Dallas, Texas 75202. The amount of the contract is not to exceed $156,250.

TRD-201201615
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 28, 2012

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Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the January 20, 2012, issue of the *Texas Register* (37 TexReg 239). The selected consultants will perform technical and professional work to conduct a Section 408 safety assurance review for the IH30/IH35E Horseshoe project.

The consultant selected for structural engineering services is Thomas Havenar, Hanson Professional Services, Inc., 1525 South Sixth Street, Springfield, IL 92703. The amount of the contract is not to exceed $76,861.

The consultant selected for civil/construction engineering services is Diane Gollhofer, DGR Consultants LLC, 1445 Waterside Drive, Dallas, Texas 75218. The amount of the contract is not to exceed $72,366.

The consultant selected for geotechnical engineering services is George Sills, George Sills Geotechnical Engineering Consultant, LLC, 470 Dogwood Lake Drive, Vicksburg, MS 39183. The amount of the contract is not to exceed $83,228.

The consultant selected for hydraulics engineering services is Dr. David Williams, Nolte Vertical Five, 8000 South Chester Street, Suite 200, Centennial, CO 80112. The amount of the contract is not to exceed $81,832.

TRD-201201637
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 28, 2012

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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 March 23, 2012, 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 James Cable, LLC to Amend its State-Issued Certificate of Franchise Authority; to add City of Runaway Bay, Texas, Project Number 40252.

The requested amendment is to expand the service area footprint to include the City of Runaway Bay, Texas and the unincorporated area within two miles around the City of Runaway Bay in Wise County, 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 telephone 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 40252.

TRD-201201595
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2012

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 23, 2012, 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 Cequel III Communications I, LLC d/b/a Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority; to add city limits of Waller, Texas, Project Number 40253.

The requested amendment is to expand the service area footprint to include the municipality of Waller, 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 telephone 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 40253.

TRD-201201596
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2012

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 23, 2012, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Lightwave Networks, LLC for a Service Provider Certificate of Operating Authority, Docket Number 40254.

Applicant intends to provide data-only facilities-based and resale telecommunications services.

Applicant proposes the geographic area of all LATAs and serving areas of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone at (512) 936-7120 or toll free at (888) 782-8477 no later than April 13, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 40254.

TRD-201201597
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2012

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on March 20, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline to qualified households, pursuant to Substantive Rule §26.418.

Docket Title and Number: Application of i-wireless LLC for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline Service to Qualified Households. Docket Number 40242.

The Application: i-wireless seeks ETC designation solely to provide Lifeline service to qualifying Texas households as a prepaid wireless carrier. i-wireless will not seek access to funds from the High Cost Pool, nor does it seek ETC designation for the purpose of participating in the Link-Up program. i-wireless is a reseller of commercial mobile radio service (CMRS) throughout the United States. i-wireless provides prepaid wireless telecommunications service to consumers by using the Sprint Nextel Network. i-wireless requests ETC designation for the rural and non-rural wire centers in Sprint Nextel's coverage area. i-wireless provided a list of wire centers where Sprint serves an entire wire center, and where it serves only part of the wire center for which the company requests ETC designation.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by April 20, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division 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 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 40242.

TRD-201201562
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2012

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 23, 2012 for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Web Fire Communications, Inc. for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 40263.

The Application: The company requests ETC/ETP designation to be eligible for federal and state universal service funds to assist it in providing universal service in Texas. Pursuant to P.U.C. Substantive Rule §26.417 and §26.418, the commission, designates qualifying common carriers as ETCs and ETPs for service areas designated by the commission. Web Fire Communications, Inc. seeks ETC/ETP designation to serve in three specific non-rural service areas of AT&T Texas located in the vicinity of Wichita Falls, Texas which are identified in Exhibit I of the application. The company holds Service Provider Certificate of Operating Authority Number 60276. Web Fire Communications, Inc. has requested approval of the application to be effective no earlier than 30 days after completion of notice in the *Texas Register,* in this instance, the effective date is May 7, 2012.

Persons who wish to comment upon the action sought should notify the Public Utility Commission of Texas no later than April 26, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 40263.

TRD-201201606
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2012

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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 March 21, 2012, 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 (ADAD).

Docket Style and Number: Application of Patient Financial Management Services for a Waiver to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 40245.

The Application: Patient Financial Management Services (Patient Financial) 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).

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 40245.

TRD-201201564
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2012

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 23, 2012, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of three thousand-blocks of numbers of numbers in the Plano rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources in the Plano Rate Center, Docket Number 40258.

The Application: AT&T Texas requested three thousand-blocks of numbers on behalf of its customer, Encana Natural Gas in the Plano rate center. AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than April 13, 2012. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 40258.

TRD-201201598
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2012

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 22, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Hale County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 115-kV Transmission Line Within Hale County, Docket Number 40216.

The Application: The proposed project is designated as the Kiser Substation to Cox Substation Transmission Line Project. The facilities include construction of a new single-circuit 115-kV transmission line between the proposed Kiser Substation and the existing Cox Substation located in Hale County. All routes begin at the proposed Kiser Substation to be located in the northeast portion of the City of Plainview and all routes end at the existing Cox Substation located east of the City of Plainview.

The total estimated cost for the project, including the transmission line and substation costs, ranges from approximately $6.0 million to $7.8 million depending on the route chosen. The proposed project is presented with 11 alternative routes consisting of a combined 29 segments and is estimated to be approximately 8 to 12 miles in length depending on the route chosen. The commission may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is May 7, 2012. 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 comments should reference Docket Number 40216.

TRD-201201563
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2012

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 23, 2012, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Public Utilities Board of the City of Brownsville (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County. Docket Number 40257.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), for-

merly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Pastor Bob Ordeman, Senior Pastor of the International Christian Center, requesting BPUB to provide electric utility service to a 30.36-acre tract of land. The estimated cost to BPUB to provide service to this proposed area is $9,248.18. The area is presently not developed and distribution facilities will not need to be constructed in order to provide service. If the application is granted, the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 13, 2012, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone 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 comments should reference Docket Number 40257.

TRD-201201605
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2012

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Railroad Commission of Texas

Notice of Public Hearing Regarding Proposed New Rule §9.15, Relating to Penalty Guidelines for LP-Gas Safety Violations

A hearing has been requested by the public and is scheduled for Wednesday, April 11, 2012, from 1:30 p.m. until 3:30 p.m. (or earlier adjournment) in room 12-126 of the Railroad Commission's office at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711.

The Railroad Commission ("Commission") received a request from the public to conduct a hearing concerning proposed changes to Texas Administrative Code Title 16, Part 1, Chapter 9, relating to LP-Gas Safety Rules. Proposed new §9.15, relating to Penalty Guidelines for LP-Gas Safety Violations, implements guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety, or the provisions of a rule, order, license, permit, or certificate issued under that chapter, or of violations of regulations, codes, or standards that the Railroad Commission has adopted by reference. The proposed new rule was published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 570).

Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning of commenters will be reserved exclusively to the Commission or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the Commission reserves the right to restrict statements in terms of time or repetitive content. Depending on the number of persons who wish to speak, the Commission may limit the time each person may speak in order to ensure that all have a fair opportunity to do so. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible. This hearing is not a contested case hearing under the Administrative Procedure Act.

For more information about the proposed rule changes, please contact Jim Osterhaus at (512) 463-6692.

Auxiliary Aids or Services for Persons with a Disability. Any individual with a disability who plans to attend this hearing and who requires auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests may be made to the Human Resources Division of the Railroad Commission of Texas by mail at P.O. Box 12967, Austin, Texas 78711-2967; by telephone at (512) 463-6981 or TDD Number (512) 463-7284; by e-mail at ADA@rrc.state.tx.us; or in person at 1701 North Congress Avenue, Suite 12-110, Austin, Texas.

Issued in Austin, Texas, on March 27, 2012.

TRD-201201602
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Filed: March 27, 2012

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Texas Department of Transportation

Notice Affording an Opportunity for a Public Hearing

In accordance with Texas Administrative Code, Title 43, §25.55(a), the Texas Department of Transportation (department) offers the opportunity for a public hearing on: (A) use of the state highway system for bicycle events; and (B) department policies affecting bicycle use of the state highway system.

Any interested person may request that a public hearing be held on these matters by submitting a written request to Charles Riou, P.E., P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, requests must be received by the department no later than 5:00 p.m. on Monday, May 7, 2012.

No further action will be taken to hold a public hearing if fewer than ten individuals request a hearing within the time frame set forth above. In the event that a public hearing is scheduled, a notice will be published indicating the date, time, and location of the hearing.

TRD-201201504
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 22, 2012

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings/schedule.htm.

Or visit www.txdot.gov, click on Public Involvement, click on Hearings and Meetings, and then click on Hearings and Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201201600

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 27, 2012

♦ ♦ ♦

Upper Rio Grande Workforce Development Board

Bank Depository Services

The Upper Rio Grande Workforce Development Board has released a Request for Proposals (RFP) for bank depository services.

The authorized Workforce Board contact person for procurement is Ms. Carol Eisenberg, Contract Administrator, Workforce Solutions Upper Rio Grande, 221 N. Kansas St., Suite 1000, El Paso, Texas 79901, Telephone: (915) 772-2002, ext. 220, or via email at carol.eisenberg@urgjobs.org and/or procurement@urgjobs.org.

Packets may be picked up in person or requested in writing. The RFP will also be available on the Workforce Board website at www.urgjobs.org under the Procurements section.

Release Date: March 26, 2012, 3:00 p.m. MST

Question Submission Deadline: April 16, 2012, 3:00 p.m. MST

SUBMISSION DEADLINE: April 30, 2012, 5:00 p.m. MST

Upper Rio Grande Workforce Development Board (URGWDB) is soliciting proposals for Bank Depository services utilizing the RFP method of procurement.

TRD-201201620
Joseph Sapien
Special Projects Administrator
Upper Rio Grande Workforce Development Board
Filed: March 28, 2012

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Workforce Investment Act Youth Program Elements for In-School Youth

The Upper Rio Grande Workforce Development Board has released a Request for Proposals (RFP) for Program Elements for In-School Youth (ISY).

The authorized Workforce Board contact person for procurement is Ms. Carol Eisenberg, Contract Administrator, Workforce Solutions Upper Rio Grande, 221 N. Kansas St., Suite 1000, El Paso, Texas 79901, Telephone: (915) 772-2002, ext. 220, or via email at carol.eisenberg@urgjobs.org and/or procurement@urgjobs.org.

Packets may be picked up in person or requested in writing. The RFP will also be available on the Workforce Board website at www.urgjobs.org under the Procurements section.

Release Date: Wednesday, March 21, 2012, 12:00 p.m. MST

Respondents' Conference: Friday, March 30, 2012, 12:00 p.m. MST

Question Submission Deadline: Thursday, April 5, 2012, 12:00 p.m. MST

SUBMISSION DEADLINE: Friday, April 20, 2012, 5:00 p.m. MST

Upper Rio Grande Workforce Development Board (URGWDB) understands that workforce development is a key factor in our region's economic competitiveness. To stay ahead of workforce needs, we must identify strategies to serve the needs of youth populations that are an integral part of the URGWDB Region's diverse workforce population.

The Board is committed to increasing the number of youth completing advanced high school curriculum and earning a diploma, and increasing the number of students earning post-secondary certificates or degrees that qualify them for high-wage jobs. To accomplish these goals, the Board will collaborate with schools, employer groups and organizations with youth initiatives to emphasize the need for youth to receive an education that provides them with the skills needed by employers and prepares them for high-wage jobs. Furthermore, Workforce Solutions Upper Rio Grande will engage eligible youth in WIA services designed to prepare them for high school graduation, post-secondary education and high-wage careers.

TRD-201201619
Joseph Sapien
Special Projects Administrator
Upper Rio Grande Workforce Development Board
Filed: March 28, 2012

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Workforce Investment Act Youth Program Elements for Out-of-School Youth

The Upper Rio Grande Workforce Development Board has released a Request for Proposals (RFP) for Program Elements for Out-of-School Youth (OSY).

The authorized Workforce Board contact person for procurement is Ms. Carol Eisenberg, Contract Administrator, Workforce Solutions Upper Rio Grande, 221 N. Kansas St., Suite 1000, El Paso, Texas 79901, Telephone: (915) 772-2002, ext. 220, or via email at carol.eisenberg@urgjobs.org and/or procurement@urgjobs.org.

Packets may be picked up in person or requested in writing. The RFP will also be available on the Workforce Board website at www.urgjobs.org under the Procurements section.

Release Date: Wednesday, March 21, 2012, 12:00 p.m. MST

Respondents' Conference: Friday, March 30, 2012, 12:00 p.m. MST

Question Submission Deadline: Thursday, April 5, 2012, 12:00 p.m. MST

SUBMISSION DEADLINE: Friday, April 20, 2012, 5:00 p.m. MST

Upper Rio Grande Workforce Development Board (URGWDB) understands that workforce development is a key factor in our region's economic competitiveness. To stay ahead of workforce needs, we must identify strategies to serve the needs of youth populations that are an integral part of the URGWDB Region's diverse workforce population.

The Board is committed to increasing the number of youth completing advanced high school curriculum and earning a diploma, and increasing the number of students earning post-secondary certificates or degrees that qualify them for high-wage jobs. To accomplish these goals, the Board will collaborate with schools, employer groups and organizations with youth initiatives to emphasize the need for youth to receive an education that provides them with the skills needed by employers and prepares them for high wage jobs. Furthermore, Workforce Solutions Upper Rio Grande will engage eligible youth in WIA services designed to prepare them for high school graduation, post-secondary education and high-wage careers.

TRD-201201618
Joseph Sapien
Special Projects Administrator
Upper Rio Grande Workforce Development Board
Filed: March 28, 2012

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Workforce Solutions - Capital Area Workforce Board

Request for Proposals - Career Centers

Workforce Solutions - Capital Area Workforce Board is soliciting proposals from qualified entities for the operation and management of career centers in the Capital Area. A Request for Proposals (RFP) will be available beginning March 28, 2012, 1:00 p.m. (CST). The RFP may be obtained at the Board offices located at 6505 Airport Boulevard, Suite 101E, Austin, Texas 78752, during normal business hours (Monday-Friday, 8:00 a.m. - 5:00 p.m.), except for holidays. The RFP may also be downloaded at www.wfscapitalarea.com or requests may be submitted to yael.trevino@wfscapitalarea.com. Potential respondents are required to submit a "Letter of Intent to Bid" on or before 12:00 noon, April 5, 2012. A bidder's conference will be held on April 12, 2012, 10:00 a.m. The submission date for proposals is May 9, 2012, 4:00 p.m.

TRD-201201604
Alan D. Miller
Executive Director
Workforce Solutions - Capital Area Workforce Board
Filed: March 27, 2012

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