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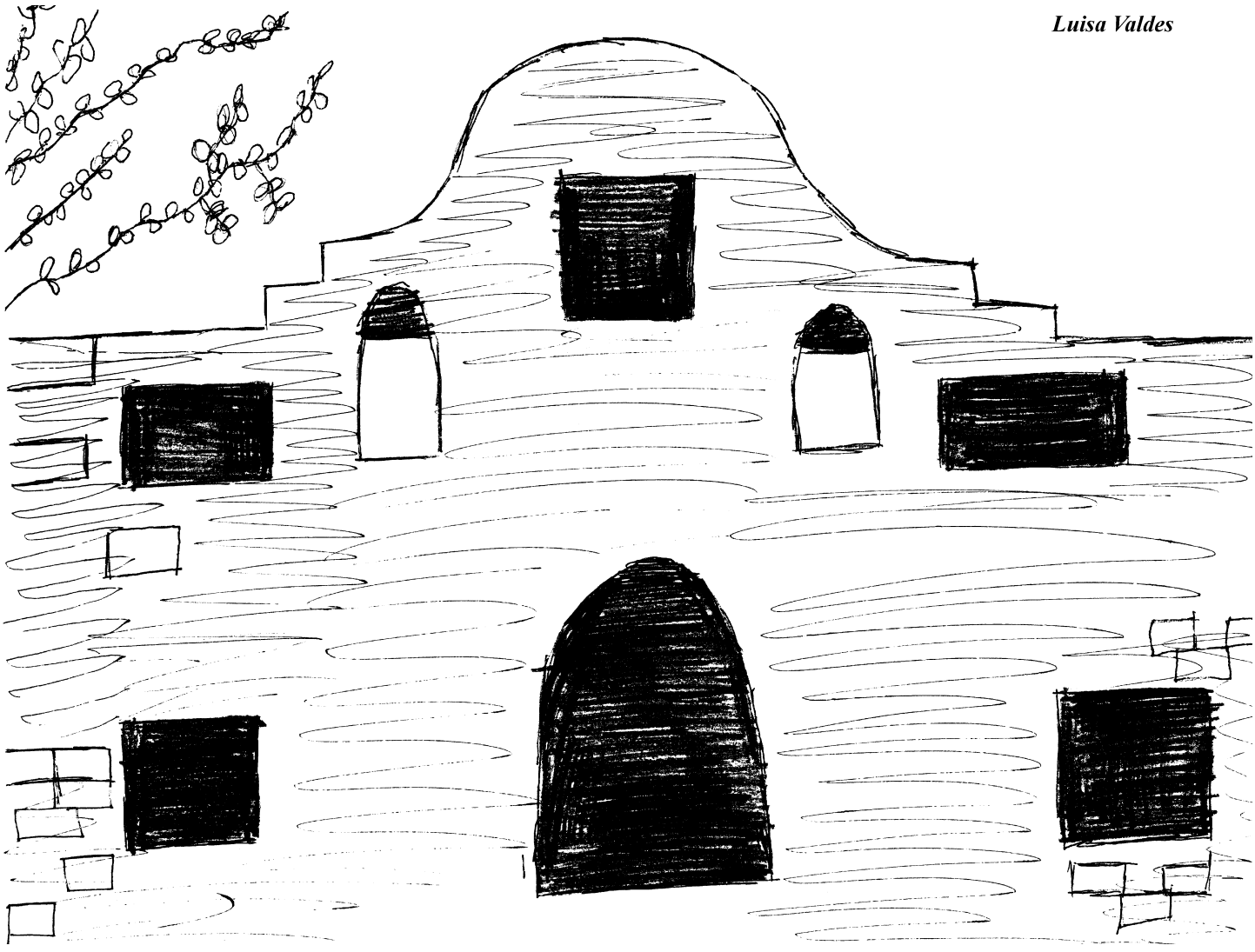

Luisa Valdes

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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IN THIS ISSUE

TABLES AND GRAPHICS

IN ADDITION

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1078-GA

Requestor:

The Honorable Burt R. Solomons

Chair, Committee on Redistricting

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Comptroller to implement rules regarding the imposition and collection of a sales and use tax by a municipality under particular circumstances (RQ-1078-GA)

Briefs requested by October 4, 2012

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

TRD-201204610
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 4, 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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1001, concerning Claim Information Requirements, and §354.1121, concerning Definitions.

Background and Justification

Section 2 of House Bill (H.B.) 1720 (82nd Legislature, Regular Session, 2011) amends Government Code Chapter 531, Subchapter B related to the reimbursement of claims for certain Medicaid services involving supervised providers.

H.B. 1720 requires a provider to include the name and national provider identifier (NPI) number of a supervised and supervising provider on Medicaid claims that are submitted based on a referral or order. In addition, the Social Security Act (42 U.S.C. §1320a-7k(e)) requires NPIs on all Medicaid claims. In response to H.B. 1720, the proposed amendment to §354.1001 will require the claim for services or supplies to include the name and associated NPI of the performing provider; the referring or ordering provider; and the supervising provider, if the referring or ordering provider is acting under the direction or supervision of another provider and the referral or order is based on the supervised provider's evaluation of the client.

H.B. 1720 applies to pharmacy claims. However, HHSC cannot implement the provisions of H.B. 1720 for pharmacy claims without a waiver or authorization from a federal agency. Federal regulation on administrative simplification (Health Insurance Portability and Accountability Act of 1996, Public Law 104-191) requires all private and public payers to use one standardized format (i.e., National Council for Prescription Drugs Program (NCPDP) Telecommunications Standard) for all pharmacy claims. This universal claims format does not allow for the inclusion of more than one NPI number. Section 39 of H.B. 1720 allows for a delay in implementation if implementation of any provision of the bill requires a waiver or authorization from a federal agency. Therefore, the implementation of this rule as it applies to pharmacy claims will be delayed until such time as HHSC obtains the necessary waiver or authorization to modify the NCPDP form to include more than one NPI number.

Additionally, HHSC is amending §354.1121 to include a definition for NPI.

HHSC is also proposing amendments to update references to agencies and to delete obsolete citations.

Section-by-Section Summary

The proposed amendment to §354.1001 updates the rule to reflect current procedure and agency names and removes a reference in paragraph (11) to certification required by 45 Code of Federal Regulations §250.80, as that requirement no longer exists in federal rule. Paragraph (11) is revised to add a requirement for providers to include the name and NPI of the eligible provider, the ordering or referring provider, and the supervised and supervising provider on a Medicaid claim submitted based on a referral or order based on the supervised provider's evaluation of the Medicaid recipient.

Proposed §354.1121(20) adds a definition for "National Provider Identifier." The remaining paragraphs are renumbered to accommodate the new definition.

Fiscal Note

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

Small and Micro-Business Impact Analysis

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

Public Benefit

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that for each of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the amendments. The anticipated public benefit of enforcing the amendments will be improved accountability by Medicaid and CHIP providers of services.

Regulatory Analysis

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

public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

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

Public Hearing

A public hearing is scheduled for October 4, 2012 from 3:00 p.m. to 4:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1001

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.024161, which requires the Executive Commissioner of HHSC to adopt rules requiring that certain names and associated national provider identifiers appear on reimbursement claims for certain Medicaid services involving supervised providers.

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

§354.1001. Claim Information Requirements.

Eligible providers are required to provide separate claim information for each eligible recipient. Claims must be complete, accurate, and as specified by the Health and Human Services Commission or its designee [~~health insuring agent with departmental approval~~]. Required information includes[~~, but is not limited to,~~] the following:

(1) name, address, and appropriate identification number of the provider of services or supplies or both;

(2) the date of the claim;

(3) the name, address, identification number, and date of birth of the individual who received services or supplies or both;

(4) the type of such services or supplies or both provided;

(5) the date(s) each service or supplies or both were provided;

(6) the amounts of each charge for the various types of services or supplies or both;

(7) the total charge for services or supplies or both;

(8) credits for any payments made at the time of submission of the claim, including payments made by private health insurance and under Medicare;

(9) indication that the eligible recipient has health, accident, or other insurance policies, or is covered by private or governmental benefit systems, or other third party liability, when reported, known, or suspected;

(10) the date of the eligible recipient's death, if applicable; and

(11) the name and associated national provider identifier of: [~~a certification by the eligible provider or his or her designated representative which meets the requirements of 45 Code of Federal Regulations, §250.80.~~]

(A) the eligible provider;

(B) the ordering or referring provider or other professional, if services or supplies, or both, are ordered or referred; and

(C) the supervising and supervised provider, except for pharmacy claims, if:

(i) the services or supplies, or both, were provided due to a referral or ordered by a provider;

(ii) the referring or ordering provider is acting under the direction or under the supervision of another provider; and

(iii) the referral or order is based on the supervised provider's evaluation of the recipient or enrollee.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204584
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 424-6900

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DIVISION 10. DEFINITIONS

1 TAC §354.1121

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.024161, which requires the Executive Commissioner of HHSC to adopt rules requiring that certain names and associated national provider identifiers appear on reimbursement claims for certain Medicaid services involving supervised providers.

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

§354.1121. Definitions.

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

(1) Advanced practice registered nurse--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist.

(2) Ambulance service supplier--A person, firm, or institution approved for and participating in Medicare as an air, ground, or specialized ambulance service supplier or provider.

(3) Ambulatory surgical center--A distinct health care entity that operates exclusively for the purpose of providing certain surgical services to patients not requiring overnight inpatient hospital services. The center must meet the conditions for participation described in §354.1211 of this subchapter (relating to Conditions for Participation) and other applicable state and federal requirements.

(4) Approved laboratory--A laboratory that is independent of a hospital or physician's office and that has been approved for and is participating in Medicare and only for the procedures certified to that laboratory under Medicare.

(5) Claim--A request for payment for authorized benefits on the applicable approved form meeting the established itemization requirements.

(6) Day--With respect to inpatient hospital services, the time period of a day is counted for:

(A) hospital bed occupancy each midnight while under registration in a hospital as an inpatient;

(B) each hospital bed occupancy where admission and discharge occur on the same calendar day while under registration in a hospital as an inpatient.

(7) Doctor--Doctor of chiropractic (chiropractor), doctor of optometry (optometrist), doctor of podiatry (podiatrist), or doctor of dentistry (doctor of dental surgery (DDS), doctor of medical dentistry (DMD), and doctor of dental medicine (DDM)).

(8) Doctor of chiropractic, doctor of optometry, doctor of podiatry, and doctor of dentistry (DDS, DMD, or DDM)--A licensed doctor legally authorized to practice his specialty at the time and place the service is provided.

(9) Eligible provider--An institution, facility, agency, person, partnership, corporation, or association approved for participation in the Texas Medicaid program in accordance with terms of this chapter. "Eligible provider" also includes any person, firm, or institution approved for and participating in Part B Medicare as a supplier or provider of medical services or supplies, who is not otherwise designated as an eligible Title XIX provider, and who meets the requirements stipulated in this definition, except that such eligible provider shall be an eligible Title XIX provider only for Part B Medicare services or supplies and for the Title XIX payment of the deductible and coinsurance liabilities.

(10) Eyeglasses--Eyewear dispensed and delivered that is medically necessary and prescribed by a doctor of optometry or physician, is professionally adjudged to be necessary and appropriate for the lens, age, and sex of the eligible recipient, and significantly improves visual acuity or impedes progression of visual problems. The term "eyeglasses" does not include artificial eyes or any item of eyewear for which benefits are not provided in the rules of the Texas Health and Human Services Commission (HHSC) regarding the Medicaid eyeglass program.

(11) Eyeglass supplier--A person, firm, or institution that has entered into a written agreement with HHSC or its designee as an eyeglass supplier on a form approved by HHSC; provided that the benefits shall be available for eyeglass services and supplies dispensed by an eyeglass supplier only if the fitting, adjustment, and repair of the eyewear involved is performed by a physician, doctor of optometry, or an optician; and provided that an eyeglass supplier is an eligible provider under this program. Such suppliers must accept the benefits paid as stipulated by HHSC as payment in full for the service and supplies involved, except as otherwise provided.

(12) Family planning agency--A facility or institution that has been determined by HHSC or its designee to qualify as a family planning agency under standards of participation established by HHSC, including any amendment of such standards of participation authorized by HHSC. Family planning agencies shall accept as payment in full the amount paid in accordance with the benefits as stipulated by HHSC.

(13) Health insuring agency--An organization legally operating within the state that pays for the cost of certain medical services available under the Title XIX state plan to eligible recipients in exchange for premiums paid by HHSC and which assumes an underwriting risk.

(14) Hospital--Any institution licensed as a hospital by the appropriate licensing authority but which is not an institution for tuberculosis, a mental institution, a health resort, nursing home, rest home, or any other institution primarily providing convalescent or custodial care or which is otherwise excluded under this chapter.

(15) Illness--A bodily disorder, bodily injury, disease, or mental disease.

(16) Inpatient--A person registered and assigned a medical record number by a hospital for bed occupancy in that hospital.

(17) Institution for mental diseases (IMD)--As defined in 25 TAC §419.453(17) (relating to Definitions).

(18) Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Chapter 32, Texas Human Resources Code, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(19) Mental disease or disorder--Any condition classified as a neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

(20) National provider identifier--The identification number required under §1128J(e) of the Social Security Act (42 U.S.C. §1320a-7k(e)).

(21) [~~(20)~~] Nonmedical public institution--An institution or facility that is either a unit of, or under the administrative control of a state, federal, or local government and that is not approved for participation in the Medicaid program.

(22) [~~(21)~~] Out-of-state hospital--A hospital located outside of the State of Texas that participates as a general or acute care hospital or both under Medicare or Title XIX, or both. Examples of institutions that are excluded are institutions primarily for mental disease, pulmonary care, or tuberculosis, a health resort, a nursing home, a rest home, or any other institution primarily providing convalescent or custodial care or that is otherwise excluded under this chapter.

(23) [~~(22)~~] Outpatient--A person registered by a hospital for outpatient services but not as an inpatient.

(24) [~~(23)~~] Physician--A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(25) [~~(24)~~] Physical therapist--A graduate of a program of physical therapy approved by the Commission on Accreditation in Physical Therapy Education (or one of the previously recognized accreditation bodies), and licensed by the state in which the services are performed.

(26) [~~(25)~~] Physical therapist assistant--A person licensed by the appropriate state licensure board as a physical therapist assistant and who provides physical therapy under the direction of a licensed physical therapist.

(27) [~~(26)~~] Physical therapy--Restorative services prescribed by a physician and provided to a recipient by a qualified physical therapist. It includes any necessary supplies and equipment.

(28) [~~(27)~~] Prescription--A signed written or electronic order by a physician or other healthcare practitioner acting within the scope of his or her licensure. This includes a verbal order subsequently countersigned by the practitioner or verified by the pharmacist.

(29) [~~(28)~~] Psychologist--A person who is licensed to practice as a psychologist in the state in which the service is performed.

(30) [~~(29)~~] Recipient month--A calendar month of continuous eligibility for one individual under the Medicaid program. Each month covers eligibility for only one eligible recipient. Multiple recipient months may cover eligibility for one or more eligible recipients or eligibility for the same individual if prior months are involved. Additional months of recipient eligibility may occur due to:

(A) certification of eligibility for up to three months prior to date of application;

(B) eligibility for those individuals who are certified to be eligible recipients after a first of the month;

(C) eligibility certified retroactively;

(D) certification of four months post eligibility for certain individuals in the non-Medicare related aid to families with dependent children coverage group; or

(E) appropriately identified error adjustments.

(31) [~~(30)~~] Respiratory care practitioner--A person certified to practice respiratory care as defined in the Occupations Code, Chapter 604, relating to Respiratory Care Practitioners.

(32) [~~(31)~~] Semiprivate room--A two-bed, three-bed, or four-bed accommodation.

(33) [~~(32)~~] State fiscal year--The 12-month period beginning September 1 and ending August 31.

(34) [~~(33)~~] State plan--The plan for administration of the Medicaid program which is approved by the secretary of health and human services[~~, education, and welfare~~] in accordance with the provisions of Title XIX of the Social Security Act, as amended.

(35) [~~(34)~~] Therapeutic optometrist--A person certified by the Texas Optometry Board to practice therapeutic optometry in accordance with the Texas Optometry Act. References in this chapter to optometrists include therapeutic optometrists.

(36) [~~(35)~~] Third-party billing vendor--A vendor that submits claims to HHSC, or its designee, for reimbursement on behalf of a provider of medical services under the Medicaid program.

(37) [~~(36)~~] Third-party liability--The resources that an eligible recipient may have which serve as a source of payment for services provided under the Medicaid program.

(38) [~~(37)~~] Title XIX hospital--A hospital that is participating as a hospital under Medicare, that has in effect a utilization review plan approved by HHSC applicable to all eligible recipients to whom it provides services or supplies, and has been designated by HHSC as a Title XIX hospital or a hospital not meeting all of the requirements listed in this definition but which provides services or supplies for which benefits are provided under Medicare, the Social Security Act, §1814(d), or would have been provided under such section had the recipients to whom the services or supplies are provided been eligible for and enrolled under Part A of Medicare, to the extent of such services and supplies only, and then only if such hospital has been designated by HHSC as a Title XIX emergency care only hospital, or has been approved by HHSC to provide emergency hospital services and agrees that the reasonable cost of such services or supplies, as defined in the Social Security Act, §1902(a)(13), will be such hospital's total charge for such services and supplies.

(39) [~~(38)~~] Title XIX spell of illness--With respect to inpatient hospital services, spell of illness is a continuous period of hospital confinement. Successive periods of hospital confinement are considered to be continuous unless the last date of discharge and the date of readmission are separated by at least 60 consecutive days.

(40) [~~(39)~~] Utilization review--The methods and procedures related to the review of utilization of covered care and services with respect to medical necessity and to safeguard against inappropriate utilization of care and services.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204585
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 424-6900

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DIVISION 2. MEDICAID VISION CARE PROGRAM

1 TAC §354.1015, §354.1021

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1015, concerning Benefits and Limitations, and §354.1021, concerning Additional Claims Information Requirements, in the Medicaid vision care program for adults.

Background and Justification

HHSC proposes to add axis changes as a condition that will allow clients to receive vision services more frequently than the benefit limitations allow. HHSC received comments from external stakeholders indicating that clients with axis changes could need new lenses more frequently than currently allowed in the Medicaid program. HHSC reviewed the vision policies of other state Medicaid programs and private insurance carriers and determined that axis changes are an acceptable condition under which earlier replacement of eyewear should be allowed.

Additionally, the claims criteria for vision care services is updated to indicate that the provider's signature on the claim form of the physician or supplier verifies the axis changes required to dispense replacement eyewear.

Section-by-Section Summary

The amendment to §354.1015:

(1) updates the language in subsection (c)(2)(B)(iv) to add axis changes as an acceptable condition under which reimbursement for replacement of prosthetic eyewear is allowed; and to indicate that specific details on axis and diopter changes for prosthetic eyewear are defined by the Commission or its designee; and

(2) updates the language in subsection (c)(2)(C) to add axis changes as an acceptable condition under which earlier replacement of eyewear is allowed; and to indicate that the change in visual acuity is measured in diopter or axis changes as defined by the Commission or its designee.

The amendment to §354.1021 indicates that the provider's signature on the claim form verifies the axis change required for replacement eyewear and adds optometrist as a provider who is authorized to sign the claim form.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect there will be a fiscal impact to state government. The effect on state government for the first five years the amendments are in effect is an estimated cost in general revenue of $1,409 for state fiscal year (SFY) 2013, $2,151 for SFY 2014, $2,213 for SFY 2015, $2,281 for SFY 2016, and $2,350 for SFY 2017. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

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

Public Benefit

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that for each year of the first five years the amendments are in effect, the public will benefit from the adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be the additional services provided as a result of axis changes.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

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

Public Hearing

A public hearing is scheduled for October 2, 2012 from 2:00 p.m. to 3:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§354.1015. Benefits and Limitations.

(a) Except as specified in §354.1023, Optometric Services Provider, the services addressed in this subchapter are those optometric services available to Medicaid recipients who are 21 years old or older. Services are available to Medicaid recipients under 21 years old through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, Benefits and Limitations, described in 1 TAC §363.502.

(b) The amount, duration, and scope of optometric services available through the Texas Medicaid Program are established according to applicable federal regulations, the Texas state plan for medical assistance under Title XIX of the Social Security Act, state law, and Commission rules. Information regarding benefits and limitations is available to providers of these services through the Texas Medicaid Provider Procedures Manual issued to each provider upon enrollment in the Texas Medicaid Program.

(c) The benefits and limitations applicable to optometric services available through the Texas Medicaid Program to eligible recipients who are 21 years old or older are as follows:

(1) Provider eligibility. A provider must be a physician or optometrist and enrolled in the Texas Medicaid Program at the time the service is provided in order to be eligible for reimbursement by the program.

(2) Reimbursable services.

(A) Examination. One examination of the eyes by refraction may be provided to each eligible recipient every 24 months. This limit does not apply to diagnostic or other treatment of the eye for medical conditions.

(B) Prosthetic eyewear. Prosthetic eyewear, including contact lenses and glass or plastic lenses in frames, is a program benefit provided to an eligible recipient if the eyewear is prescribed for a congenital abnormality or defect, or an acquired condition as a result of trauma or cataract removal. The following benefits and limitations apply to prosthetic eyewear:

(i) Medically necessary temporary lenses are reimbursed during post-surgical cataract convalescence. The convalescence period is considered to be the four-month period following the date of cataract surgery.

(ii) Only one pair of permanent prosthetic lenses may be dispensed as a program benefit.

(iii) Replacement of prosthetic eyewear is reimbursed when the eyewear is lost, stolen, or damaged beyond repair.

(iv) Prosthetic eyewear is reimbursed when the eyewear is required due to a change in visual acuity measured in diopters or axis changes as defined by the Commission or its designee [~~of .5 diopters or more~~].

(v) Repairs to prosthetic eyewear are reimbursable if the cost of materials exceeds $2.00. Repairs for which the cost of materials is $2.00 or less are not separately reimbursable, but are the responsibility of the provider and are included in the rate for eyewear. The provider may not bill the recipient for these services.

(C) Non-prosthetic eyewear. Non-prosthetic eyewear includes contact lenses and glass or plastic lenses in frames. Non-prosthetic eyewear is a program benefit when the eyewear is medically necessary to correct defects in vision. This eyewear is provided to an eligible recipient only once every 24 months unless the recipient experiences a visual acuity change measured in diopters or axis changes as defined by the Commission or its designee [~~of .5 diopters or more~~]. A new 24-month benefit period for eyewear begins with the replacement of non-prosthetic eyewear due to a change in visual acuity measured in diopters or axis changes as defined by the Commission or its designee [~~of .5 diopters or more~~].

(i) Contact lenses require prior authorization by the Commission or its designee. Prior authorization decisions are based on the provider's written documentation supporting the need for contact lenses as the only means of correcting the vision defect.

(ii) Non-prosthetic eyewear that is lost or stolen is not reimbursed by the program.

(iii) Repairs to non-prosthetic eyewear for which the cost of materials exceeds $2.00 are not reimbursable. Repairs for which the cost of materials is $2.00 or less are not separately reimbursable, but are the responsibility of the provider and are included in the rate for eyewear. The provider may not bill the recipient for repairs for which the cost of materials is $2.00 or less.

§354.1021. Additional Claims Information Requirements.

Providers must meet the claim criteria established in the provisions of this subchapter for optometric services and the provisions for participation in the Medicaid program established under Division 1, Medicaid Procedures for Providers, and Division 11, General Administration, of Subchapter A, Purchased Health Services. Besides the claims information requirements established in §354.1001, Claim Information Requirements, of this chapter, the following information is required for claims for vision care services:

(1) Name, address, and Medicaid provider identification number of the ordering provider, as appropriate;

(2) Description of lenses and frames provided;

(3) Provider's signature on the claim form of the physician, optometrist, or supplier, including degrees or credentials, verifying the diopter or axis changes [~~change~~] required for the dispensing of replacement eyewear;

(4) Claims for eyewear with special features must be accompanied by a signed form by the recipient that acknowledges his selection of eyewear that is beyond the specifications for eyewear in §354.1017, Specifications for Eyewear. A signed patient certification satisfies this requirement for claims that are electronically submitted;

(5) If the claim is for replacement of prosthetic eyewear that was lost, stolen, or damaged beyond repair, the recipient must sign the claim form or, in the case of providers who electronically bill, a patient certification.

(6) If the claim is for vision care services provided to a Medicaid recipient residing in a skilled nursing facility or an intermediate care facility, the claim must indicate the name of the physician who ordered the services and the name of the facility where the recipient resides as the place of service.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204586
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 424-6900

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CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM

SUBCHAPTER E. EPSDT EYEGLASS PROGRAM

1 TAC §363.502

The Texas Health and Human Services Commission (HHSC) proposes to amend §363.502, concerning Benefits and Limitations, in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) eyeglass program for children.

Background and Justification

HHSC proposes to add axis changes as a condition that will allow clients to receive vision services more frequently than the benefit limitations allow. HHSC received comments from external stakeholders that clients with axis changes could need new lenses more frequently than currently allowed in the Medicaid program. HHSC reviewed the vision policies of other state Medicaid programs and private insurance carriers and determined that axis changes are an acceptable condition under which earlier replacement of eyewear should be allowed.

Section-by-Section Summary

The proposed amendment to §363.502:

(1) corrects the title of a cross-referenced section in the opening sentence;

(2) replaces a reference in paragraph (3)(B)(i) to the specific change in diopter required to replace non-prosthetic eyewear, adds axis changes as an acceptable condition under which earlier replacement of permanent prosthetic eyewear would be allowed, and states that the requisite diopter and axis changes will be defined by the Commission or its designee; and

(3) replaces a reference in paragraph (3)(B)(ii)(II) to the specific change in diopter required to replace permanent prosthetic eyewear, adds axis changes as an acceptable condition under which earlier replacement of permanent prosthetic eyewear would be allowed, and states that the requisite diopter and axis changes will be defined by the Commission or its designee.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect there will be a fiscal impact to state government. The effect on state government for the first five years the amendments are in effect is an estimated cost to general revenue of $4,041 for state fiscal year (SFY) 2013, $6,169 for SFY 2014, $6,347 for SFY 2015, $6,540 for SFY 2016, and $6,739 for SFY 2017. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

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

Public Benefit

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that for each year of the first five years the amendments are in effect, the public will benefit from the adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendment, will be the additional services provided as a result of axis changes.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

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

Public Hearing

A public hearing is scheduled for October 2, 2012 from 2:00 p.m. to 3:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§363.502. Benefits and Limitations.

In addition to the services specified in §354.1023 of this title (relating to Optometric [~~Optometrist~~] Services Provider), the benefits and limitations applicable to vision services available through the Medicaid EPSDT Program are as follows.

(1) Recipient eligibility. All Medicaid recipients under the age of 21 are eligible for EPSDT vision services. Services may be continued through the month the eligible recipient becomes 21.

(2) Provider eligibility. All vision services reimbursable by the program must be provided to eligible recipients by a physician, optometrist, or optician enrolled in the Medicaid Program at the time the service is provided.

(3) Reimbursable services.

(A) Examination. One examination of the eyes by refraction may be provided to each eligible recipient each state fiscal year (September 1-August 31).

(B) Eyewear. Eyewear that is medically necessary to correct vision defects may be provided to an eligible recipient. Eyewear include eyeglasses (lenses and frames), contact lenses, and post cataract surgery prosthetic lenses.

(i) Nonprosthetic eyeglasses or contact lenses are available to an eligible recipient only once every 24 months, unless the recipient's visual acuity has changed in diopters or axis as defined by the Commission or its designee [~~by .5 diopters or more~~], or the eyewear is lost or destroyed. The Texas Health and Human Services Commission or its designee must authorize in writing prescriptions for contact lenses before dispensing. Prior authorization is based on the provider's written documentation that contact lenses are the only means of correcting the vision defect.

(ii) Prosthetic eyewear is provided to an eligible recipient if prescribed for post cataract surgery, congenital absence of the eye lens, or loss of an eye lens because of trauma.

(I) Reimbursement is made for as many temporary lenses as are medically necessary during post cataract surgery convalescence (four months after the date of surgery).

(II) Only one pair of permanent prosthetic eyewear may be dispensed except to replace lost or destroyed prosthetic

eyewear or if required because of a change in visual acuity measured in diopter or axis changes as defined by the Commission or its designee [~~of .5 diopters or more~~].

(C) Repairs. Eyeglass repairs are reimbursable if the cost of materials exceeds $2.00. Repairs costing less are not reimbursable and the provider may not bill the recipient for these repairs.

(D) Replacement of lost or destroyed eyewear. Replacement of eyewear is reimbursable. The date nonprosthetic eyewear is replaced begins a new 24-month ineligibility period for new eyewear unless the conditions in subparagraph (B)(i) of this paragraph apply.

(E) Limitations. Eyeglasses for residents of institutions that include this service in their vendor payment are not reimbursed under this program.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204587
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §§85.200, 85.709, 85.710, 85.725, 85.1003

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 85, §§85.200, 85.709, 85.710, 85.725, and 85.1003, regarding the towing, storage, and booting program.

The proposed amendments are necessary to implement amendments recommended by the Towing, Storage, and Booting Advisory Board, and as general rule cleanup so that these rules are internally consistent and in harmony with 16 TAC Chapter 86, rules regarding the towing of vehicles.

The proposed amendment to §85.200 clarifies the requirement that only a single licensed facility may register and operate from a single address. This rule links the registered address of the licensed facility to the taxing records of the county wherein the facility is located.

The proposed amendments to §85.709 implement one of the purposes for requiring a fenced and secure area around a licensed facility. The amendment clarifies the classes or groups of persons authorized to enter the secured area.

The proposed amendment to §85.710(a)(3) requires that a vehicle storage facility (VSF) must accept payment at the location of the stored vehicle and may not require a person to travel to a separate location to make payment and another location to retrieve the stored vehicle. The provision in §85.710(a)(5) has been deleted and moved to §85.710(a)(3)(I).

The proposed amendment to §85.710(c) addresses long-standing issues related to persons attempting to gain access to or possession of stored vehicles using fraudulent documentation. This amendment is an express prohibition against such fraudulent activity through exercise of the department's and the Texas Commission of Licensing and Regulation's jurisdiction to impose administrative penalties for such violations.

The proposed amendment to §85.725(a)(6)(C)(iii) harmonizes the drug testing requirement that the percentage of random testing be based on the number of employees participating in the consortium rather than the VSF. This harmonizes the drug testing requirements for VSFs with those used by towing companies.

The proposed amendment to §85.1003 provides flexibility for a VSF to continue with the existing practices related to the placement of signage or implement the new provisions which provide for and allow affixing the notices to the payment window. This flexibility will reduce or eliminate the need to print new signs with each statute or rule change that may affect consumer notices. A new subsection §85.1003(g) is added to retain the statutory requirement that notice of nonconsent fee schedules be provided.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz has determined that for each year of the first five-year period the amendments are in effect, the public will benefit from improved clarity in what is required by the law of a vehicle storage facility. The rules also maintain consumer protections for individuals whose vehicles are the subject of a nonconsent tow. The public will also benefit from the enhanced integrity of vehicle storage facilities.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§85.200. License Required--Vehicle Storage Facility.

(a) A person may not operate a VSF unless the person holds a VSF license issued by the department. For purposes of this section,

each VSF physical location or lot is a separate facility and must obtain a VSF license.

(b) Only one licensed facility may be located at the physical address as recorded in the records of the local taxing appraisal district for the county in which the facility is located.

§85.709. Responsibilities of Licensee--Unpermitted Tow Trucks Prohibited and Unlicensed Personnel Restrictions.

(a) Unless authorized by another law or regulation, a VSF shall not allow a tow truck that is not permitted under Texas Occupations Code, Chapter 2308, to enter the storage area of the facility.

(b) Except as provided for in paragraphs (1) - (7), a VSF shall not allow any person to access the fenced vehicle storage area unless the person is:

(1) licensed under Chapters 85 or 86;

(2) the owner of the stored vehicle;

(3) a person authorized by the owner of the stored vehicle to have access to or possession of the vehicle;

(4) law enforcement;

(5) named in a court order;

(6) a person participating in the auctioning of a vehicle under Chapter 683, Transportation Code; or

(7) any other person authorized by this chapter or Texas Occupations Code Chapters 2303 and 2308.

§85.710. [~~Responsibilities of Licensee--~~] Release of Vehicles.

(a) Release of vehicles. The VSF must comply with the following requirements when releasing vehicles.

(1) The VSF shall comply with all provisions of Texas Occupations Code, Chapter 2308, Subchapter J, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of:

(A) the justice court that has jurisdiction in the precinct in which the vehicle is towed; and

(B) the name, address and telephone number of the person or law enforcement agency that authorized the tow.

(2) The VSF shall provide the owner or the owner's representative with a tow ticket. The tow ticket may be combined with a VSF Invoice; provided, the combined tow ticket and VSF Invoice comply with the following requirements:

(A) tow charges must be separated from VSF storage charges and each category of charges must be preceded by a heading or label identifying the charges as "Tow Charges" or "Storage Charges";

(B) tow charges must appear on the combined statement of charges exactly as stated on the tow ticket prepared by the tow operator and provided to the VSF at the time the vehicle is presented for storage; and

(C) the combined statement of charges meet and contain all required elements of a separate VSF invoice and tow ticket; provided the license number and name of the tow operator may be excluded.

(3) The VSF shall allow the vehicle owner or authorized representative to obtain possession of the vehicle, including payment at the location of the stored vehicle, at any time between the hours listed on the facility information sign posted as described in §85.1003, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(A) a notarized power-of-attorney;

(B) a court order;

(C) a certificate of title;

(D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

(E) name and address information corresponding to that contained in the files of the Texas Department of Motor Vehicles;

(F) a current automobile lease or rental agreement executed by the operator of the vehicle or a person holding a power of attorney executed by the person named in the lease agreement;

(G) appropriate identification of any state or federal law enforcement agency representative; [~~or~~]

(H) the most recent version of a department-approved form or electronic version of a department-approved form published on the department's website, www.license.state.tx.us; which the VSF must make available to the vehicle owner or person seeking possession of or access to the vehicle; or[~~.~~]

(I) evidence of financial responsibility (insurance card), as required by §601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(4) A VSF may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.

[~~(5) A VSF must accept evidence of financial responsibility (insurance card), as required by §601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.~~]

(5) [~~(6)~~] Paragraph (3) does not require a VSF to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(A) pay the charges for services regulated under this chapter or Chapter 86 of this title, including charges for and associated with delivery or storage of the vehicle; and

(B) present valid photo identification issued by this state, another state, a federal agency or a foreign government.

(6) [~~(7)~~] If it accepts vehicles 24 hours a day, all VSFs shall have vehicles available for release 24 hours a day within one hour's notice.

(7) [~~(8)~~] If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(8) [~~(9)~~] For purposes of determining when the one hour for release of a vehicle starts, the VSF must clearly note on the receipt the time of the call requesting vehicle release and have the person requesting release separately initial the notation.

(b) A VSF may not require an owner, operator or agent of an owner or operator of a vehicle to sign an authorization or release form to release the vehicle from the VSF if that form:

(1) changes the status of the law enforcement initiated tow from a nonconsent status to a consent tow status;

(2) changes the status of the storage resulting from a nonconsent tow from a nonconsent storage status to a consent storage status; or

(3) imposes any additional charges not regulated by the department.

(c) A person may not execute, submit or use a department approved form or other document which contains a false, fictitious, dishonest, or fraudulent statement of a material fact used for the purpose of obtaining possession of or access to a motor stored by facility licensed under Texas Occupations Code Chapter 2303.

(1) For purposes of this section, a false, fictitious, dishonest, or fraudulent statement related to authorization from the vehicle owner to the person or entity named in the form or document is a material fact.

(2) Conduct found by the commission or the executive director by final order to have violated this section shall be deemed fraudulent and dishonest conduct.

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

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

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

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

(3) Consent Form.

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

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

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

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

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

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

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

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

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

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

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

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

(6) Types of Tests.

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

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

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

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

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

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

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

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

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

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

(8) Specimen Collection Procedures.

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

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

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

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

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

(i) VSF employee's name;

(ii) VSF employee license number;

(iii) date of the positive test;

(iv) substance detected by the drug test; and

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

(9) Reporting and Reviewing of Drug Testing Results.

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

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

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

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

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

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

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

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

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

(11) Consequences of a Confirmed Positive Drug Test.

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

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

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

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

(12) Exceptions.

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

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

(b) Independent drug testing policy.

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

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

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

§85.1003. Technical Requirements--Storage Lot Signs.

(a) Facility information. All VSFs shall have a clearly visible and readable sign at its main entrance. Such sign shall have letters at least 2 inches in height, with contrasting background, shall be visible at 10 feet, and shall contain the following information:

(1) the registered name of the storage lot, as it appears on the VSF license;

(2) street address;

(3) the telephone number for the owner to contact in order to obtain release of the vehicle;

(4) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and

(5) the storage lot's state license number preceded by the phrase "VSF License Number."

(b) All VSFs shall have a sign in view of the person who claims the vehicle setting out the charge for storage and all other fees, which may be charged by the storage lot, including notification and impoundment fees. The sign may be affixed to the payment window and shall include all forms of payments the VSF accepts for any charge associated with delivery or storage of a vehicle. If the sign is affixed to the payment window, it [~~The sign~~] must be located so it is clearly visible to a vehicle owner at the place of payment [~~and shall have letters at least 1 inch in height with a contrasting background~~].

(c) Nonconsent towing fees schedule. All VSFs shall conspicuously place a sign, at the place of payment, which states in 1-inch letters that:

(1) "Nonconsent tow fees schedules available on request." The VSF shall provide a copy of a nonconsent towing fees schedule on request; and

(2) The nonconsent towing fees provided for viewing and to the vehicle owner or representative must match the nonconsent towing fees authorized by this chapter or Texas Occupations Code §2308.2065.

(d) Instruments accepted for release of vehicle. VSFs shall have a sign describing the documents that may be presented by the vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described in §85.710(a)(3)(A) - (I) [~~(G)~~], and shall also state: "Affidavit of Right of Possession Furnished Upon Request." The sign may be affixed to the payment window. [~~This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, and have letters at least 1 inch in height with a contrasting background.~~]

(e) A VSF must conspicuously post a sign that states: "This vehicle storage facility must accept payment by an electronic check, credit card, or debit card for any fee or charge associated with delivery or storage of a vehicle."

(f) Combination signs. A VSF may combine the signs described in subsections (b), (c), (d), and (e), if the combination sign meets the requirements of each of the separate signs.

(g) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign in one inch letters stating "Nonconsent tow fees schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fees schedule on 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 August 31, 2012.

TRD-201204594
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER E. STUDENT COMPLAINT PROCEDURE

19 TAC §§1.110 - 1.120

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§1.110 - 1.120, concerning the Student Complaint Procedure. The U.S. Department of Education has promulgated Program Integrity regulations which require each state to have "a process to review and appropriately act on complaints concerning higher education institutions including enforcing applicable State laws" in order for the institution to be legally authorized by the state and eligible for federal Title IV funds. In December 2011, the Office of the Attorney General of Texas issued an opinion stating in pertinent part that the Coordinating Board has authority to promulgate procedures for handling complaints about postsecondary educational institutions under Texas Education Code, §61.031. To that end, the Coordinating Board has established a complaint procedure to review student complaints regarding public and private (non-profit, not-for-profit and for-profit) higher education institutions in Texas. That procedure is outlined in these new sections.

Sections 1.110 - 1.119 provide that students will exhaust all of the institutions' grievance and appeal procedures prior to the Coordinating Board's investigation of complaints; Coordinating Board staff members will investigate student complaints, make recommendations for the resolution of the complaints, and refer certain student complaints to other agencies or entities; and the Commissioner of Higher Education will issue written determinations dismissing complaints or requiring institutions to take specific actions to remedy complaints or forward certain complaints to the Board for its determination.

Section 1.120 authorizes the Commissioner to: issue written determinations dismissing complaints, require institutions to take specific action(s) to remedy complaints, or forward to the Board complaints regarding institutional integrity for its consideration and determination. Texas Education Code, §61.031 authorizes the Coordinating Board to investigate and resolve student complaints.

Mr. William Franz, General Counsel, has estimated that for each year of the first five years the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, except to the extent that institutions of higher education are required to provide certain directory information to students and except to the extent the proposed rules may require the Coordinating Board to hire one or more full-time employees in order to handle, investigate, and resolve the student complaints as contemplated in these rules.

Mr. Franz has also determined that for each year of the first five years the new sections are in effect, the public benefits anticipated as a result of administering the new sections will be to encourage the early resolution of student complaints through use of the institutions' grievance procedures and to establish clear procedures for the administration of all student complaints filed with the Coordinating Board. There is no effect on small businesses. Other than as noted, there are no anticipated economic costs to persons who are required to comply with the subchapter as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to William Franz, P.O. Box 12788, Austin, Texas 78711, (512) 427-6143, william.franz@thecb.state.tx.us. Comments will be accepted

for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, §61.031, which provides the Coordinating Board with the authority to establish policies and procedures relating to complaint investigation and resolution; §61.028, which provides that the Board can delegate these responsibilities to the Commissioner; and §61.027, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Chapter 61 of the Texas Education Code.

The new sections affect Texas Education Code, §61.031.

§1.110. Definitions.

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

(1) Agency--Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Complainant or student--A current, former, or prospective student of an institution who submits a complaint to the Agency regarding that institution.

(4) Educational association--Independent Colleges and Universities of Texas, Inc. (ICUT).

(5) Institution--A public or private (non-profit, not-for-profit, or for-profit) institution of higher education that the legislature or the Agency has authorized to operate in Texas.

(6) Student complaint form--A standard form, available in downloadable format on the Agency's website or in hard copy form from the Agency, which is required to be used in filing any student complaint with the Agency.

§1.111. Scope and Purpose.

(a) This subchapter shall govern all instances in which complainants file written complaints with the Agency regarding institutions.

(b) This subchapter implements Texas Education Code, §61.031, concerning Public Interest Information and Complaints, and 34 C.F.R. §600.9(a)(1) of the United States Department of Education's Program Integrity regulations, which requires each state to establish "a process to review and appropriately act on complaints concerning an institution of higher education including enforcing applicable State laws."

(c) The purpose of this subchapter is:

(1) to encourage the early resolution of student complaints through use of the institutions' grievance procedures or informal processes in appropriate cases; and

(2) to establish procedures for the administration of all student complaints filed with the Agency.

§1.112. Institution's Obligation to Provide Information Concerning the Complaint Procedure.

(a) Each institution shall post information regarding the complaint procedure outlined in this subchapter on its website. Such information shall:

(1) contain, at a minimum, contact information for filing student complaints with the Agency, a description of the complaint procedure outlined in this subchapter, and the Uniform Resource Locator (URL) for this subchapter on the Texas Secretary of State's website;

(2) be accessible from the institution's Internet website home page by use of not more than three links;

(3) be searchable by keywords and phrases;

(4) be accessible to the public without requiring registration or use of a user name, a password, or another user identification; and

(5) be updated as soon as practicable if the information changes.

(b) Each institution shall also provide each individual student of that institution with written information regarding the complaint procedure outlined in this subchapter at the beginning of each academic year, such as in the school's catalog. Such information shall contain, at a minimum, contact information for filing student complaints with the Agency and a description of the complaint procedure outlined in this subchapter.

§1.113. Complaints Not Reviewed by the Agency.

The following is a non-exhaustive list of student complaints that are not reviewed by the Agency:

(1) The Agency does not handle, investigate, or attempt to resolve anonymous complaints.

(2) The Agency does not intervene in matters solely concerning an individual's grades or examination results, as these are within the sole purview of the institution and its faculty.

(3) The Agency does not intervene in matters solely related to student life such as student housing, dining facilities, food service, violations of the student code of conduct, or student activities and organizations, as these issues are within the sole purview of the institution.

(4) The Agency does not handle, investigate, or attempt to resolve complaints in matters that are or have been in litigation.

(5) The Agency does not handle, investigate, or attempt to resolve complaints about religious institutions relating solely to their religious (as opposed to secular) standards and religious programs of study.

(6) The Agency does not handle, investigate, or attempt to resolve student complaints against institutions not authorized by the Agency to operate in Texas. Institutions authorized by the Agency to operate in Texas are listed on the following websites: http://www.txhighereddata.org and http://www.thecb.state.tx.us.

(7) The Agency does not handle, investigate, or attempt to resolve complaints regarding tribal institutions.

(8) The Agency does not handle, investigate, or attempt to resolve complaints about criminal matters, and instead encourages students to contact local law enforcement authorities regarding these complaints.

§1.114. Filing a Complaint.

(a) The student complaint form is available on the Agency's website. All complaints must be submitted to the Agency on the student complaint form.

(b) Complainants shall send student complaint forms by electronic mail to StudentComplaints@thecb.state.tx.us or by mail to the Texas Higher Education Coordinating Board, Office of the General Counsel, P.O. Box 12788, Austin, Texas 78711-2788. Facsimile transmissions of the student complaint form are not accepted.

(c) All submitted complaints must include a student complaint form and a signed Family Educational Rights and Privacy Act (FERPA)

Consent and Release form, which is at the bottom of the student complaint form. Submitted complaints regarding students with disabilities shall also include a signed Authorization to Disclose Medical Record Information form, which is at the bottom of the student complaint form.

(d) The Agency does not handle, investigate, or attempt to resolve complaints concerning actions that occurred more than two years prior to filing a student complaint form with the Agency, unless the cause of the delay in filing the student complaint form with the Agency was the complainant's exhaustion of the institution's grievance procedures.

(e) Former students shall file a student complaint form with the Agency no later than one year after the student's last date of attendance at the institution, or within 6 months of discovering the grounds for complaint, unless the cause of the delay in filing the student complaint form with the Agency was the complainant's exhaustion of the institution's grievance procedures.

§1.115. Referral of Certain Complaints to Other Agencies or Entities.

Once the Agency receives a student complaint form, the Agency may refer the complaint to other agencies or entities as follows:

(1) Complaints alleging that an institution has violated state consumer protection laws, e.g., laws related to fraud or false advertising, shall be referred to the Consumer Protection Division of the Office of the Attorney General of Texas for investigation and resolution.

(2) Complaints pertaining to an institution in the University of Texas System, Texas A&M University System, University of Houston System, University of North Texas System, Texas Tech University System, or Texas State University System shall be referred to the appropriate university system for investigation and resolution.

(3) If the Agency determines that the complaint is appropriate for investigation and resolution by the institution's recognized accrediting agency, the Agency may refer the complaint to the accrediting agency. If the Agency refers the complaint to such an accrediting agency, the accrediting agency shall send monthly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to accept, modify, or reject any decision proposed or made or any course of action proposed or taken by the accrediting agency. The Agency shall have the right to terminate the referral of the complaint to the accrediting agency if the Agency determines that the accrediting agency is not appropriately addressing the complaint.

(4) If the Agency determines that the complaint is appropriate for investigation and resolution by an educational association to which the institution belongs, the Agency may refer the complaint to the educational association. If the Agency refers the complaint to such an educational association, the educational association shall send monthly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to accept, modify, or reject any decision proposed or made or any course of action proposed or taken by the educational association. The Agency shall have the right to terminate the referral of the complaint to the educational association if the Agency determines that the educational association is not appropriately addressing the complaint.

§1.116. Agency Investigation of Student Complaint.

(a) If a student complaint form concerns compliance with the statutes and regulations that the Agency administers and the Agency has not referred the complaint to another entity, the Agency will initiate an investigation, as described in subsections (b) - (h) of this section.

(b) Prior to initiating an investigation, the Agency shall require the complainant to exhaust all grievance and appeal procedures that the institution has established to address student complaints. Complainants will be encouraged to consult the institution's website and student handbook, or to contact the institution's student ombudsman, Office of Student Affairs, Office of the General Counsel, or other appropriate administrative official, for information regarding the institution's processes for resolving complaints. Upon exhaustion of the institution's procedures, the complainant shall inform the Agency of the outcome of the grievance and appeal procedures and provide all documentation concerning same.

(c) As part of the Agency's investigation of the complaint, Agency staff may contact the complainant to obtain additional information regarding the complaint.

(d) Agency staff, as appropriate, will request a written response to the complaint from the institution. Along with a request for response, the Agency will transmit to the institution a copy of the student complaint form and any attachments thereto. The institution has thirty days from receiving the request for response to provide a written response to the complaint. Agency staff, in its discretion, may contact the institution to obtain additional information upon the Agency's receipt of the institution's response or at any time during the investigation of the complaint.

(e) As part of its investigation, the Agency may also contact other persons or entities named in the student's complaint.

(f) The Agency shall provide the complainant, the institution, and each person who is a subject of the complaint a copy of the Agency's policies and procedures relating to complaint investigation and resolution.

(g) The Agency, at least quarterly until final disposition of the complaint, shall notify the complainant, the institution, and each person who is a subject of the complaint of the status of the investigation, unless the notice would jeopardize an undercover investigation.

(h) The Agency shall maintain a file on each student complaint form filed with the Agency. The file shall include:

(1) the name of the complainant;

(2) the date the complaint is received by the Agency;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the Agency closed the file without taking action other than to investigate the complaint.

§1.117. Attempt to Facilitate an Informal Resolution to the Complaint.

During the investigation of a student complaint, Agency staff shall, in appropriate cases, attempt to facilitate an informal resolution to the complaint that is mutually satisfactory to the complainant and institution.

§1.118. Recommendation for Resolution Made to the Commissioner.

In cases in which an informal resolution between the complainant and institution is not feasible, Agency staff shall evaluate the results of the

investigation of the student complaint and recommend a course of action to the Commissioner. If Agency staff finds the complaint to be without merit following the investigation, Agency staff shall recommend that the complaint be dismissed. If Agency staff finds the complaint has merit following the investigation, Agency staff may recommend that the Commissioner require the institution to take specific action(s) to remedy the complaint.

§1.119. Written Determination of the Commissioner.

After receiving the Agency staff's recommendation, the Commissioner shall consider the recommendation regarding the complaint and render a written determination thereon. If the Commissioner finds the complaint is without merit, the Commissioner shall dismiss the complaint. If the Commissioner finds the complaint has merit, the Commissioner may require the institution to take specific action(s) to remedy the complaint. In the Commissioner's sole discretion, complaints regarding institutional integrity may be forwarded to the Board for its consideration and determination. The Agency shall send a copy of the Commissioner's or the Board's, as appropriate, written determination to the complainant and the institution. As necessary, the Agency may take all appropriate actions to enforce its determination.

§1.120. Authority of the Commissioner to Issue Written Determinations Regarding Student Complaints.

With regard to student complaints to the Board about a public or private (non-profit, not-for-profit, or for-profit) institution of higher education that the legislature or the Agency has authorized to operate in Texas, the Board authorizes the Commissioner to issue written determinations dismissing complaints or requiring institutions to take specific action(s) to remedy complaints. In the Commissioner's sole discretion, complaints regarding institutional integrity may be forwarded to the Board for its consideration and determination. The student complaint procedure is set out in 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 August 31, 2012.

TRD-201204593
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2012
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 7. RESOLUTION OF DISPUTES BETWEEN PARENTS AND SCHOOL DISTRICTS

19 TAC §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185, 89.1191

The Texas Education Agency (TEA) proposes amendments to §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185, and 89.1191, concerning special education services. The sections address resolution of disputes between parents and school districts. The proposed amendments would clarify the timelines associated with special education due process hearings filed pursuant to the Individuals with Disabilities Education Act (IDEA), 20 USC §§1400, *et seq.,* and make minor technical corrections and clarifications.

The IDEA and its implementing regulations provide that parents or public education agencies may file due process complaints regarding the identification, evaluation, or educational placement of a child with a disability or regarding the provision of a free appropriate public education (FAPE) to the child. The IDEA requires the TEA, as the state education agency, to conduct due process hearings and have procedural safeguards in effect to ensure that each public education agency in the state meets the requirements for due process hearings. Accordingly, in 2001, the commissioner exercised rulemaking authority to adopt 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, Division 7, Resolution of Disputes Between Parents and School Districts.

Proposed amendments to 19 TAC Chapter 89, Subchapter AA, Division 7, are necessary to clarify and align the rules with federal law and regulations, as follows.

Section 89.1151, Due Process Hearings, would be amended to align the rule with federal law and to clarify that there are exceptions to the one-year statute of limitations. Technical corrections would also be made.

Section 89.1165, Request for Hearing, would be amended to clarify that the model due process request form available from the TEA may be used by both parents and public education agencies. Minor technical corrections would also be made.

Section 89.1170, Impartial Hearing Officer, would be amended to change the term "appeal" to "hearing" in reference to the hearing officer's ability to complete the performance of duties. The term "hearing" more accurately refers to the stage in the proceeding in which the hearing officer is actively involved, while the term "appeal" refers to the stage in the proceeding after the hearing officer has rendered a decision.

Section 89.1180, Prehearing Procedures, would be amended to make minor technical corrections.

Section 89.1185, Hearing, would be amended in subsection (a) to clarify that requests for extension of time may be made by either party and are granted subject to the hearing officer's discretion and to clarify that the timelines for expedited hearings cannot be extended. Section 89.1185 would also be amended in subsection (p) to clarify that although a public education agency is not required to reimburse past expenses during the pendency of an appeal, all other aspects of the hearing officer decision that are adverse to the public education agency must be implemented within ten school days after the decision is rendered. Minor technical corrections would also be made.

Section 89.1191, Special Rule for Expedited Due Process Hearings, would be amended to align the rule with federal law regarding the timelines associated with expedited due process hearings.

The proposed amendments would incorporate procedural requirements contained in the IDEA that public education

agencies must follow; however, there would be no reporting implications. The proposed amendments would have no new locally maintained paperwork requirements.

David Anderson, general counsel, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments.

Mr. Anderson has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be further clarification of the special education due process hearing system for students, parents, and public education agencies. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins September 14, 2012, and ends October 15, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 14, 2012.

The amendments are proposed under 34 Code of Federal Regulations (CFR), Part 300, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities (34 CFR, §300.100) and that children with disabilities and their parents are afforded procedural safeguards (34 CFR, §300.121), and Texas Education Code (TEC), §29.001, which authorizes the commissioner of education to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21.

The amendments implement 34 CFR, §300.100 and §300.121, and TEC, §29.001.

§89.1151. Due Process Hearings.

(a) A parent or public education agency may initiate a due process hearing as provided in the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code [~~(USC)~~], §§1401 et seq., and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 et seq.

(b) The Texas Education Agency [~~(TEA)~~] shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514[~~,~~] and 300.532 [~~34 CFR, §300.532~~], if applicable, and this division [~~§§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter~~].

(c) A parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

(d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:

(1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or

(2) the public education agency's withholding of information from the parent that was required by the IDEA, Part B to be provided to the parent.

§89.1165. Request for Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for a due process hearing may be filed by mail, hand-delivery, or facsimile. The Individuals with Disabilities Education Act (IDEA) timelines applicable to due process hearings shall commence when the non-filing party first receives the request for a due process hearing. Unless rebutted, it will be presumed that the non-filing party first received the hearing request on the date it is sent to the parties by the Texas Education Agency (TEA). The TEA has developed a model form that [~~which~~] may be used by parents and public education agencies [~~a parent~~] to initiate a due process hearing. The form is available on request from the TEA, all regional education service centers, and all school districts. The form is also available on the TEA [~~TEA's~~] website.

(b) The party filing a request for a due process hearing must provide a copy of the request to the other party.

(c) The request for due process hearing must include:

(1) the name of the child;

(2) the address of the residence of the child;

(3) the name of the school the child is attending;

(4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) a proposed resolution of the problem to the extent known and available to the party at the time.

(d) A party may not have a due process hearing until the party, or the attorney representing the party, files a request for a due process hearing that meets the requirements of subsection [~~paragraph~~] (c) of this section.

§89.1170. Impartial Hearing Officer.

(a) Each due process hearing shall be conducted by an impartial hearing officer selected by the Texas Education Agency (TEA).

(b) The hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.

(c) If the hearing officer is removed, dies, becomes disabled, or withdraws from a hearing [~~an appeal~~] before the completion of duties,

the TEA may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

§89.1180. Prehearing Procedures.

(a) Promptly upon being assigned to a hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:

(1) Response to Complaint (34 Code of Federal Regulations (CFR), §300.508(f));

(2) Resolution Meeting (34 CFR, §300.510(a));

(3) Contesting Sufficiency of the Complaint (34 CFR, §300.508(d));

(4) Resolution Period (34 CFR, §300.510(b));

(5) Five-Business Day Disclosure (34 CFR, §300.512 (a)(3)); and

(6) the date by which the final decision of the hearing officer shall be issued (34 CFR, §300.515 and §300.532(c)(2)).

(b) The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.

(c) The prehearing shall be recorded and transcribed by a court reporter, who shall immediately prepare a transcript of the prehearing for the hearing officer with copies to each of the parties.

(d) The purpose of the prehearing conference shall be to consider any of the following:

(1) specifying issues as set forth in the due process complaint [~~notice~~];

(2) admitting certain assertions of fact or stipulations;

(3) establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or

(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which confirms and/or identifies:

(1) the time, place, and date of the hearing;

(2) the issues to be adjudicated at the hearing;

(3) the relief being sought at the hearing;

(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");

(5) the date by which the final decision of the hearing officer shall be issued; and

(6) other information determined to be relevant by the hearing officer.

(f) No pleadings, other than the request for hearing, and Response to Complaint, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a due process hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this subsection [~~rule~~].

(g) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.

(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) that [~~which~~] the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) that [~~which~~] the party anticipates calling to testify at the hearing.

(i) A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under the Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.

§89.1185. Hearing.

(a) The hearing officer shall afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the hearing officer, at the request of either party, grants an extension of time [~~parties agree otherwise~~], except that the [~~parties must comply with the~~] timelines for expedited hearings cannot be extended.

(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514 or 300.532, or this division [~~the provisions of §§89.1151-89.1191 of this subchapter~~], the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.

(i) Hearings conducted under this subchapter shall be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing shall be recorded and transcribed by a court reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties. The hearing officer shall instruct the court reporter to delete all personally identifiable information from the transcription of the hearing.

(k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer.

(l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after the expiration of the 30-day period under 34 CFR, §300.510(b), or the adjusted time periods described in 34 CFR, §300.510(c), after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (n) of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the public education agency [school district] unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency [school district] the appropriate information in the due process complaint in accordance with 34 CFR, §300.508(b).

(n) A hearing officer may grant extensions of time for good cause beyond the time period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.

(o) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code [(USC)], §1415(i)(2), and 34 CFR, §300.516.

(p) In accordance with 34 CFR, §300.518(d), a public education agency [school district] shall implement any decision of the hearing officer that is, at least in part, adverse to the public education agency [school district] in a timely manner within ten school days after the date the decision was rendered. A public education agency must implement a decision of the hearing officer during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer [School districts must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals].

§89.1191. Special Rule for Expedited Due Process Hearings.

An expedited due process hearing requested by a party under 34 Code of Federal Regulations (CFR), §300.532, shall be governed by the same procedural rules as are applicable to due process hearings generally, except that: [the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.]

(1) the hearing must occur within 20 school days of the date the complaint requesting the hearing is filed;

(2) the hearing officer must make a decision within ten school days after the hearing;

(3) unless the parents and the school district agree in writing to waive the resolution meeting required by 34 CFR, §300.532(c)(3)(i), or to use the mediation process described in 34 CFR, §300.506, the resolution meeting must occur within seven days of receiving notice of the due process complaint;

(4) the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint; and

(5) the hearing officer shall not grant any extensions of time.

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

Filed with the Office of the Secretary of State on August 28, 2012.

TRD-201204540
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.2

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.2, concerning Application Process. The proposed amendment would clarify an applicant's rights and obligations following the denial of his or her application for licensure. The amendment grants the applicant twenty (20) days from the date of the denial, during which he or she may request a hearing to appeal the denial.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.2. Application Process.

Applications for licensure are processed in the following manner:

(1) An individual requests the application packet for the type of licensure desired and includes the fee for the Board to send the application packet. No applicant can have more than one application pending before the Board at one time, unless the second application is to become a licensed specialist in school psychology.

(2) An applicant submits the completed application form, any other information required by the Board, and the application filing fee. An application which contains an incorrect fee amount or which does not include the information required to be submitted must be returned to the applicant. The responsibility of ensuring a complete application resides with the applicant. The application packet will contain a checklist which should be followed carefully. An incomplete application remains in the active file for 90 days, at the end of which time, if still incomplete, it is void. If licensure is sought again, a new application and filing fee must be submitted.

(3) Applications which contain all required information are reviewed by the Applications Committee of the Board to determine if the applicants are eligible to sit for the examinations.

(4) Once an applicant is reviewed by the Applications Committee of the Board, the applicant receives a letter from the Board approving or denying the applicant to sit for the examinations. If the letter indicates the applicant is approved, the applicant may then submit an examination application and the appropriate fees for any required examinations.

(5) After sitting for examination(s), an applicant is informed in writing of the results of the examination(s). An applicant who has passed the examination(s) is informed in writing that the applicant has been licensed.

(6) If an applicant's application for licensure is denied, the applicant shall have 20 days from the date of denial to submit a written request to the Board for a hearing at the State Office of Administrative Hearings. The Board must receive the written request on or before the 20th day following the date of denial for the request to be timely made. If a timely request is made, the Board shall refer the contested case to the State Office of Administrative Hearings for a hearing. If a timely written request is not made, the denial is final.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204562
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.15

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.15, concerning Fees and Financial Arrangements. The proposed amendment would clarify a licensee's duty to provide notice to a person at least 30 days prior to utilizing a collection agency or legal measures to collect any unpaid fees.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.15. Fees and Financial Arrangements.

(a) General Requirements.

(1) Before the provision of any services, the licensee and the recipient of psychological services reach an agreement specifying the compensation and billing arrangements.

(2) If services are not paid for as agreed, the licensee shall not utilize a collection agency or legal measures to collect any unpaid [~~the~~] fees unless the licensee has provided the affected party with at least 30 days written notice, separate and apart from any notice provided as part of the informed consent process, [~~until after the licensee has first informed the affected party~~] that such measures will be taken and the party has been provided with a reasonable opportunity to make prompt payment.

(3) Licensees shall not withhold records solely because payment has not been received unless specifically permitted by law.

(4) In reporting their services to third-party payers, licensees accurately state the nature, date and fees for the services

provided, and the identity of the person(s) who actually provided the services.

(b) Ethical and Legal Requirements.

(1) Licensees do not engage in fraudulent billing.

(2) Licensees do not misrepresent their fees.

(3) Licensees do not overcharge or otherwise exploit recipients of services or payers with respect to fees.

(4) Licensees do not receive payments from or divide fees with another health care provider in exchange for professional referrals.

(5) A licensee does not participate in bartering if it is clinically contra-indicated or if bartering has the potential to create an exploitative or harmful dual relationship.

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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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 305-7700

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22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.18, concerning Forensic Services. The proposed amendment would clarify the basic requirements for rendering a child visitation or parenting recommendation.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.18. Forensic Services.

(a) In General.

(1) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees, must comply with all applicable Board rules concerning forensic services regardless of whether the licensee is acting as a factual witness or an expert.

(2) Licensees who engage in forensic services must have demonstrated appropriate knowledge of and competence in all underlying areas of psychology about which they provide such services.

(3) All forensic opinions, reports, assessments, and recommendations rendered by a licensee must be based on information and techniques sufficient to provide appropriate substantiation for each finding.

(4) A licensee who provides forensic services must comply with all other applicable Board rules and state and federal law relating to the underlying areas of psychology relating to those services.

(5) When appointed or designated in writing by a court to provide psychological services, a licensee shall obtain and keep a copy of the court order.

(6) When providing forensic psychological services to a minor who is the subject of a court order or the ward of guardianship, a licensee shall obtain and keep a copy of the relevant portions of any court order, divorce decree, or letters of guardianship authorizing the individual to provide substitute consent on behalf of the minor or ward.

(b) Limitation on Services.

(1) A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.

(2) A licensee who is asked to provide an opinion concerning a specific matter for which the licensee lacks sufficient information to render a professional opinion shall decline to render that opinion unless the required information is provided.

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without conducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

(4) A written or oral opinion about the psychological characteristics of an individual rendered by a licensee who did not conduct an examination of that individual must contain clarification of the extent to which this limits the reliability and validity of the opinion and the conclusions and recommendations of the licensee.

(5) When seeking or receiving court appointment or designation as an expert for a forensic evaluation a licensee specifically avoids accepting appointment or engagement for both evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case.

(c) Describing the Nature of Services. A licensee must document in writing that subject(s) of forensic evaluations or their parents or legal representative have been informed of the following:

(1) The nature of the anticipated services (procedures);

(2) The specific purpose and scope of the evaluation;

(3) The identity of the party who requested the psychologist's services;

(4) The identity of the party who will pay the psychologist's fees and if any portion of the fees is to be paid by the subject, the estimated amount of the fees;

(5) The type of information sought and the uses for information gathered;

(6) The people or entities to whom psychological records will be distributed;

(7) The approximate length of time required to produce any reports or written results;

(8) Applicable limits on confidentiality and access to psychological records;

(9) Whether the psychologist has been or may be engaged to provide testimony based on the report or written results of forensic psychological services in a legal proceeding; and

(10) The licensee's name as it appears in their professional file with the Board prior to initiating services.

(d) Child Custody Evaluations.

(1) The primary consideration in a child custody evaluation is to assess the individual and family factors that affect the best psychological interests of the child. Other factors or specific factors may also be addressed given a specific forensic services engagement.

(2) Child custody evaluations generally involve an assessment of the adults' capacity for parenting, an assessment of the psychological functioning, developmental needs, and wishes of the child, and the functional ability of each parent to meet such needs. Other socioeconomic factors, family, collateral and community resources may also be taken into secondary consideration.

(3) The role of the psychologist in a child custody forensic engagement is one of a professional expert. The psychologist cannot function as an advocate and must retain impartiality and objectivity, regardless of whether retained by the court or a party to the divorce. The psychologist must not perform an evaluation where there has been a prior therapeutic relationship with the child or the child's immediate family members, unless required to do so by court order.

(4) The scope of the evaluation is determined by the psychologist based on the referral question(s). Licensees must comprehensively perform the evaluation based on the scope of the referral, but not exceed the scope of the referral.

(e) Child Visitation. Forensic opinions as to child visitation and parenting arrangements must be supported by forensic evaluations.

(1) Licensees may provide treatment or evaluation, but not both in the same case.

(2) A treating psychologist may express an opinion as to the progress of treatment, but shall refrain from rendering an opinion about child visitation or parenting arrangements, unless required to do so by court order.

(3) Basis of forensic opinions as to child visitation and parenting access.

(A) The evaluation must be specific to the issue of visitation or parenting access. A general evaluation of an affected party's psychological condition is insufficient.

(B) The evaluation must be court ordered, or the psychologist-expert retained specifically to offer such opinion.

(C) Any evaluation to address the issue of visitation or parenting access must include an evaluation of all affected parties to the proceeding, or identify why a child or affected party was not evaluated, and include a statement as to the limitations on validity imposed thereby.

(f) Parenting Facilitators.

(1) The title "parenting facilitator" is defined in the Texas Family Code, Title 5, Subtitle B, Chapter 153, Subchapter K, Parenting Plan, Parenting Coordinator, and Parenting Facilitator.

(2) The Board's jurisdiction over licensees who also accept engagements as parenting facilitators is limited to its enforcement of Board rules. The Family Code sets forth procedures for the qualifications, duties, appointment and removal, reporting, record retention, and compensation of parenting facilitators. The Family Code also provides procedures for disclosure of conflicts of interest by parenting facilitators. In the event of conflict between the Family Code and Board rules, the Family Code controls, pursuant to Board rule §461.14 of this title (relating to Conflict between Laws and Board Rules).

(3) A parenting facilitator who is also a licensed psychologist in Texas is a provider of forensic psychological services and must comply with all other applicable Board rules and state and federal laws relating to the underlying areas of psychology relating to those services.

(4) Participants in parenting facilitation are not patients as defined in these rules and in Texas Health and Safety Code §611.001. Records created during parenting facilitation are not confidential.

(5) Parenting facilitators must comply with the Texas Family Code at §153.6061 as to duties and §153.6101 as to qualifications, and with the "Guidelines for Parenting Coordination" developed by the Association of Family and Conciliation Courts Task Force on Parenting Coordination, dated May 2005.

(6) The following psychologist-parenting facilitator practice standards are set forth consistent with Texas Family Code §153.6101.

(A) Parenting facilitators licensed by the Board shall comply with the standard of care applicable to the license to practice psychology in Texas.

(B) Psychologist-parenting facilitators meet all requirements of Texas Family Code §153.6101, including active licensure to practice as a psychologist in Texas; completion of 8 hours of family violence dynamics training provided by a family violence service provider; 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court; 24 classroom hours of training in the fields of family dynamics, child development, and family law; and 16 hours of training in the laws governing parenting coordination and parenting facilitation and the multiple styles and procedures used in different models of service.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204564
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 305-7700

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22 TAC §465.22

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.22, concerning Psychological Records, Test Data and Test Protocols. The proposed amendment would reduce the length of time that licensees are required to maintain mental health records to a comparable period of time shared by other regulated health professions thereby reducing the record-keeping burden on licensees.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email brenda.skiff@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.22. Psychological Records, Test Data and Test Protocols.

(a) General Requirements.

(1) All licensees shall create and maintain accurate, current, and pertinent records of all psychological services rendered by or under the supervision of the licensee.

(2) All records shall be sufficient to permit planning for continuity in the event that another care provider takes over delivery of services to a patient or client for any reason, including the death, disability or retirement of the licensee and to permit adequate regulatory and administrative review of the psychological service.

(3) All licensees shall identify impressions and tentative conclusions as such in patient or client records.

(4) All records and record entries shall be created in as timely a manner as possible after the delivery of the specific services being recorded.

(5) Records, test data and test protocols shall be maintained and stored in a way that permits review and duplication.

(6) Licensees working in public school settings shall comply with all federal and state laws and regulations relative to the content, maintenance, control, access, retention and destruction of psychological and educational records, test data and test protocols.

(7) Licensees are prohibited from falsifying, altering, fabricating, or back-dating patient records and reports.

(b) Maintenance and Control of Records and Test Data.

(1) Licensees shall maintain records and test data in a manner that protects the confidentiality of all services delivered by the licensee.

(2) Licensees are responsible for the maintenance, confidentiality and contents of, and access to, all records and test data.

(3) Licensees shall make all reasonable efforts to protect against the misuse of any record or test data.

(4) Licensees shall maintain control over records and test data to the extent necessary to ensure compliance with all applicable Board rules and all state and federal laws.

(5) In situations where it becomes impossible for a licensee to maintain control over records and test data as required by applicable Board rule and state and federal law, the licensee shall make all necessary arrangements for transfer of the licensee's records to another licensee who will ensure compliance with all applicable Board rules and state and federal laws concerning records.

(6) Records and test data of psychological services rendered by a licensee as an employee of an agency or organization remain the property of the employing agency upon termination of the employment of the individual unless legal ownership of such records is controlled by applicable state or federal law or legal agreement.

(c) Access to Records and Test Data.

(1) Records shall be entered, organized and maintained in a manner that facilitates their use by all authorized persons.

(2) Records may be maintained in any media that ensure confidentiality and durability.

(3) A licensee shall release information about a patient or client only upon written authorization by the patient, client or appropriate legal guardian pursuant to a proper court order or as required by applicable state or federal law.

(4) Test data are not part of a patient's or client's record. Test data are not subject to subpoena. Test data shall be made available only:

(A) to another qualified mental health professional and only upon receipt of written release from the patient or client, or

(B) pursuant to a court order.

(5) Licensees cooperate in the continuity of care of patients and clients by providing appropriate information to succeeding qualified service providers as permitted by applicable Board rule and state and federal law.

(6) Licensees who are temporarily or permanently unable to practice psychology shall implement a system that enables their records to be accessed in compliance with applicable Board rules and state and federal law.

(7) Access to records may not be withheld due to an outstanding balance owed by a client for psychological services provided prior to the patient's request for records. However, licensees may impose a reasonable fee for review and/or reproduction of records and are not required to permit examination until such fee is paid, unless there is a medical emergency or the records are to be used in support of an application for disability benefits.

(8) No later than 15 days after receiving a written request from a patient to examine or copy all or part of the patient's mental health records, a psychologist shall:

(A) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(B) inform the patient in writing that the information does not exist or cannot be found; or

(C) provide the patient with a signed and dated statement that having access to the mental health records would be harmful to the patient's physical, mental or emotional health. The written statement must specify the portion of the record being withheld, the reason for denial and the duration of the denial.

(d) Retention of Records and Test Data.

(1) Licensees shall comply with all applicable laws, rules and regulations concerning record retention.

(2) In the absence of applicable state and federal laws, rules and regulations, records and test data shall be maintained for a minimum of seven years after termination of services with the client or subject of evaluation, or three years after a client or subject of evaluation reaches the age of majority, whichever is greater. [~~In the absence of applicable state and federal laws, rules and regulations, records and test data shall be maintained for a minimum of ten years after the last contact with the client. If the client is a minor, the record retention period is extended until ten years after the minor reaches the age of majority.~~]

(3) All records shall be maintained in a manner which permits timely retrieval and production.

(e) Outdated Records.

(1) Licensees take reasonable steps when disclosing records to note information that is outdated.

(2) Disposal of records shall be done in an appropriate manner that ensures confidentiality of the records in compliance with applicable Board rules and state and federal laws.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204565
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 305-7700

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.365

The Comptroller of Public Accounts proposes an amendment to §3.365, concerning sales tax holiday--clothing, shoes and school supplies. The amendment makes the following proposed changes.

Subsection (a)(4) is amended for clarity.

Subsection (b)(1)(B) is amended to implement House Bill 1555, 82nd Legislature, 2011; Senate Bill 1, 82nd Legislature, 2011, First Called Session; and legislative intent expressed by Senator Robert L. Duncan and Representative James R. Pitts which together change the dates of the annual three-day sales tax holiday in Tax Code, §151.326 beginning in 2012. House Bill 1555 amended Education Code, §25.0811(a), to provide specific conditions under which a narrow class of campuses within a school district may begin instruction as early as the first Monday in August. Article 33 of Senate Bill 1 amended Tax Code, §151.326, to set the dates of the annual three-day sales tax holiday by using a calculation based on the first date a non-year-round school district may begin classes as provided by Education Code, §25.0811(a). Legislative intent sets the date on the Friday before the eighth day before the earliest district-wide start date and not the earliest date a narrow class of campuses within a school district may begin instruction.

Subsection (c)(3) clarifies that school supplies not purchased during the sales tax holiday for use by elementary or secondary school students are taxable. Subsection (c)(4) and (6) are amended to correct grammatical errors.

Subsection (m) is amended to correct a grammatical error.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the effective dates for this annual sales tax holiday. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.326 and §151.327.

§3.365. Sales Tax Holiday--Clothing, Shoes and School Supplies.

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

(1) Clothing or footwear--An article of apparel that the article manufacturer designs for wear on or about the human body. Except as provided under paragraph (3) of this subsection, for the purposes of this section, the term does not include accessories, such as jewelry, handbags, purses, briefcases, luggage, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing.

(2) Eligible item--For the purposes of this section, an article of clothing or footwear, a school backpack, or school supplies that are eligible for the sales tax exemption established under Tax Code, §151.326 and §151.327.

(3) School backpack--A pack with straps that one wears on the back, including a backpack with wheels (provided it may also be worn on the back like a traditional backpack) or a messenger bag, that is purchased for use by a student in a public or private elementary or secondary school. The term does not include an item that is commonly considered luggage, a briefcase, an athletic bag, a duffle bag, a gym bag, a computer bag, or a framed backpack.

(4) School supply--The term "school supply" has the meaning assigned by the Streamlined Sales and Use Tax Agreement adopted November 12, 2002, including all amendments made to the Agreement on or before December 14, 2006. The items set out in the following all-inclusive list are school supplies for the purpose of this exemption: binders, book bags, calculators, cellophane tape, blackboard chalk, compasses, composition books, crayons, erasers, expandable folders, pocket folders, plastic folders and manila folders, glue, paste, paste sticks, highlighters, index cards, index card boxes, legal pads, lunch boxes, markers, notebooks, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper, pencil boxes and other school supply boxes, pencil sharpeners, pencils, pens, protractors, rulers, scissors, and writing tablets. School supply items not on this list, for example, computers and textbooks, are not eligible for the exemption.

(b) Exempt sales.

(1) Sales or use tax is not due on the sale of an eligible item if:

(A) the sales price of the eligible item is less than $100; and

(B) under Tax Code, §151.326, the sale takes place during the period that begins at 12:01 a.m. on the [~~third~~] Friday before the eighth day preceding the earliest district-wide date on which any school district, other than a district operating a year-round system, may begin instruction for the school year under Education Code, §25.0811(a), [~~in August~~] and ends at 12:00 a.m. (midnight) of the following Sunday.

(i) The earliest district-wide school starting date under Education Code, §25.0811(a)(2), is the fourth Monday in August.

(ii) Using 2012 as an example, the fourth Monday in August falls on August 27. The eighth day preceding August 27 is Sunday, August 19. The Friday before August 19 is August 17. The sales tax holiday will begin at 12:01 a.m. on Friday, August 17 and end at 12:00 a.m. (midnight) Sunday, August 19.

(iii) In 2013, the sales tax holiday will begin at 12:01 a.m. on Friday, August 16 and end at 12:00 a.m. (midnight) Sunday, August 18.

(iv) In 2014, the sales tax holiday will begin at 12:01 a.m. on Friday, August 15 and end at 12:00 a.m. (midnight) Sunday, August 17.

(2) The exemption applies to each eligible item that sells for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, then both items qualify for the exemption, even though the customer's total purchase price ($160) exceeds $99.99.

(3) The exemption does not apply to the first $99.99 of an otherwise eligible item that sells for more than $99.99. For example, if a customer purchases a pair of pants that costs $110, then sales tax is due on the entire $110.

(c) Taxable sales. The exemption under this section does not apply to:

(1) any special clothing or footwear that the manufacturer primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which the manufacturer designed the article. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and thus qualify for the exemption;

(2) accessories, such as jewelry, handbags, purses, briefcases, luggage, athletic bags, duffle bags, gym bags, computer bags, framed backpacks, umbrellas, wallets, watches, and similar items that are carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing;

(3) school supplies and backpacks that are not purchased for use by elementary or secondary school students;

(4) school [~~School~~] supplies not listed in subsection (a)(4) of this section;

(5) the rental of clothing or footwear. For example, the exemption under this section does not apply to the rental of formal wear, costumes, uniforms, diapers, or bowling shoes;

(6) taxable services that are performed on [~~the~~] clothing or footwear, such as repair, remodeling, or maintenance services, and cleaning or laundry services. For example, sales tax is due on alterations to clothing, even though the alterations may be sold or invoiced, and the customer pays such invoice, at the same time as the clothing is being altered. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, then the $90 charge for the pants is exempt, but tax is due on the $15 alterations charge; and

(7) purchases of items that are used to make or repair eligible items, including fabric, thread, yarn, buttons, snaps, hooks, and zippers.

(d) Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, then the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

(e) Sales of pre-packaged combinations containing both exempt and taxable items.

(1) When an eligible item is sold together with taxable merchandise in a pre-packaged combination or single unit and the predominant cost of the set or unit is taxable, then the full price is subject to sales tax unless the price of the eligible item is separately stated. For example, if a boxed gift set that consists of a French-cuff dress shirt, cufflinks, and a tie tack is sold for a single price of $95, the full price of the boxed gift set is taxable if the cufflinks and tie tack are the predominant cost and the price of the shirt and tie are not separately stated.

(2) When an eligible item is sold in a pre-packaged combination that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the eligible item may qualify for the exemption under this section. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item that is being sold is the tie, which is exempt from tax if the tie is sold for less than $100 during the exemption period. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(f) Discounts and coupons.

(1) A retailer may offer discounts to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption under this section. For example, a customer buys a $150 dress and a $100 blouse from a retailer who offers a 10% discount. After application of the 10% discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (its price is over $99.99), and the blouse is exempt (its price is less than $100.00).

(2) When retailers accept coupons as a part of the sales price of any taxable item, the value of the coupon is excludable from the tax as a cash discount, regardless of whether the retailer is reimbursed for the amount that the coupon represents. Therefore, a coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption under this section. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20, the final sales price of the shoes is $90, and the shoes qualify for the exemption.

(g) Buy one, get one free or for a reduced price. The total price of items that are advertised as "buy one, get one free," or "buy one, get one for a reduced price," cannot be averaged in order for both items to qualify for the exemption under this section. The following examples illustrate how such sales should be handled.

(1) A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot register the charge for each pair of pants at $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50% off, and sells each pair of $120 pants for $60, each pair of pants qualifies for the exemption. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(2) A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption under this section. However, if the retailer advertises the shoes for 25% off, and thereby sells each pair of $100 shoes for $75, then each pair of shoes qualifies for the exemption.

(h) Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater.

(i) Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the merchandise. An order is accepted for layaway by the retailer when the retailer removes the goods from normal inventory or clearly identifies the items as sold to the customer. The sale of an eligible item under a layaway plan qualifies for exemption when either:

(1) final payment on a layaway order is made by, and the merchandise is given to, the customer during the exemption period; or

(2) the customer selects the eligible item and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

(j) Rain checks. Eligible items that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

(k) Exchanges.

(1) If a customer purchases an eligible item during the exemption period, but later exchanges the item for an item of a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

(2) If a customer purchases an eligible item during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.

(3) If a customer purchases an eligible item before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different eligible item, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(4) Examples:

(A) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(B) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(C) During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(D) During the exemption period, a customer purchases a $60 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was also purchased during the exemption period and otherwise meets the qualifications for the exemption.

(l) Returned merchandise. For a 30-day period after the temporary exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific item. This 30-day period is set solely for the purpose of designating a time period during which the customer must

provide documentation that shows that sales tax was paid on returned merchandise. The 30-day period is not intended to change a retailer's policy on the time period during which the retailer will accept returns.

(m) Mail, telephone, e-mail, [~~and~~] Internet orders and custom orders. Under the Texas sales tax law, a sale of tangible personal property occurs when a purchaser receives title to or possession of the property for consideration. Therefore, an eligible item may qualify for this exemption if:

(1) the item is both delivered to and paid for by the customer during the exemption period; or

(2) the customer orders and pays for the item and the retailer accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The retailer accepts an order when the retailer has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order, or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the company.

(n) Shipping and handling charges.

(1) Shipping and handling charges are included as part of the sales price of an eligible item, regardless of whether the charges are separately stated. Except as provided in paragraph (2) of this subsection, if multiple items are shipped on a single invoice, the shipping and handling charge must be proportionately allocated to each item ordered, and separately identified on the invoice, to determine if any items qualify for the exemption. The following examples illustrate the way these charges should be handled.

(A) A customer orders a jacket for $95. The shipping charge to deliver the jacket to the customer is $5.00. The sales price of the jacket is $100. Tax is due on the full sales price.

(B) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $15. The $15 shipping charge must be proportionately and separately allocated between the items: $285 / $380 = 75%; therefore, 75% of the $15 shipping charge, or $11.25, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $15 shipping charge, or $3.75, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $3.75, which totals $98.75; therefore, the shirt qualifies for the exemption.

(C) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $20. The $20 shipping charge must be proportionately and separately allocated between the items: $285 / $380 = 75%; therefore, 75% of the $20 shipping charge, or $15, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $20 shipping charge, or $5.00, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $5.00, which totals $100; because the sales price of the shirt exceeds $99.99, the purchase of the shirt is taxable.

(2) If the shipping and handling charge is a flat rate per package and the amount charged is the same regardless of how many items are included in the package, for purposes of this exemption the total charge may be attributed to one of the items in the package rather than proportionately and separately allocated between the items. For example, a customer orders five shirts, with four priced at $98 and one at $85. The retailer charges $10 for shipping and handling the order. The retailer would have charged the same amount for shipping and handling whether the customer ordered one shirt or five shirts. The retailer may choose to attribute the $10 shipping and handling charge to the shirt that was sold for $85 rather than allocate the charge proportionately and separately between the shirts. If the charge is attributed to the $85 shirt, the sales price of that shirt is $95, and all of the shirts will qualify for the exemption.

(o) Documenting exempt sales.

(1) Except as provided in paragraphs (2) and (3) of this subsection, a retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period; however, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, and the sales price of the item.

(2) A retailer who sells more than 10 backpacks to a customer at the same time must obtain an exemption certificate from the customer verifying that the backpacks are being purchased for use by elementary or secondary school students.

(3) If the purchaser is buying the school supplies under a business account, the retailer must obtain an exemption certificate from the purchaser certifying that the items are purchased for use by an elementary or secondary school student. "Under a business account" means the purchaser is using a business credit card or business check rather than a personal credit card or personal check; is being billed under a business account maintained at the retailer; or is using a business membership at a retailer that is membership based.

(p) Reporting exempt sales. No special reporting procedures are necessary to report exempt sales made during the exemption period. Sales should be reported as currently required by 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 August 31, 2012.

TRD-201204596
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.55

The Texas Board of Criminal Justice proposes amendments to §151.55, concerning the Disposal of Surplus Agricultural Goods and Agricultural Personal Property. This review of this section is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years. The proposed amendments are necessary to change the method of transmission of the surplus agricultural goods and personal property report.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first

five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to ensure surplus agricultural goods and personal property are disposed in the most efficient manner possible.

Comments should be directed to Michael McManus, Deputy General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Michael.McManus@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The revisions are proposed under Texas Government Code §497.113.

Cross Reference to Statutes: Texas Government Code §492.013.

§151.55. Disposal of Surplus Agricultural Goods and Agricultural Personal Property.

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ [~~or Board~~]) that surplus agricultural goods produced by the Texas Department of Criminal Justice (TDCJ [~~or Agency~~]) and surplus agricultural personal property used [~~utilized~~] in the TDCJ's agricultural operations be disposed in the most efficient manner possible for the goods or personal property being disposed.

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

(1) Surplus agricultural goods are those[~~--Those~~] agricultural commodities grown, produced, purchased, or acquired by the TDCJ for use within the TDCJ or other state or local agency or nonprofit organization, which exceed [~~are excess to~~] the needs of the TDCJ operations, which are not required for its foreseeable needs, and which have been determined to be surplus by the TDCJ chief financial officer [~~Chief Financial Officer~~] in coordination with the TDCJ director [~~Director~~] of Agribusiness, Land and Minerals.

(2) Surplus agricultural personal property is[~~--~~] personal [~~Personal~~] property related to the agricultural operations of the TDCJ and grown, produced, purchased, or acquired by the TDCJ, including livestock and farming equipment and implements, which exceeds [~~is excess to~~] the needs of the TDCJ operations, which is not required for its foreseeable needs, and which has been determined to be surplus by the chief financial officer [~~Chief Financial Officer~~] in coordination with the director [~~Director~~] of Agribusiness, Land and Minerals.

(c) Procedures.

(1) The TBCJ [~~Board~~] hereby authorizes the chief financial officer [~~Chief Financial Officer~~] or designee [~~his Designee~~] to sell or dispose of surplus agricultural goods and surplus agricultural personal property. Sale or disposal shall be accomplished in such manner so as to provide, if possible, reasonable consideration for the sale or disposal of such surplus items.

(2) When items of agricultural goods or agricultural personal property are considered surplus, the director [~~Director~~] of Agribusiness, Land and Minerals shall provide a written report to the chief financial officer [~~Chief Financial Officer~~] setting forth those items of agricultural goods and agricultural personal property considered to be surplus. In those instances requiring immediate action due to the perishable nature of such items, the report may be transmitted via e-mail. [~~fax with written follow-up by mail.~~] The chief financial officer [~~Chief Financial Officer~~] shall review the [~~such~~] report and determine if such items shall be sold or disposed as surplus agricultural goods or personal property.

(3) The chief financial officer [~~Chief Financial Officer~~] shall review the report submitted as required herein and shall determine if such reported items are surplus to the needs of the TDCJ, and the terms and method of sale or disposal of such items. [~~surplus agricultural goods and surplus agricultural personal property.~~] Sale or disposal of surplus agricultural goods or agricultural personal property includes:

(A) sale in the usual market for such items;

(B) direct sale by bid or negotiated sale;

(C) exchange for other agricultural products and finished goods; and

(D) donation of food commodities to state, local, or non-profit organizations.

(4) Proceeds from the sale of surplus agricultural goods and surplus agricultural personal property shall be deposited in the appropriate TDCJ fund to be used [~~utilized~~] for purchase of agricultural goods and agricultural personal property necessary for the operation of the TDCJ.

(5) Prices of sales shall be at prevailing market prices or better.

(6) The TDCJ staff shall include, as an agenda item for the Consent Agenda at the next regularly scheduled TBCJ [~~Board~~] meeting following sale or disposition of surplus agricultural items, a report detailing the sale or other disposition of surplus agricultural goods and agricultural personal property.

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

Filed with the Office of the Secretary of State on August 29, 2012.

TRD-201204557
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 463-9693

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 12. PUBLIC DONATION AND PARTICIPATION PROGRAM

SUBCHAPTER J. REAL-TIME SYSTEM MANAGEMENT INFORMATION PROGRAM

43 TAC §§12.301 - 12.304

The Texas Department of Transportation (department) proposes new §§12.301 - 12.304, Subchapter J, all relating to the establishment of a Real-Time System Management Information Program.

EXPLANATION OF PROPOSED NEW SECTIONS

A federal rule creating a new Part 511 under Title 23 of the Code of Federal Regulations (23 C.F.R. Part 511), which establishes a real-time system management information program under §1201 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), became effective November 1, 2011. Title 23 C.F.R. Part 511 requires a state to complete development of a program to collect and distribute real-time traffic and travel condition information for Interstate highways not later than November 8, 2014 and for routes of significance in metropolitan areas not later than November 8, 2016 in order for the state to be eligible to receive federal funds for that program. The new sections define the requirements for the development of a Real-Time System Management Information (RTSMI) Program and will allow Texas to comply with federal law, including federal regulations.

New §12.301, Purpose, states that the new rules authorize the RTSMI Program and provides the general reasons for these rules.

New §12.302, Definitions, provides the definitions for terms used within the subchapter. The terms are defined to provide a clear understanding of their usage within the subchapter.

New §12.303, Real-Time System Management Information Program, allows the department to contract for the development of the RTSMI Program and requires any developed system to conform to 23 C.F.R. Part 511 and any traffic control devices installed under the program to conform to the Texas Manual on Uniform Traffic Control Devices (MUTCD). This section requires that the department comply with the applicable federal regulations and allows the flexibility to adjust the program if the federal regulations are amended. Any sign installed under the program must meet the Texas MUTCD requirements, which provide standards on the size, location, and material of signs installed on state right of way.

New §12.304, Program Acknowledgement Plaques, authorizes the department to allow for the installation of program acknowledgement plaques under the program to inform the public that a donation has been made to support the program. The requirements of the section comply with the federal guidelines regarding the size and content of the plaques and the requirement that a plaque installed under the program must comply with state laws prohibiting discrimination. The new section further provides that the department may terminate the authority of the contractor to install an acknowledgement plaque because of safety concerns, interference with the free and safe flow of traffic, or a department determination that a donation under the program is not in the public interest.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections.

Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be the provision of easily accessible real-time information about travel and traffic conditions to the traveling public. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §§12.301 - 12.304 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "§§12.301 - 12.304." The deadline for receipt of comments is 5:00 p.m. on October 15, 2012. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed new sections, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§12.301. Purpose.

The purpose of this subchapter is to provide for a state Real-Time System Management Information Program that complies with 23 C.F.R. Part 511 and that makes information about current traffic and travel conditions available to the traveling public.

§12.302. Definitions.

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

(1) Contractor--A person that acts as the authorized agent of the department in the development, operation, or maintenance of a Real-Time System Management Information program.

(2) Department--The Texas Department of Transportation.

(3) Person--An individual, corporation, firm, group, or association.

(4) Program--The Real-Time System Management Information Program under which the state is responsible for the collection and availability to the traveling public of information about current traffic and travel conditions.

(5) Texas MUTCD--Texas Manual on Uniform Traffic Control Devices issued by the Texas Department of Transportation.

§12.303. Real-Time System Management Information Program.

(a) The department may award one or more contracts to design, build, host, operate, maintain, or market the program.

(b) The program must comply with 23 C.F.R. Part 511.

(c) Each traffic control device installed by a contractor under the program must conform to the requirements of the Texas MUTCD and must be approved by the department.

§12.304. Program Acknowledgement Plaques.

(a) To acknowledge a donation to the department for the program, the department may allow during the period of the related sponsorship agreement the installation of an acknowledgment plaque below a general service sign for the program that is in the state highway right of way.

(b) An acknowledgment plaque is intended only to inform the traveling public that a donation to the program has been provided and is not intended to provide advertisement.

(c) The size of an acknowledgment plaque may not exceed the lessor of one-third of the area of the general service sign below which it is mounted or 24 square feet, except as provided by this subsection. If, because of a special allowance provided in the Texas MUTCD, the area of the general service sign below which the acknowledgment plaque is mounted exceeds the largest size generally prescribed in the Texas MUTCD for that type of sign, the acknowledgement plaque may not exceed the lessor of one-third of the area generally prescribed in the Texas MUTCD for that type of sign or 24 square feet.

(d) The acknowledgment plaque may contain the donor's registered business name or logo but may not contain the donor's telephone number, address, or website address.

(e) Each acknowledgment plaque must be approved by the department and must comply with state laws prohibiting discrimination based on race, religion, color, age, sex, or national origin, and any other applicable law regarding sign restrictions.

(f) The department will include in any contract entered into under this subchapter the authority to terminate the right to install an acknowledgment plaque if the use of the plaque raises any safety concerns or interferes with the free and safe flow of traffic, or if the department determines that acknowledging the donation is not in the public interest.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204588
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER A. GENERAL

43 TAC §25.1

The Texas Department of Transportation (department) proposes an amendment to §25.1, concerning Uniform Traffic Control Devices.

EXPLANATION OF PROPOSED AMENDMENT

Under Transportation Code, §544.001, the Texas Transportation Commission (commission) is required to adopt a manual for a uniform system of traffic control devices. The statute further states that the manual must be consistent with state traffic laws and to the extent possible conform to the system approved by the American Association of State Highway Transportation Officials. The edition of the manual that is currently in effect is the 2011 version.

The Texas Manual on Uniform Traffic Control Devices (MUTCD) is revised periodically to maintain substantial conformance with the National MUTCD to allow use of a single manual for local, state, and federal-aid highway projects. The National MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways open to public travel. The National MUTCD is published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F.

The department is revising the 2011 Texas MUTCD to incorporate changes to existing compliance dates as adopted by the FHWA, include language restored to the National MUTCD concerning engineering judgment, make the corrections identified by the FHWA in the National MUTCD, and correct minor, non-substantive typographical errors in the 2011 Texas MUTCD.

On May 14, 2012, the FHWA issued a final rule to revise or eliminate certain compliance dates from the National MUTCD as adopted in 2009. The FHWA eliminated the compliance dates for 46 items (eight that had already expired and 38 that had future compliance dates) and extended or revised the dates for four items. These changes became final and effective on June 13, 2012.

The new National MUTCD also restored certain language concerning the use of engineering judgment in the selection and application of traffic control devices that had been originally deleted from the 2009 National MUTCD. This change also became final and effective on June 13, 2012. The Texas MUTCD currently contains provisions for engineering judgment; however, the department has amended the Texas MUTCD to add these provisions under all sections included in the federal changes.

These rule revisions also include minor non-substantive corrections identified by the department and by FHWA in the revisions to the National MUTCD. These changes include such things as corrections to sign designations, grammatical corrections, and correcting formatting and spacing issues. In addition, some sign names have been changed so that the text in the narrative and tables are consistent.

Changes to the Texas MUTCD include corrections identified by the FHWA for the National MUTCD and corrections identified by department staff for the Texas MUTCD.

The adopted 2011 version of the Texas MUTCD and the proposed Revision 1 are available online at the department's website, www.txdot.gov. The National MUTCD is available online at www.fhwa.dot.gov.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years the amendment as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment.

Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be a more uniform use of traffic control devices and increased highway safety. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendment to §25.1 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "§25.1." The deadline for receipt of comments is 5:00 p.m. on October 15, 2012. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendment, or is an employee of the department.

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §544.001, which requires the commission to adopt a manual of uniform traffic control devices.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 544.

§25.1. Uniform Traffic Control Devices.

(a) The 2011 Texas Manual on Uniform Traffic Control Devices, Revision 1, was prepared by the Texas Department of Transportation to govern standards and specifications for all traffic control devices to be erected and maintained upon any street, highway, bikeway, public facility, or private property open to public travel within this state, including those under local jurisdiction, and is adopted by reference. Copies of the manual are available online through the Texas Department of Transportation web site, www.txdot.gov, and a copy is available for public inspection at the department's Traffic Operations Division office located at 118 East Riverside Drive, Austin, Texas.

(b) This manual will be periodically updated. In the intervals between updates, standards contained in "Official Rulings on Requests for Interpretations, Changes, and Experimentation" to the United States Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways will be inserted in this manual and may be used as interim standards.

(c) This manual is not intended to preclude the use of sound engineering judgment and experience in the application and installation of devices and particularly in those cases not specifically covered which must not conflict with the manual or other applicable state laws.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204589
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 14, 2012
For further information, please call: (512) 463-8683

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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8065

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.8065, concerning Disproportionate Share Hospital (DSH) Reimbursement Methodology, with changes to the proposed text as published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2823). The text of the rule will be republished.

Background and Justification

Section 355.8065 establishes the reimbursement methodology for the Disproportionate Share Hospital (DSH) program. HHSC, under its authority and responsibility to administer and implement rates, is amending this rule to: (1) update the methodology for calculation of DSH payments in response to a Petition for the Adoption of a Rule submitted under §351.2; (2) delete language pertaining to calculation of the hospital-specific limit (HSL); and (3) clarify current rule language and administrative processes.

Updating the DSH Payment Methodology in Response to a Petition for the Adoption of a Rule

Hospitals participating in the Texas Medicaid program that meet the DSH program conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement through the DSH program. HHSC, as the Medicaid single state agency, establishes each hospital's eligibility for DSH reimbursement and the amount of reimbursement as specified in §355.8065. However, funding for the vast majority of the non-federal share of payments to hospitals under the DSH program comes from transfers of public funds from transferring non-state governmental entities that are members of the Texas Coalition of Transferring Hospitals (TCTH). TCTH is a coalition of hospital districts representing large-volume Medicaid hospitals in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Tarrant, and Travis counties. Entities voluntarily transfer these funds and cannot be compelled to make such transfers under state law.

Section 351.2, relating to Petition for the Adoption of a Rule, under Title 1, Part 15, Chapter 351, provides procedures for any interested person to request HHSC to adopt a rule. Upon receipt of an acceptable petition, HHSC has 60 days to either deny or accept the petition in whole or in part.

On February 21, 2012, HHSC received a request for rule change from the chairman of TCTH. This petition complied with 1 Texas Administrative Code §351.2 and requested changes to §355.8065 (the DSH rule) to align Texas DSH policy with the §1115 Healthcare Transformation and Quality Improvement waiver (the Waiver) approved by the federal Centers for Medicare and Medicaid Services (CMS) on December 12, 2011.

The petition from TCTH stated that change to the existing DSH rule is required to ensure adequate funding for the Waiver's Uncompensated-Care (UC) and Delivery System Reform Incentive Payment (DSRIP) pools. As well, the petition referenced the impact of the Affordable Care Act (ACA) on Medicaid eligibility and the redistributive effect this change will have on DSH funds through increasing the number of Texans eligible for Medicaid.

In addition to the reasoning cited in the petition, due to changing utilization patterns and economic factors, the proportion of the federal matching funds generated by the TCTH fund transfers that are returned to the transferring hospitals through DSH payments has been steadily declining over the past 16 years from approximately 50 percent in federal fiscal year 1996 to an estimated 14 percent for federal fiscal year 2012. Given these dynamics, unless the distribution of funds under the DSH program is modified through a rule amendment, transferring hospitals will have strong incentives to move their funds from the DSH program to the Waiver in order to ensure compliance with their fiduciary responsibilities, putting funding for the DSH program in serious jeopardy.

HHSC determined that the petition from TCTH had merit and proposed to amend the DSH rule based primarily on the methodology described in the Petition. In response to comments received from interested parties (discussed more fully below) and for the purpose of clarity, HHSC changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matters or affect persons in addition to those subject to the proposal as published. As adopted, §355.8065 differs from the current version of the rule in the following significant ways:

- Non-state-owned institutions for mental diseases (IMDs) will receive, in the aggregate, 1.88% of the federally mandated reimbursement amount for all IMDs in the state. From that aggregate amount, each non-state-owned IMD will be allocated a pro rata share based on the hospital's percentage of all non-state-owned IMDs' hospital-specific limits. For DSH program year 2012, non-state-owned IMDs have already received the maximum allocation amount and will not receive additional DSH payments during the program year.

- Separate funding pools are created for children's hospitals, rural hospitals, urban public hospitals *(i.e.,* hospitals owned by or under an operating lease with TCTH members), and all other hospitals.

- The amount of funds available for distribution within each pool is expressed as a percentage of the federal DSH allotment for Texas for which the non-federal share is available after the amounts expended for state-owned hospitals and IMDs are deducted, as follows: children's hospitals (8.36%); rural hospitals (5.98%), urban public hospitals (51.25%); all other hospitals (34.41%). The percentages are based on multiple factors, including historical payment amounts to the hospitals in each category, historical intergovernmental transfer (IGT) amounts, and the need to ensure a sufficient return of federal funds to the hospitals that fund the DSH program.

Based on current estimates and assumptions, and assuming that sufficient IGTs are made, the net allocation of state and federal funds for program year 2012 resulting from application of the rule would be as follows:

Figure: 1 TAC Chapter 355--Preamble

HHSC will provide notice of pool amounts prior to issuing payments.

- The pool methodology will be implemented in the 4th quarter of DSH program year 2012 with payments calculated to ensure that total payments for the program year equal the pool amounts. Payments already made to each hospital during the program year will be deducted from the payment amounts calculated using the revised methodology. HHSC will not recoup any payments already made that exceed the revised payment amounts. Each pool will be reduced by the amount of payments already made to hospitals in that pool that exceeded the revised payment amounts.

- Half of the DSH funds in each of the funding pools for rural, children's, and all other hospitals are allocated based on Medicaid days and half on low-income days. This methodology is consistent with the historical DSH allocation methodology, except that this is calculated within each pool, rather than on all available DSH funds.

- Funds in the pool for the urban public hospitals are allocated based on 100% low-income days.

- If there are remaining or non-allocated funds available within any pool *(e.g.,* when a hospital's initial payment amount exceeds its hospital-specific limit), the excess funds will be allocated to hospitals within the same pool with available DSH room.

For DSH program year 2012, HHSC anticipates that the amount of local funds transferred by TCTH to support DSH payments to the hospitals in the children's, rural and "other hospital" pools will not be less than the amount of local funds that supported payments to those hospitals in program year 2011.

For DSH program year 2012, HHSC anticipates that DSH payments to hospitals in the children's and rural hospital pools will be equal to or greater than DSH payments to hospitals in those categories in program year 2011. Payments to the urban, non-transferring hospitals may be less than DSH payments to those hospitals in program year 2011, but the reduction would be entirely attributable to the reduction in the Federal Medical Assistance Percentage (FMAP), and not to a reduction in non-federal funds transferred by TCTH to support the hospitals in that category.

Deleting Language Pertaining to Calculation of the Hospital-Specific Limit

Texas has calculated HSLs as part of the DSH program since 1995. The DSH HSLs have also played an important role in calculating upper payment limit (UPL) caps for Texas hospitals that participated in both DSH and the former UPL supplemental payment program. As Texas transitions from UPL to the Waiver, HSLs will continue to be a factor in calculating caps for hospitals that choose to participate in the Waiver UC pool.

Because of this dual role in determining hospital reimbursement in both the DSH and Waiver programs, HHSC removed language pertaining to the calculation of HSLs from §355.8065 and incorporated that language into new §355.8066, which was adopted effective July 1, 2012.

Clarifying Current Administrative Processes

Changes to clarify current rule language and administrative processes include: (1) updates to various definitions; (2) clarification of the deadline for submission to HHSC of CMS tie-in notices for merged hospitals; (3) clarification that hospitals must notify HHSC within 30 days of any change that may affect the hospital's continued eligibility, qualification or compliance with DSH conditions of participation; and (4) updates to language describing the review hospitals can request related to their participation in the DSH program.

Comments

HHSC conducted two public hearings to receive comment on the proposed amendment to §355.8065. HHSC also received written comments on the proposed amendment. Oral and written comments were received from the following entities (listed in alphabetical order):

Baptist St. Anthony's Health System (BSA)

Baylor Health Care System (Baylor)

Children's Hospital Association of Texas (CHAT)

Christus Health

Clarity Child Guidance Center (Clarity)

Dell Children's Hospital

Doctors Hospital of Renaissance

Hospital Corporation of America (HCA)

Memorial Hermann Healthcare System

Mission Regional Medical Center

Oakbend Medical Center

St. Joseph Medical Center

Scott & White Healthcare (SWH)

Southwest General Hospital

Teaching Hospitals of Texas (THOT)

Texas Health Resources Health Care System (THR) (including Texas Health Presbyterian Hospitals, Texas Health Arlington Memorial Hospital, and Texas Health Harris Methodist Hospitals)

Texas Hospital Association (THA)

Texas Organization of Rural and Community Hospitals (TORCH)

The Medical Center of Southeast Texas (MCST)

Universal Health Services, Inc. (UHS)

Vanguard Hospitals (including Baptist Health System, Valley Baptist-Brownsville, and Valley Baptist-Harlingen)

Summaries of the comments and HHSC's responses to the comments, grouped by topic, follow:

Withdraw proposed rule or postpone adoption

Comment: Multiple commenters asked HHSC to extend the 30-day comment period, postpone adoption of the rule, or withdraw the rule altogether to provide additional time for the hospital industry to build consensus on a solution to DSH funding issues.

Response: HHSC extended the comment period and postponed adoption of the rule while continuing to work with hospital associations and representatives to find a solution to DSH funding issues. Without changes in the rule that would flow more funds to TCTH members, DSH funding for the remainder of the 2012 program year would be jeopardized. HHSC is adopting the rule in time to make payments during the 2012 program year.

Support for long-term solutions to DSH funding issues

Comment: During the extended comment period, HHSC received recommendations from a task force convened by the Texas Hospital Association (THA) representing a wide range of hospital types. The task force was formed to address current issues affecting the Medicaid DSH program. The task force recommended a set of principles upon which DSH would be funded and DSH funds distributed. The task force also proposed a different funding model based on the set of principles. Several other commenters expressed support for the THA task force principles.

Response: HHSC appreciates the efforts of THA and the DSH task force to reach consensus on solutions to the difficult issue of funding the uncompensated care provided by public and private hospitals in Texas, and to share its recommendations with HHSC. The principles reflect careful thought and a balanced perspective. HHSC considered the principles as comments to the proposed rule and has included those comments and HHSC's responses below.

Comment: Several commenters recognize the important role played by TCTH in funding the DSH program and express support for long-term solutions to return more federal funds to TCTH-owned hospitals, although each of these commenters oppose one or more of the methods proposed in the rule to accomplish that goal.

Response: HHSC appreciates these comments and the willingness and effort of the hospital industry to work together toward long-term solutions for equitable DSH funding. The specific objections expressed by these commenters are addressed below.

Texas should maximize receipt of federal funding

Comment: Some commenters stated that Texas should maximize receipt of federal funding for Medicaid DSH payments and uncompensated care payments under the §1115 waiver.

Response: By setting maximum pool dollar amounts for children's and rural hospitals, the proposed rule may have left some federal funding unclaimed for the 2012 program year. HHSC revised the rule language to set maximum pool amounts as a percentage of available DSH funds, which is defined based on the federal DSH allotment to Texas and on available non-federal funds. With that change, the rule maximizes receipt of federal funding for DSH payments if the non-federal share of the payments is available.

Alternate sources of funding

Comment: Some commenters point to the lack of state funding as the source of the DSH funding dilemma and suggest that HHSC revise the rule to accommodate the use of state funds. Some of these commenters urge HHSC to use state general revenue, trauma, or tobacco funds that are currently not appropriated for other purposes as the non-federal share of DSH payments to non-state hospitals.

Response: The state legislature currently does not appropriate general revenue to HHSC for the purpose of funding the non-federal share of DSH payments to non-state hospitals. Legislative action would be required before HHSC could expend general revenue, trauma, tobacco, or other state funds for that purpose. HHSC notes, however, that the rule language does not specify the source of the non-federal share of DSH payments. Should state funds be appropriated or otherwise identified for this program, no rule change would be required unless pool sizes were changed as a consequence of the new funding source. HHSC did not change the proposed rule in response to these comments.

Comment: Some commenters support a proposal by the Texas Association of Voluntary Hospitals (TAVH) that, among other things, would remove state-owned hospitals from the DSH program, allowing more of Texas' DSH allocation to be distributed to non-state DSH hospitals and increasing the return to TCTH members.

Response: Although removal of state-owned hospitals from the DSH program would allow more funds to be distributed to non-state DSH hospitals, it would require a transfer of significantly more local public funds to HHSC to support the increased payments to non-state hospitals. According to TCTH members, there is insufficient IGT capacity to support the additional payments. HHSC did not change the rule in response to these comments.

Comment: Several commenters proposed allocating funds from the Texas Healthcare Transformation and Quality Improvement Program waiver incentive pool to TCTH members during the 2012 program year in order to offset the low return those members receive in the DSH program.

Response: HHSC is working closely with the Centers for Medicare and Medicaid Services to obtain approval of the protocol for allocating funds from the waiver incentive pool to hospitals and other entities participating in that program. HHSC anticipates that incentive pool funds will be allocated to TCTH members because they will participate both as anchoring entities and as performing providers in the waiver. HHSC did not change the rule in response to these comments.

Comment: Some commenters proposed expanding the list of entities that provide the non-federal share of DSH payments to include all other public entities that own hospitals participating in the DSH program.

Response: As noted previously, the rule does not specify the source of the non-federal share of DSH payments. However, to the extent these comments propose requiring other entities to transfer funds to HHSC to support DSH payments, HHSC believes there has not been sufficient notice of or opportunity for comment to enable HHSC to implement such a change to the

proposed rule. HHSC is taking this suggestion under consideration for future rule-change proposals.

Funding pools for rural and children's hospitals

Comment: Some commenters expressed support for the funding pools and distribution methodologies for rural and children's hospitals described in the proposed rule. These commenters encourage HHSC to protect historic funding levels for these categories of hospital because of their unique role and mission.

Response: HHSC recognizes the key role that these hospitals play as safety-net providers to vulnerable populations in Texas. The adopted rule retains the pools for these categories of hospitals. In response to other comments (discussed later in more detail), the methodology for determining the pool amounts was changed to make the pool a percentage of available DSH funds. The revision provides more certainty in the pool amount relative to total available funds than did the proposed version. If the pool is adequately funded, pool amounts remain equal to or greater than the amount of DSH payments the hospitals in those categories received during the 2011 DSH program year.

Comment: Some commenters opposed the creation of protected pools of funding for rural and children's hospitals and argue that doing so disadvantages urban private hospitals and pits classes of providers against each other. These commenters propose developing a methodology that allocates DSH funds among hospitals based on the percentages of actual care provided, regardless of classification.

Response: HHSC believes that there has not been sufficient notice of or opportunity for comment to enable HHSC to implement the methodology suggested by these commenters at this time, but is taking this suggestion under consideration for future rule-change proposals. HHSC further believes that the creation of a separate protected funding pool for urban, non-state, non-transferring hospitals (discussed later in more detail) resolves the concern that urban private hospitals are disadvantaged relative to children's and rural hospitals. HHSC did not revise the proposed rule in response to these comments.

Comment: One commenter asked HHSC to add a provision requiring HHSC to notify hospitals each year of the size of each funding pool.

Response: HHSC agrees with this suggestion and revised subsection (h)(3) of the rule to add the notification language. It should be noted that, for purposes of providing annual notification of the size of each funding pool, HHSC will base its calculation on full funding of the non-federal share of Texas' DSH allocation. The pool sizes will be proportionately reduced if actual IGT amounts are less than the full amount.

Comment: One commenter suggested that HHSC provide flexibility to increase the size of the children's hospital pool to accommodate new children's hospitals that may become eligible for the DSH program in the future.

Response: Since increasing the size of the children's hospital pool would require a reduction in some or all of the other funding pools, HHSC believes this suggestion warrants additional analysis and opportunity for input from all stakeholders. HHSC did not change the proposed rule in response to this comment but will consider this suggestion for future rule changes.

Support for additional pools

Comment: Some commenters support a proposal by the Texas Association of Voluntary Hospitals (TAVH) that, among other things, included establishing two funding pools in addition to those created for rural and children's hospitals. The additional pools would fund payments to the transferring hospitals *(i.e.,* TCTH members) and all "other" hospitals *(i.e.,* urban, non-transferring, non-state hospitals). If each pool were adequately funded, the result would be an increased return of federal funds to TCTH members without a significant drop in DSH payments to the other hospitals, compared to 2011 levels.

Response: HHSC agrees that establishing the two additional funding pools could increase the return of federal funds to TCTH members and mitigate the negative impact of DSH reform to non-transferring hospitals, if the pools are adequately funded. HHSC revised the proposed rule in response to these comments to add the two funding pools urged in the TAVH model. The pool sizes for the two additional pools are determined as a percentage of available DSH funds.

Comment: One commenter suggested that the distribution methodology should ensure that non-public critical access hospitals receive no less than the amount they would have received under the existing rule.

Response: To the extent this comment is proposing the creation of a protected funding pool for critical access hospitals, HHSC believes this suggestion warrants additional analysis and opportunity for input from all stakeholders. HHSC did not change the proposed rule in response to this comment but will consider this suggestion for future rule changes.

Opposition to allocation formula

Comment: Several commenters representing urban, non-transferring, non-children's hospitals oppose the proposed allocation formula that reduces the initial allocation of funds to each hospital in this group by an amount equal to the non-federal share and adds it to the allocation of the transferring entities. This is sometimes referred to as an "imputed IGT." According to these commenters, their hospitals could see DSH payments drop significantly as a result of the "imputed IGT" methodology.

Response: The proposed allocation formula was intended to provide a more equitable balance of the burden of funding the DSH program among a larger number of hospitals benefitting from DSH payments. However, creating separate funding pools for each category of hospital, and specifying the size of each pool, eliminated the need for the "imputed IGT" allocation methodology. HHSC removed that language from the allocation formula in the final version of the rule.

Comment: Several commenters representing urban, non-transferring, non-children's hospitals oppose the allocation of DSH funds to their hospitals based on 100% low-income days. These commenters argue that the low-income utilization formula described in the rule is not an accurate measure of the number of low-income patients treated and that the proposed methodology may have the long-term effect of causing payment reductions under Section 2551 of the Patient Protection and Affordable Care Act. The commenters urge HHSC to continue the historical Medicaid DSH funding methodology that allocates half of the DSH funds based on Medicaid days and half on low-income days.

Response: HHSC is persuaded that additional analysis of the impact of moving to 100% low-income days is appropriate. HHSC has revised the rule in response to these comments to allow additional time for consideration of allocation methodologies. The rule was changed to distribute half of the DSH funds in each of the funding pools for rural, children's, and all

other hospitals based on Medicaid days and half on low-income days. The pool for urban public hospitals *(i.e.,* TCTH-member hospitals) is allocated based on 100% low-income days. HHSC may consider other allocation methodologies for future rule revisions.

Comment: Some commenters urged that payments be distributed based on the number of each hospital's low-income and Medicaid days compared to the total number of low-income and Medicaid days provided by all DSH hospitals.

Response: The proposed rule contained this methodology for allocation of funds in the children's and rural hospital pools. However, in response to other comments received and discussed previously, HHSC is changing the proposed rule to distribute half of the DSH funds in each of the funding pools for rural, children's, and all other hospitals based on Medicaid days and half on low-income days. This allocation methodology mirrors the methodology in the current rule, except that it is done within each pool. For that reason, HHSC believes this methodology is more consistent with the historical distribution methodology and is less disruptive for 2012 than that proposed in the comment. HHSC may consider other distribution methodologies for future rule-change proposals.

Comment: Some commenters representing urban, non-transferring, non-children's hospitals oppose the allocation of "second-pass funds" only to TCTH-owned hospitals. Second-pass funds are funds initially allocated to a hospital that exceed its hospital-specific limit. These excess funds have historically been allocated pro rata among hospitals that, after the initial allocation, have not reached their hospital-specific limit. These commenters urge HHSC to continue to calculate eligibility for the second-pass funds for all hospitals that have DSH room available.

Response: The proposal to allocate second-pass funds to TCTH-owned hospitals was intended to provide a more equitable balance of the burden of funding the DSH program among a larger number of hospitals benefitting from DSH payments. However, creating separate funding pools for each category of hospital and specifying the size of each pool eliminated the need for allocating second-pass funds only to TCTH members. HHSC revised the rule so that second-pass funds are allocated to hospitals within each pool that have DSH room available.

Require TCTH members to maintain historical DSH funding levels.

Comment: Some commenters asked HHSC to add a provision to the DSH rule requiring TCTH members to fully fund the non-federal share of DSH payments to all non-state-owned hospitals as a condition of their receipt of payments under the DSH program or under the Texas Healthcare Transformation and Quality Improvement Program waiver.

Response: HHSC agrees that continuation of the DSH program is vital to the maintenance of the public and private safety net hospitals as well as to the success of the waiver. In order to achieve these objectives, and to ensure to the greatest degree possible the availability of funding of the DSH and waiver programs, HHSC proposed new §355.8203, concerning Waiver Payments to Urban Public Hospitals, which conditions waiver payments to urban public hospitals on funding the DSH program in an amount prescribed by HHSC. The proposed new rule was published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6409). HHSC did not change this rule in response to these comments.

Proposed change is prohibited by Legislative directive or promise to protect supplemental funding levels

Comment: One commenter stated that the proposed changes to the DSH rule are prohibited by the 82nd Legislature's direction in Government Code §531.502(d)(2) which, according to the commenter, directs HHSC to ensure that the terms of the §1115 waiver are consistent with long-held DSH principles. The commenter alleges that the proposed changes do not satisfy that legislative mandate.

Response: HHSC disagrees that the cited provision of the Government Code applies to the DSH program at all. Section 531.502 authorizes HHSC to seek a federal demonstration waiver, and subsection (d)(2) directs HHSC on use of a trust fund authorized elsewhere in Chapter 531, should that fund be created as a funding mechanism for the waiver. The fund has not been created and, furthermore, DSH funding is outside of the waiver. For these reasons, the proposed DSH rule is not inconsistent with the legislature's direction in this provision.

HHSC also disagrees that the proposed DSH rule is inconsistent with long-held DSH principles. The intent of the "weighted" methodology for allocating DSH funds has always been to avoid penalizing the transferring entities for funding DSH payments to all participating hospitals. As the program has grown, however, that methodology no longer results in an adequate return to TCTH members to justify continuing to support all non-state hospitals. The proposed changes to the methodology for calculating and distributing DSH payments were intended to restore a more equitable balance of the burden of funding the DSH program among a larger number of hospitals benefitting from DSH payments. The proposed rule was not changed in response to this comment.

Comment: Some commenters state that creation of the §1115 waiver was based on the premise that DSH reimbursement would not be altered or that a promise had been made to protect the existing level of supplemental Medicaid funds. These commenters state that the proposed changes violate those assurances.

Response: HHSC has insufficient information to evaluate the validity of these comments because the commenters did not identify the source of the statements. HHSC is unaware of any statement guaranteeing that DSH would not be altered or that a hospital or category of hospitals would continue to receive the same level of supplemental payments received prior to the waiver. HHSC did not change the proposed rule in response to these comments.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

§355.8065. Disproportionate Share Hospital (DSH) Reimbursement Methodology.

(a) Introduction. Hospitals participating in the Texas Medical Assistance (Medicaid) program that meet the conditions of participation and that serve a disproportionate share of low-income patients

are eligible for reimbursement from the disproportionate share hospital (DSH) fund. The Texas Health and Human Services Commission (HHSC) will establish each hospital's eligibility for and amount of reimbursement using the methodology described in this section.

(b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Available DSH funds--The total amount of funds that may be distributed to eligible qualifying DSH hospitals during the DSH program year, based on the federal DSH allotment for Texas (as determined by the Centers for Medicare and Medicaid Services) and available non-federal funds.

(3) Bad debt--A debt arising when there is nonpayment on behalf of an individual who has third-party coverage.

(4) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to indigent individuals, either directly or through other nonprofit or public outpatient clinics, hospitals, or health care organizations. A hospital must set the income level for eligibility for charity care consistent with the criteria established in §311.031, Texas Health and Safety Code.

(6) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a DSH data year. These charges do not include bad debt charges, contractual allowances, or discounts given to other legally liable third-party payers.

(7) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(8) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(9) DSH data year--A twelve-month period, two years before the DSH program year, from which HHSC will compile data to determine DSH program qualification and payment.

(10) DSH program year--The twelve-month period beginning October 1 and ending September 30.

(11) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid.

(12) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

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

(14) Hospital-specific limit--The maximum amount during a program year that a hospital may receive in reimbursement for the cost of providing services to individuals who are Medicaid eligible or uninsured. The hospital-specific limit is calculated using the methodology described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology).

(15) Independent certified audit--An audit that is conducted by an auditor that operates independently from the Medicaid agency and the audited hospitals and that is eligible to perform the DSH audit required by CMS.

(16) Indigent individual--An individual classified by a hospital as eligible for charity care.

(17) Inpatient day--Each day that an individual is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere. The term includes observation days, rehabilitation days, psychiatric days, and newborn days. The term does not include swing bed days or skilled nursing facility days.

(18) Inpatient revenue--Amount of gross inpatient revenue derived from the most recent completed Medicaid cost report or reports related to the applicable DSH data year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, other nonhospital revenue, and revenue not identified by the hospital.

(19) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(20) Low-income days--Number of inpatient days attributed to indigent patients.

(21) Low-income utilization rate--A DSH qualification criterion calculated as described in subsection (d)(2) of this section.

(22) Mean Medicaid inpatient utilization rate--The average of Medicaid inpatient utilization rates for all hospitals that have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year.

(23) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(24) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(25) Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(26) Medicaid inpatient utilization rate--A DSH qualification criterion calculated as described in subsection (d)(1) of this section.

(27) MSA--Metropolitan Statistical Area as defined by the United States Office of Management and Budget. MSAs with populations greater than or equal to 137,000, according to the most recent decennial census, are considered "the largest MSAs."

(28) Obstetrical services--The medical care of a woman during pregnancy, delivery, and the post-partum period provided at the hospital listed on the DSH application.

(29) PMSA--Primary Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

(30) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(31) Ratio of cost-to-charges (inpatient only)--A ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(32) Ratio of cost-to-charges (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio that covers all applicable hospital costs and charges relating to patient care, inpatient and outpatient. This ratio is used in calculating the hospital-specific limit and does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(33) Rural hospital--A hospital located outside an MSA or a PMSA.

(34) State chest hospital--A public health facility operated by the Department of State Health Services designated for the care and treatment of patients with tuberculosis.

(35) State-owned teaching hospital--A hospital owned and operated by a state university or other state agency.

(36) Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(37) Total Medicaid inpatient days--Total number of inpatient days based on adjudicated claims data for covered services for the relevant DSH data year.

(A) The term includes:

(i) Medicaid-eligible days of care adjudicated by managed care organizations;

(ii) days that were denied payment for spell-of-illness limitations;

(iii) days attributable to individuals eligible for Medicaid in other states, including dually eligible patients;

(iv) days with adjudicated dates during the period; and

(v) days for dually eligible patients for purposes of the calculation in subsection (d)(1) of this section.

(B) The term excludes:

(i) days attributable to Medicaid-eligible patients ages 21 through 64 in an IMD;

(ii) days denied for late filing and other reasons; and

(iii) days for dually eligible patients for purposes of the calculation in subsections (d)(3) and (h)(2), (3), and (5) of this section.

(38) Total Medicaid inpatient hospital payments--Total amount of Medicaid funds that a hospital received for adjudicated claims for covered inpatient services during the DSH data year. The term includes payments that the hospital received:

(A) for covered inpatient services from managed care organizations; and

(B) for patients eligible for Medicaid in other states.

(39) Total state and local payments--Total amount of state and local payments that a hospital received for inpatient care during the DSH data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(40) Urban hospital--A hospital located inside an MSA or PMSA.

(41) Urban public hospital--An urban hospital that is owned by or under a lease contract with one of the following entities: the Dallas County Hospital District, the Ector County Hospital District, the El Paso County Hospital District, the Harris County Hospital District, the Lubbock County Hospital District, the Tarrant County Hospital District, Central Health, or University Health System.

(c) Eligibility. To be eligible to participate in the DSH program, a hospital must:

(1) be enrolled as a Medicaid hospital in the State of Texas;

(2) have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year; and

(3) apply annually by completing the application packet received from HHSC by the deadline specified in the packet.

(A) Only a hospital that meets the condition specified in paragraph (2) of this subsection will receive an application packet from HHSC.

(B) The application may request self-reported data that HHSC deems necessary to determine each hospital's eligibility. HHSC may audit self-reported data.

(C) A hospital that fails to submit a completed application by the deadline specified by HHSC will not be eligible to participate in the DSH program in the year being applied for or to appeal HHSC's decision.

(D) For purposes of DSH eligibility, a multi-site hospital is considered one provider unless it submits separate Medicaid cost reports for each site. If a multi-site hospital submits separate Medicaid cost reports for each site, for purposes of DSH eligibility, it must submit a separate DSH application for each eligible site.

(E) HHSC will consider a merger of two or more hospitals for purposes of the DSH program for any hospital that submits a CMS tie-in notice prior to the deadline for submission of the DSH application. Otherwise, HHSC will determine the merged entity's eligibility for the subsequent DSH program year. Until the time that the merged hospitals are determined eligible for payments as a merged hospital, each of the merging hospitals will continue to receive any DSH payments to which it was entitled prior to the merger.

(d) Qualification. For each DSH program year, in addition to meeting the eligibility requirements, applicants must meet at least one of the following qualification criteria, which are determined using information from a hospital's application or from HHSC's Medicaid contractors, as specified by HHSC:

(1) Medicaid inpatient utilization rate. A hospital's inpatient utilization rate is calculated by dividing the hospital's total Medicaid inpatient days by its total inpatient census days for the DSH data year.

(A) Rural hospital: A rural hospital must have a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(B) Urban hospital: An urban hospital must have a Medicaid inpatient utilization rate that is at least one standard deviation above the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(2) Low-income utilization rate. A hospital must have a low-income utilization rate greater than 25 percent.

(A) The low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated in clauses (i) and (ii) of this subparagraph:

(i) The sum of the total Medicaid inpatient hospital payments and the total state and local payments paid to the hospital for inpatient care in the DSH data year, divided by a hospital's gross inpatient revenue multiplied by the hospital's ratio of cost-to-charges (inpatient only) for the same period: (Total Medicaid Inpatient Hospital Payments + Total State and Local Payments)/(Gross Inpatient Revenue x Ratio of Costs to Charges).

(ii) Inpatient charity charges in the DSH data year minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Medicaid payments, in the DSH data year, divided by the gross inpatient revenue in the same period: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue.

(B) HHSC will determine the ratio of cost-to-charges (inpatient only) by using information from the appropriate worksheets of each hospital's Medicaid cost report or reports that correspond to the DSH data year. In the absence of a Medicaid cost report for that period, HHSC will use the latest available submitted Medicaid cost report or reports.

(3) Total Medicaid inpatient days.

(A) A hospital must have total Medicaid inpatient days at least one standard deviation above the mean total Medicaid inpatient days for all hospitals participating in the Medicaid program, except;

(B) A hospital in an urban county with a population of 290,000 persons or fewer, according to the most recent decennial census, must have total Medicaid inpatient days at least 70 percent of the sum of the mean total Medicaid inpatient days for all hospitals in this subset plus one standard deviation above that mean.

(C) Days for dually eligible patients are not included in the calculation of total Medicaid inpatient days under this paragraph.

(4) Children's hospitals, state-owned teaching hospitals, and state chest hospitals. Children's hospitals, state-owned teaching hospitals, and state chest hospitals that do not otherwise qualify as disproportionate share hospitals will be deemed disproportionate share hospitals.

(5) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. HHSC will aggregate the data used to determine qualification under this subsection from the merged hospitals to determine whether the single Medicaid provider that results from the merger qualifies as a Medicaid disproportionate share hospital.

(e) Conditions of participation. HHSC will require each hospital to meet and continue to meet for each DSH program year the following conditions of participation:

(1) Two-physician requirement.

(A) In accordance with Social Security Act §1923(e)(2), a hospital must have at least two licensed physicians (doctor of medicine or osteopathy) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to individuals who are entitled to medical assistance for such services.

(B) Subparagraph (A) of this paragraph does not apply if the hospital:

(i) serves inpatients who are predominantly under 18 years of age; or

(ii) was operating but did not offer nonemergency obstetrical services as of December 22, 1987.

(C) A hospital must certify on the DSH application that it meets the conditions of either subparagraph (A) or (B) of this paragraph, as applicable, at the time the DSH application is submitted.

(2) Medicaid inpatient utilization rate. At the time of qualification and during the DSH program year, a hospital must have a Medicaid inpatient utilization rate, as calculated in subsection (d)(1) of this section, of at least one percent.

(3) Trauma system.

(A) The hospital must be in active pursuit of designation or have obtained a trauma facility designation as defined in §780.004 and §§773.111 - 773.120, Texas Health and Safety Code, respectively, and consistent with 25 TAC §157.125 (relating to Requirements for Trauma Facility Designation) and §157.131 (relating to the Designated Trauma Facility and Emergency Medical Services Account). A hospital that has obtained its trauma facility designation must maintain that designation for the entire DSH program year.

(B) HHSC will receive an annual report from the Office of EMS/Trauma Systems Coordination regarding hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation or active pursuit of designation status before final qualification determination for interim DSH payments. HHSC will use this report to confirm compliance with this condition of participation by a hospital applying for DSH funds.

(4) Maintenance of local funding effort. A hospital district in one of the state's largest MSAs or in a PMSA must not reduce local tax revenues to its associated hospitals as a result of disproportionate share funds received by the hospital. For this provision to apply, the hospital must have more than 250 licensed beds.

(5) Retention of and access to records. A hospital must retain and make available to HHSC and its designee records and accounting systems related to DSH data for at least five years from the start of each DSH program year in which the hospital qualifies, or until an open audit is completed, whichever is later.

(6) Compliance with audit requirements. A hospital must agree to comply with the audit requirements described in subsection (o) of this section.

(7) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. If HHSC receives the CMS tie-in notice prior to the deadline for submission of the DSH application, the merged entity must meet all conditions of participation. If HHSC does not receive the CMS tie-in notice prior to the deadline for submission of the DSH application, any proposed merging hospitals that are receiving DSH payments must continue to meet all conditions of participation as individual hospitals to continue receiving DSH payments for the remainder of the DSH program year.

(8) A hospital receiving payments under this section must notify HHSC's Rate Analysis Department within 30 days of changes

in ownership, operation, provider identifier, designation as a trauma facility or as a children's hospital, or any other change that may affect the hospital's continued eligibility, qualification, or compliance with DSH conditions of participation. At the request of HHSC, the hospital must submit any documentation supporting the change.

(f) Hospital-specific limit calculation. HHSC uses the methodology described in §355.8066 of this title to calculate an interim hospital-specific limit for each Medicaid hospital that applies to receive payments under this section, and a final hospital-specific limit for each hospital that receives payments under this section.

(g) Distribution of available DSH funds. HHSC will distribute the available DSH funds as defined in subsection (b)(2) of this section among eligible, qualifying DSH hospitals using the following priorities:

(1) State-owned teaching hospitals and state chest hospitals. HHSC may reimburse state-owned teaching hospitals and state chest hospitals an amount less than or equal to their interim hospital-specific limits.

(2) IMDs.

(A) Aggregate payments made to IMD facilities statewide are subject to federally mandated reimbursement limits for IMD facilities.

(B) State-owned IMDs.

(i) From the amount determined in subparagraph (A) of this paragraph, HHSC will deduct the amount of the Non-State-Owned IMD Pool determined in subparagraph (C)(i) of this paragraph to derive the amount available for distribution to state-owned IMDs.

(ii) A state-owned IMD that satisfies the DSH requirements will receive 100 percent of its interim hospital-specific limit within the amount determined in clause (i) of this subparagraph. If the amount described in clause (i) of this subparagraph is not sufficient to fully fund all state-owned IMDs to their interim hospital-specific limits, HHSC will pay all such IMDs proportionately based on each IMD's percentage of the total interim hospital-specific limit for all such IMDs.

(C) Non-state-owned IMDs.

(i) The aggregate amount available for distribution to non-state-owned IMDs (the Non-State-Owned IMD Pool) is limited to 1.88% of the amount described in subparagraph (A) of this paragraph.

(ii) Payment to each non-state-owned IMD will be proportionately reduced:

(I) to stay within the limitations described in clause (i) of this subparagraph; or

(II) if a governmental entity does not transfer sufficient intergovernmental transfer funds (IGT) to fund all non-state-owned IMDs to the amount described in clause (i) of this subparagraph.

(iii) For DSH program year 2012, the amount of the Non-State-Owned IMD Pool determined in clause (i) of this subparagraph for all non-state-owned IMDs has already been paid, so non-state-owned IMDs will not receive additional DSH payments for the program year.

(3) Other non-state hospitals. HHSC distributes the remaining available DSH funds, if any, to other qualifying hospitals using the methodology described in subsection (h) of this section. The remaining available DSH funds equal the lesser of the funds as defined in subsection (b)(2) of this section less funds expended under paragraphs (1) and (2) of this subsection or the sum of remaining qualifying hospitals' interim hospital-specific limits.

(h) DSH payment calculation.

(1) Medicaid data verification.

(A) On or about April 15 of each year, HHSC will make available upon request for each Medicaid participating hospital a report of the hospital's adjudicated data received from Medicaid contractors reflecting the hospital's Medicaid days, Medicaid charges, and Medicaid payments during the DSH data year.

(B) A hospital must communicate directly with the appropriate Medicaid contractors to request correction of any data the hospital believes is inaccurate or incomplete.

(C) Each Medicaid contractor will submit a final report to HHSC by July 15 of each year or a date specified by HHSC, which will include all agreed-upon corrections resulting from requests submitted by hospitals. Unless a hospital contacts HHSC pursuant to subparagraph (D) of this paragraph, HHSC will use the corrected report for DSH calculations described in this section.

(D) At a hospital's request, HHSC will review instances in which a hospital and a Medicaid contractor cannot resolve disputes concerning data included in or excluded from the final report. HHSC will make the final determination in such a case and notify the hospital of the final determination.

(E) A hospital's right to request a review of eligibility, qualification, and estimated payment amount is addressed in subsection (j) of this section.

(2) Allocation of available DSH funds by category of hospital. From the amount of remaining available DSH funds determined in subsection (g)(3) of this section, HHSC will establish a pool amount for DSH payments to each of the following categories of hospital:

(A) Children's hospitals. The amount of the Children's Hospital Pool is 8.36% of the amount determined in subsection (g)(3) of this section.

(B) Rural hospitals. The amount of the Rural Hospital Pool is 5.98% of the amount determined in subsection (g)(3) of this section.

(C) Urban public hospitals. The amount of the Urban Public Hospital Pool is 51.25% of the amount determined in subsection (g)(3) of this section.

(D) Other hospitals. The amount of the pool for all hospitals not described in subparagraphs (A) - (C) of this paragraph is 34.41% of the amount determined in subsection (g)(3) of this section.

(3) HHSC will give notice of the amounts determined in subsection (g)(2)(C)(i) of this section and in paragraph (2) of this subsection.

(4) Distribution and payment calculation methodology for Children's Hospitals, Rural Hospitals, and Other Hospitals.

(A) For each category of hospital described in paragraphs (2)(A), (B), and (D) of this subsection, HHSC will divide the amount of the pool into two equal parts:

(i) One half of the funds will reimburse each hospital in that category based on its percentage of the aggregate Medicaid inpatient days for all hospitals in that category.

(ii) One half of the funds will reimburse each hospital in that category based on its percentage of the aggregate low-income days for all hospitals in that category.

(B) HHSC will calculate each hospital's total Medicaid inpatient days and total low-income days.

(C) Using the results in subparagraph (B) of this paragraph, HHSC will:

(i) divide each hospital's total Medicaid inpatient days by the sum of Medicaid inpatient days for all hospitals in the same category to obtain a percentage;

(ii) multiply each hospital's percentage calculated in clause (i) of this subparagraph by the amount determined in subparagraph (A)(i) of this paragraph;

(iii) divide each hospital's total low-income days by the sum of low-income days for all hospitals in the same category to obtain a percentage;

(iv) multiply each hospital's percentage calculated in clause (iii) of this subparagraph by the amount determined in subparagraph (A)(ii) of this paragraph; and

(v) sum the results of clauses (ii) and (iv) of this subparagraph to determine each hospital's projected annual payment amount.

(I) The projected annual payment amount may not exceed a hospital's interim hospital-specific limit.

(II) Any amount above a hospital's interim hospital-specific limit will be redistributed to other hospitals as described in paragraph (7) of this subsection.

(5) Distribution and payment calculation methodology for urban public hospitals. For the hospitals described in paragraph (2)(C) of this subsection, HHSC will:

(A) sum the low-income days for all hospitals in that category;

(B) divide each hospital's low income days by the result in subparagraph (A) of this paragraph; and

(C) multiply the result in subparagraph (B) of this paragraph by the pool amount from paragraph (2)(C) of this subsection to determine the projected annual payment amount for each hospital in that category.

(i) The projected annual payment amount may not exceed a hospital's interim hospital-specific limit.

(ii) Any amount above a hospital's interim hospital-specific limit will be redistributed to other hospitals as described in paragraph (7) of this subsection.

(6) Reconciliation of 2012 DSH payments. For DSH program year 2012, HHSC will reduce the projected annual payment amount determined in paragraphs (4)(C)(v) and (5)(C)of this subsection by the amount of all DSH payments already received by the hospital for the program year to determine a remaining interim payment amount. If the amount of the DSH payments already received equals or exceeds the projected annual payment amount:

(A) the hospital will not receive additional DSH funds for the program year;

(B) remaining interim DSH payments to remaining hospitals in that category will be reduced as follows. HHSC will:

(i) sum the remaining interim payment amounts for all such hospitals;

(ii) divide each such hospital's remaining interim payment amount by the result of clause (i) of this subparagraph;

(iii) for each hospital described in subparagraph (A) of this paragraph, subtract the hospital's projected annual payment amount as determined in paragraph (4)(C)(v) or (5)(C) of this subsection as appropriate from the amounts already paid to the hospital. Sum the results of this calculation for all hospitals described in subparagraph (A) of this paragraph;

(iv) multiply the result of clause (ii) of this subparagraph for each hospital by the result of clause (iii) of this subparagraph;

(v) subtract the result of clause (iv) of this subparagraph from the hospital's remaining interim payment amount to derive a payment amount.

(7) Redistribution of amounts in excess of hospital-specific limits. In the event that the projected annual payment amount calculated in paragraphs (4)(C) and (5)(C) of this subsection exceeds a hospital's interim hospital-specific limit, the payment amount will be reduced to the interim hospital-specific limit. For each category of hospital described in paragraph (2) of this subsection, HHSC will separately sum all resulting excess funds and redistribute that amount to qualifying hospitals in that category that have projected payments below their interim hospital-specific limits. For each such hospital, HHSC will:

(A) subtract the hospital's projected DSH payment from its interim hospital-specific limit;

(B) sum the results of subparagraph (A) of this paragraph for all hospitals in the same category; and

(C) compare the sum from subparagraph (B) of this paragraph to the total excess funds calculated for the category of hospital.

(i) If the sum of subparagraph (B) of this paragraph is less than or equal to the total excess funds, HHSC will pay all such hospitals up to their interim hospital-specific limit and any remaining excess funds will be allocated to the other categories of hospitals described in this subsection.

(ii) If the sum of subparagraph (B) of this paragraph is greater than the total excess funds, HHSC will calculate payments to all such hospitals as follows:

(I) Divide the result of subparagraph (A) of this paragraph for each hospital by the sum from subparagraph (B) of this paragraph.

(II) Multiply the ratio from subclause (I) of this clause by the sum of the excess funds from all hospitals in the same category.

(III) Add the result of subclause (II) of this clause to the projected DSH payment for that hospital.

(8) Reallocating funds if hospital closes, loses its license or eligibility. If a hospital that is receiving DSH funds closes, loses its license, or loses its Medicare or Medicaid eligibility during a DSH program year, HHSC will reallocate that hospital's disproportionate share funds going forward among all DSH hospitals in the same category that are eligible for additional payments.

(i) Hospital located in a federal natural disaster area. A hospital that is located in a county that is declared a federal natural disaster area and that was participating in the DSH program at the time of the natural disaster may request that HHSC determine its DSH qualifica-

tion and interim reimbursement payment amount under this subsection for subsequent DSH program years. The following conditions and procedures will apply to all such requests received by HHSC:

(1) The hospital must submit its request in writing to HHSC with its annual DSH application.

(2) If HHSC approves the request, HHSC will determine the hospital's DSH qualification using the hospital's data from the DSH data year prior to the natural disaster. However, HHSC will calculate the one percent Medicaid minimum utilization rate, the interim hospital-specific limit, and the payment amount using data from the DSH data year. The final hospital-specific limit will be computed based on the actual data for the DSH program year.

(3) HHSC will notify the hospital of the qualification and interim reimbursement.

(j) Review of HHSC determination of eligibility, qualification, and estimated payment amount.

(1) Prior to the first payment of the DSH program year, HHSC will notify each hospital that applied to participate in the DSH program whether it is eligible and qualified to participate. An eligible hospital will be notified of its estimated annual DSH allocation, calculated as described in subsections (g)(1) - (2) and (h)(2) - (6) of this section.

(2) A hospital that either does not qualify or disputes the payment amount may request a review by HHSC in accordance with paragraph (3) of this subsection. Initial qualification determinations and estimated payment amounts for all hospitals may change depending on the outcome of the review.

(3) Except as specified in paragraph (6) of this subsection, a request for review must be submitted in writing to HHSC within 15 calendar days of the date the hospital received the notification under this subsection.

(A) The written request for review and all supporting documentation must be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department.

(B) The request must allege the specific factual or calculation errors the hospital contends HHSC made that, if corrected, would result in the hospital's qualifying for payments or receiving a more accurate payment amount.

(C) A hospital may not base a request for review on a claim that the data the hospital or a Medicaid contractor submitted to HHSC is incorrect or incomplete unless such incorrect or incomplete data would result in an inappropriate qualification or payment to the hospital.

(i) The hospital will have an opportunity to resolve disputed data with the Medicaid contractor under subsection (h)(1) of this section.

(ii) HHSC may require supporting documentation when a hospital requests a review based on data submitted with and certified in a hospital's original DSH application.

(iii) HHSC may require an independent third party audit of the revised data to be paid for by the hospital requesting the review. The audit must be performed within the time frame determined by HHSC.

(D) The request may not dispute HHSC's eligibility, qualification, or payment methodologies.

(E) Within 30 calendar days of the date of the notification, the hospital must submit documentation supporting its allegations.

(4) The review is:

(A) limited to the hospital's allegations of factual or calculation errors;

(B) supported by documentation submitted by the hospital or used by HHSC in making its original determination;

(C) solely a data review; and

(D) not an adversarial hearing.

(5) HHSC will notify the hospital of the results of the review.

(6) HHSC will not consider requests for review submitted after the deadline specified in paragraph (3) of this subsection unless HHSC subsequently notifies a hospital that it no longer qualifies for DSH funding. In that case, the hospital may request a review in accordance with paragraph (3) of this subsection.

(k) Disproportionate share funds held in reserve.

(1) If HHSC has reason to believe that a hospital is not in compliance with the conditions of participation listed in subsection (e) of this section, HHSC will notify the hospital of possible noncompliance. Upon receipt of such notice, the hospital will have 30 calendar days to demonstrate compliance.

(2) If the hospital demonstrates compliance within 30 calendar days, HHSC will not hold the hospital's DSH payments in reserve.

(3) If the hospital fails to demonstrate compliance within 30 calendar days, HHSC will notify the hospital that HHSC is holding the hospital's DSH payments in reserve. HHSC will release the funds corresponding to any period for which a hospital subsequently demonstrates that it was in compliance. HHSC will not make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(1) and (2) of this section. HHSC may choose not to make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(3) - (7) of this section.

(4) If a hospital's DSH payments are being held in reserve on the date of the last payment in the DSH program year, and no request for review is pending under paragraph (5) of this subsection, the amount of the payments is not restored to the hospital, but is divided proportionately among the hospitals receiving a last payment.

(5) Hospitals that have DSH payments held in reserve may request a review by HHSC.

(A) The hospital's written request for a review must:

(i) be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department;

(ii) be received by HHSC within 15 calendar days after notification that the hospital's DSH payments are held in reserve; and

(iii) contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

(i) limited to allegations of noncompliance with conditions of participation;

(ii) limited to a review of documentation submitted by the hospital or used by HHSC in making its original determination; and

(iii) not conducted as an adversarial hearing.

(C) HHSC will conduct the review and notify the hospital requesting the review of the results.

(l) Recovery of DSH funds. Notwithstanding any other provision of this section, HHSC will recoup any overpayment of DSH funds made to a hospital, including an overpayment that results from HHSC error or that is identified in an audit.

(1) If the overpayment occurred prior to the effective date of this section, recovered funds will be redistributed proportionately to DSH hospitals that are eligible for additional payments for the program year in which the overpayment occurred.

(2) If the overpayment occurred on or after the effective date of this section, recovered funds will be redistributed proportionately to DSH hospitals in the same category that are eligible for additional payments for the program year in which the overpayment occurred. If there are no hospitals in the same category eligible for additional payments for that program year, any remaining funds will be distributed proportionately among all hospitals eligible for additional payments.

(m) Failure to provide supporting documentation. HHSC will exclude data from DSH calculations under this section if a hospital fails to maintain and provide adequate documentation to support that data.

(n) Voluntary withdrawal from the DSH program.

(1) HHSC will recoup all DSH payments made during the same DSH program year to a hospital that voluntarily terminates its participation in the DSH program. HHSC will redistribute the recouped funds according to the distribution methodology described in subsection (l) of this section.

(2) A hospital that voluntarily terminates from the DSH program will be ineligible to receive payments for the next DSH program year after the hospital's termination.

(3) If a hospital does not apply for DSH funding in the DSH program year following a DSH program year in which it received DSH funding, even though it would have qualified for DSH funding in that year, the hospital will be ineligible to receive payments for the next DSH program year after the year in which it did not apply.

(4) The hospital may reapply to receive DSH payments in the second DSH program year after the year in which it did not apply.

(o) Audit process.

(1) Independent certified audit. HHSC is required by the Social Security Act (Act) to annually complete an independent certified audit of each hospital participating in the DSH program in Texas. Audits will comply with all applicable federal law and directives, including the Act, the Omnibus Budget and Reconciliation Act of 1993 (OBRA '93), the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), pertinent federal rules, and any amendments to such provisions.

(A) Each audit report will contain the verifications set forth in 42 CFR §455.304(d).

(B) The sources of data utilized by HHSC, the hospitals, and the independent auditors to complete the DSH audit and report include:

(i) The Medicaid cost report;

(ii) Medicaid Management Information System data; and

(iii) Hospital financial statements and other auditable hospital accounting records.

(C) A hospital must provide HHSC or the independent auditor with the necessary information in the time specified by HHSC or the independent auditor. A complete, detailed listing of all information required by the independent auditor is available on HHSC's website.

(D) A hospital that fails to provide requested information or to otherwise comply with the independent certified audit requirements may be subject to a withholding of Medicaid disproportionate share payments or other appropriate sanctions.

(E) HHSC will recoup any overpayment of DSH funds made to a hospital that is identified in the independent certified audit and will redistribute the recouped funds to DSH providers that are eligible for additional payments subject to their final hospital-specific limits, as described in subsection (l) of this section.

(F) Review of preliminary audit finding of overpayment.

(i) Before finalizing the audit, HHSC will notify each hospital that has a preliminary audit finding of overpayment.

(ii) A hospital that disputes the finding or the amount of the overpayment may request a review in accordance with the following procedures.

(I) A request for review must be received by HHSC's Director of Hospital Reimbursement, Rate Analysis Department, in writing by regular mail, hand delivery or special mail delivery, from the hospital within 30 calendar days of the date the hospital receives the notification described in clause (i) of this subparagraph.

(II) The request must allege the specific factual or calculation errors the hospital contends the auditors made that, if corrected, would change the preliminary audit finding.

(III) All documentation supporting the request for review must accompany the written request for review or the request will be denied.

(IV) The request for review may not dispute the federal audit requirements or the audit methodologies.

(iii) The review is:

(I) limited to the hospital's allegations of factual or calculation errors;

(II) solely a data review based on documentation submitted by the hospital with its request for review or that was used by the auditors in making the preliminary finding; and

(III) not an adversarial hearing.

(iv) HHSC will submit to the auditors all requests for review that meet the procedural requirements described in clause (ii) of this subparagraph.

(I) If the auditors agree that a factual or calculation error occurred and change the preliminary audit finding, HHSC will notify the hospital of the revised finding.

(II) If the auditors do not agree that a factual or calculation error occurred and do not change the preliminary audit finding, HHSC will notify the hospital that the preliminary finding stands and will initiate recoupment proceedings as described in this section.

(2) Additional audits. HHSC may conduct or require additional audits.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204576
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 19, 2012
Proposal publication date: April 20, 2012
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 2. LICENSES

4 TAC §7.127

The Texas Department of Agriculture (the department) adopts amendments to §7.127, concerning fees for structural pest control applicants, licensees and continuing education providers, without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5530).

The amendments are necessary to comply with changes made to the structural pest control program by the 82nd Texas Legislature, which required that all of the costs of administering this program be entirely offset by revenue generated for the program. Since the last adoption of fees for structural pest control applicants, licensees and continuing education providers in September 2011, the department has conducted a cost recovery analysis and has determined that through continued cost cutting measures, reorganization of the department, and fiscal responsibility, the department has been able to reduce expenditures during fiscal year 2012 below the amount appropriated for Structural Pest Control licensing, inspection and enforcement. The amendments to §7.127 decrease fees for structural pest control applicants, licensees and continuing education providers by an average of twenty percent.

The amendments to §7.127 decrease fees for an original business license and renewal of a business license from $280 to $224; for an original certified applicator license from $135 to $108; for a renewal certified applicator license from $125 to $100; for an original technician license from $100 to $81; for a renewal technician license from $95 to $76; and for a continuing education course from $60 to $48.

A comment generally in support of the proposal was submitted by the Texas Pest Control Association.

The amendments to §7.127 are adopted under Occupations Code, §1951.201, which designates the department as the sole authority in the state for licensing persons engaged in the business of structural pest control, and provides the department with the authority to establish fees under Occupations Code, Chapter 1951 in amounts reasonable and necessary to cover the costs of administering the department's programs and activities under that chapter.

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

Filed with the Office of the Secretary of State on August 27, 2012.

TRD-201204539
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 16, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING ADULT AND COMMUNITY EDUCATION

19 TAC §89.1301

The Texas Education Agency (TEA) adopts new §89.1301, concerning adult education. The new section is adopted with changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4509). The adopted new section establishes a competitive procurement process for adult education service providers in accordance with the Texas Education Code (TEC), §29.2535, as added by Senate Bill (SB) 1, 82nd Texas Legislature, First Called Session, 2011.

SB 1, 82nd Texas Legislature, First Called Session, 2011, added the TEC, §29.2535, requiring the TEA to adopt rules to provide for a competitive procurement process to award contracts to service providers of adult education programs. In accordance with the TEC, §29.2535, adopted new §89.1301, Service Provider Contracts for Adult Education Programs, establishes definitions and delineates provisions relating to the use of funds, essential program components, allocation of funds beginning with school year 2013-2014, application process, match requirements, and tuition and fees. The adopted new section also addresses other provisions, including allowable and nonallowable expenditures, staff development, special projects, evaluation of programs, and revocation and recovery of funds.

In response to public comment, subsection (g) was modified at adoption to clarify provisions related to tuition and fees.

As required by statute, the adopted new section changes the method for funding adult education programs by changing from the current allocation method specified in State Board of Education (SBOE) rules under 19 TAC Chapter 89, Subchapter B, to a competitive procurement process specified in commissioner rule. Upon adoption, the new commissioner rule will supersede corresponding SBOE rules relating to funding for adult education

programs, which will be presented for repeal at a future SBOE meeting.

The adopted new section will require that the TEA select adult education service providers through a competitive procurement process every two years. Applicants awarded grants will be required to track and report information and achievement of participants in the federally funded adult basic education programs in accordance with state and federal regulations. These participants are not public school students, but rather are individuals who have left or never entered the Texas public school system and are without a high school diploma. The TEA adult education management information system, Texans Educating Adults Management System (TEAMS), is already developed and in operation. All grantees, including newly awarded applicants, will report through TEAMS. The adopted new section has no new locally maintained paperwork requirements for current service providers. Any new service providers will be required to maintain student and program records.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began June 22, 2012, and ended July 23, 2012. Following is a summary of public comments received and corresponding agency responses regarding the proposed new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter CC, Commissioner's Rules Concerning Adult and Community Education, §89.1301, Service Provider Contracts for Adult Education Programs.

Comment: The Gulf Coast Workforce Board, Association for the Advancement of Mexican Americans, AVANCE-Houston, and Houston Community College commented in support of charging modest tuition and fees for adult basic education students who are financially able to contribute to their own education. The commenters stated that the option to charge tuition and fees would increase the capacity of the adult education system to train more adults while continuing to serve low-income students. AVANCE-Houston and Houston Community College recommended striking §89.1301(g)(1), which prohibited charging tuition or fees for adult basic education, and adding language to specify that tuition and fees may be charged as established by local policy and that any such generated funds must be used for the adult education program. Houston Community College also commented on the importance of allowing providers the flexibility to evaluate and accommodate different student populations and local geographic areas based upon immediate local circumstances and conditions.

Agency Response: The agency disagrees. Although the Workforce Investment Act is silent on charging tuition and fees, state action is limited by Attorney General Opinion JC-0207 (2000), which states that a public entity may charge a fee or tuition only if it is specifically authorized to do so, either by statute or under the constitution. However, §89.1301(g) was modified at adoption for clarification. Proposed language in subsection (g)(1), which prohibited charging tuition or fees for adult basic education, and in subsection (g)(2), which addressed tuition and fees for adult secondary education, was removed. Language was added to subsection (g) to specify that tuition and fees for adult education instructional programs may not be charged without statutory authorization. The language adopted in subsection (g) also specifies that any such generated funds must be used for the adult education instructional program.

Comment: Houston Community College commented relating to the criteria used for the allocation formula. Houston Community College stated that the language in §89.1301(d)(2)(B)(iii), "student and program progress made," does not refer to an objective standard or method by which one may assess whether a provider of service should receive a total allocation for services rendered. Houston Community College suggested striking the proposed language and adding language to ensure proportional distribution of funds to providers/grantees based on their statewide share of program and student progress outcomes.

Agency Response: The agency disagrees and maintains language as published as proposed. The agency intends to utilize a performance-based formula for allocating adult education funds in the second year of the two-year competitive contracts. The criteria, "student and program progress made," refers to the state and federal performance measures that are applicable at the time of the allocation. This language provides the agency flexibility when and if the state and/or federal performance measures may be revised.

The new section is adopted under the TEC, §29.2535, which authorizes the Texas Education Agency to adopt rules to provide for a competitive procurement process to award a contract to a service provider of an adult education program.

The new section implements the TEC, §29.2535.

§89.1301. Service Provider Contracts for Adult Education Programs.

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

(1) Adult education--Basic and secondary instruction and services for adults.

(A) Adult basic education--Instruction in reading, writing, English, and solving quantitative problems, including functional context, designed for adults who:

(i) have minimal competence in reading, writing, and solving quantitative problems;

(ii) are not sufficiently competent to speak, read, or write the English language; or

(iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

(B) Adult secondary education--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

(2) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).

(B) Student contact hour is 60 minutes.

(3) Cooperative/consortium adult education program--A community or area partnership of educational, work force development, and human service entities and other agencies that agree to collaborate for the provision of adult education and literacy services.

(4) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in state and federal law.

(5) Fiscal agent--The local entity that applies for, receives, and manages funds on behalf of the cooperative or adult education partnership.

(6) Grantee--Recipient of award of federal and/or state adult education funds from the Texas Education Agency (TEA).

(b) Use of funds.

(1) Federal adult education and literacy funds may be used for programs of adult education and literacy for out-of-school individuals who have attained 16 years of age and:

(A) function at less than a secondary school completion level;

(B) lack a secondary school credential; or

(C) are unable to speak, read, or write in English.

(2) State adult education and literacy funds are to be used for programs of adult education and literacy for out-of-school individuals who are beyond compulsory school attendance age and:

(A) function at less than a secondary school completion level;

(B) lack a secondary school credential; or

(C) are unable to speak, read, or write in English.

(3) The proportion of students served who meet the requirements of paragraph (1) of this subsection but do not meet the requirements of paragraph (2) of this subsection may not exceed the grantee's percentage of federal funds to the total allocation.

(c) Essential program components. The following essential program components shall be provided:

(1) adult basic education;

(2) programs for adults who are English language learners;

(3) adult secondary education, including programs leading to the achievement of a high school equivalency certificate and/or a high school diploma;

(4) instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;

(5) assessment and guidance services related to paragraphs (1)-(4) of this subsection; and

(6) collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

(d) Allocation of funds beginning with school year 2013-2014.

(1) Allocation of funds in the first year of each biennium.

(A) After federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds will be made available for application under a statewide competitive procurement process each biennium, as specified in subsection (e) of this section.

(B) Funds will be allocated based on the number and costs of students served and the quality of services proposed in the applications submitted as determined by competitive review and ranking.

(C) The TEA shall ensure the competitive procurement is conducted in accordance with all applicable policies, procedures, rules, and statutes governing applicable state and federal procurement processes.

(2) Allocation of state and federal funds in the second year of each biennium.

(A) In the second year of each biennium, after federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds shall be allocated to the service providers selected in the previous year through competitive procurement.

(B) Each grantee's total allocation shall be based on the following components with equal weight assigned to each:

(i) need;

(ii) student contact hours reported; and

(iii) student and program progress made.

(e) Application process. The TEA shall select the adult education service providers through a competitive procurement process conducted in accordance with federal and state procurement requirements.

(1) Each service provider contract will be for a two-year period.

(2) An eligible entity must apply through the TEA request for application (RFA) process to receive a grant.

(3) An eligible entity submitting an application on behalf of a consortium must agree to serve as the fiscal agent for the grant and will be held responsible for all compliance and audit recoveries.

(4) An eligible entity submitting an application must meet all deadlines, requirements, and guidelines outlined in the RFA.

(f) Match requirements.

(1) Service providers shall provide and document any cash or in-kind match. The match must be met using non-federal (i.e., local or state) sources.

(2) The cash or in-kind match may be obtained from any state or local source that is fairly evaluated, excluding any sources of federal funds.

(3) The match may include allowable costs such as the following:

(A) goods and services;

(B) fair market value of third-party goods and services donated by volunteers and employees or other organizations; and

(C) supplies, equipment, and building space not owned by the fiscal agent.

(4) The grantee is required to maintain auditable records for all expenditures relating to the cash or in-kind match the same as for the funds granted through an approved application.

(5) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the

program may claim a proportionate share of the student contact time as the cash or in-kind match.

(g) Tuition and fees. Tuition and fees may not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by such tuition and fees shall be used for the adult education instructional programs.

(h) Other provisions.

(1) Allowable and nonallowable expenditures. Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.

(2) Staff development and special projects. From the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.

(3) Evaluation of programs. The TEA shall evaluate adult education programs based on the indicators of program quality for adult education as defined in the RFA.

(i) Revocation and recovery of funds.

(1) The commissioner of education may revoke a grant award for the adult education grant program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this subsection;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to participate in data collection and audits;

(D) failure to meet performance standards specified in the application or in the Texas state plan for adult education approved by the U.S. Department of Education; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the adult education program.

(2) A decision by the commissioner and the TEA to revoke the grant award of an adult education program is final and may not be appealed.

(3) The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204597
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 20, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.19

The Texas State Board of Examiners of Psychologists adopts new §461.19, concerning Petition for Rulemaking, without changes to the proposed text published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4174) and will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted would bring the Board into compliance with Texas Government Code Annotated §2001.021.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204566
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 8, 2012
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.31

The Texas State Board of Examiners of Psychologists adopts new §463.31, concerning Use of Titles during Practicum, Internship, and Supervised Experience When Applicant Holds Another License, without changes to the proposed text published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4175) and will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted would clarify that a person who holds another mental health license while completing the requirements for a practicum, internship or supervised experience required for licensure with this Board may not use the title of that license.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of

Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204567
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 8, 2012
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.9

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.9, concerning Competency, with changes to the proposed text published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4176).

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would comply with *Texas Register* formatting requirements.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.9. Competency.

(a) Licensees provide only services for which they have the education, skills, and training to perform competently.

(b) Competency includes the ability to provide services concerning a specific individual that takes into account characteristics of that individual including age, gender, ethnicity, national origin, disability, language, and socio-economic status.

(c) Licensees maintain current knowledge of scientific and professional information that ensures competency in every area in which they provide services.

(d) Licensees provide services in an unfamiliar area or involving new techniques only after first undertaking appropriate study and training, including supervision, and/or consultation from a professional competent to provide such services.

(e) In emerging areas in which generally recognized standards for preparatory training do not exist, licensees take reasonable steps to ensure the competence of their work and to protect patients, clients, research participants, and other affected individuals from the potential for harm.

(f) Licensees are responsible for ensuring that all individuals practicing under their supervision are competent to perform those services.

(g) Licensees who delegate performance of certain services such as test scoring are responsible for ensuring that the entity to whom the delegation is made is competent to perform those services.

(h) Licensees who lack the competency to provide particular psychological services to a specific individual must withdraw and refer the individual to a competent appropriate service provider.

(i) Emergency Situations. In emergencies, when licensees are asked to provide services to individuals for whom appropriate mental health services are not available and for which the licensee has not obtained the necessary competence, licensees may provide such services only to the extent necessary to ensure that services are not denied. If ongoing services are provided, licensees must comply with subsection (d) of this section as soon as practicable or refer the patient as per subsection (h) of this section.

(j) Licensees refrain from initiating or continuing to undertake an activity when they know or should know that there is a substantial likelihood that personal problems or conflicts will prevent them from performing their work-related activities or producing a psychological report in a competent and timely manner. When licensees become aware of such conflicts, they must immediately take appropriate measures, such as obtaining professional consultation or assistance in order to determine whether they should limit, suspend, or terminate the engagement in accordance with Board rule §465.21 of this title (relating to Termination of Services).

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204569
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 8, 2012
For further information, please call: (512) 305-7700

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22 TAC §465.12

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.12, concerning Privacy and Confidentiality, without changes to the proposed text published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4176) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would comply with *Texas Register* formatting requirements.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204570
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 8, 2012
For further information, please call: (512) 305-7700

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22 TAC §465.33

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.33, Improper Sexual Conduct, without changes to the proposed text published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4780) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would prohibit harmful, or potentially harmful, relationships between licensees and current or former patients, and between licensees and certain categories of third-persons when those relationships have the potential to harm patients.

A general comment was received regarding the adoption of the amendment.

Comment. This individual generally supported the proposed amendment, but requested that the proposal be modified so that the prohibition against a licensee dating a client or former client be limited to two years after termination of services.

Response. The Board declines to modify the proposed rule in this fashion. The Board believes the current wording represents a balanced approach that provides the public greater protection by making the propriety of any such relationship contingent upon the absence of undue influence and potential for harm, rather than placing a large emphasis upon the passage of time.

Comment. This individual seeks to define the phrase "influence due to a therapeutic relationship" in conjunction with his requested modification.

Response. The Board declines to adopt the definition proposed because it contains conflicting language and would limit the intended effect of the proposed rule.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204571
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 305-7700

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22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.38, Psychological Services for Public Schools, without changes to the proposed text published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4781) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would ensure that there is no potential conflict between the newly proposed Board rule §463.31 and existing Board rules concerning use of titles during a practicum, internship, or other supervised experience.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204572
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 305-7700

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.1

The Texas State Board of Examiners of Psychologists adopts an amendment §469.1, Timeliness of Complaints, without changes to the proposed text published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4177) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would comply with the *Texas Register* formatting requirements.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204573
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 8, 2012
For further information, please call: (512) 305-7700

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.21

The Texas State Board of Examiners of Psychologists adopts an amendment §470.21, Disciplinary Guidelines, without changes to the proposed text published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4177) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would ensure that all felony convictions involving Medicare or Medicaid fraud, regardless of whether the convictions are state or federal, result in revocation of the licensee's license. The adopted amendment further ensures that the licensees who receive deferred adjudication for a felony involving Medicare or Medicaid fraud, and who meet the criteria of Texas Occupations Code Annotated §53.021(d), may have their licenses revoked.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204574
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 19, 2012
Proposal publication date: June 8, 2012
For further information, please call: (512) 305-7700

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §§5.4920 - 5.4926

The commissioner of insurance adopts new 28 Texas Administrative Code §§5.4920 - 5.4926, concerning alternative eligibility for Texas Windstorm Insurance Association windstorm and hail insurance coverage. Sections 5.4920 - 5.4923, 5.4925 and 5.4926 are adopted with nonsubstantive changes to the proposed text published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4552) and will be republished. Section 5.4924 is adopted without changes and will not be republished.

REASONED JUSTIFICATION. Sections 5.4920 - 5.4926 are necessary to implement Insurance Code §2210.260, enacted in House Bill 3, 82nd Legislature, 1st Called Session, effective September 28, 2011. Section 2210.260 allows certain residential structures to be eligible for TWIA windstorm and hail insurance coverage with an alternative certification instead of the certificate of compliance (WPI-8) required under Insurance Code §2210.251.

The sections establish structural components that qualify for an alternative certification, the procedure for obtaining an alternative certification, and the procedure for obtaining association insurance coverage under the alternative eligibility program. The sections also require the association to inform affected policyholders of the program.

Section 5.4920(a) introduces the alternative eligibility program and lists the sections that create it. Although Insurance Code §2210.260 does not use the word "program," §§5.4920 - 5.4926 refer to the alternative eligibility requirements and activities as "the alternative eligibility program." This terminology is consistent with previous association insurance eligibility programs such as the certificate of compliance approval program addressed in §5.4906 of this title and the certificate of compliance transition program addressed in §5.4907 of this title.

Section 5.4920(b) restates Insurance Code §2210.260(d) to confirm that the alternative eligibility program does not impose additional requirements on residential structures that are eligible for association insurance coverage under Insurance Code §2210.251(a), (d), (e), and (f). This would include structures eligible under the certificate of compliance approval program addressed in §5.4906 of this title, because these structures

were insured by the association as of September 1, 2009, and thus qualify for coverage under Insurance Code §2210.251(f).

Policyholders insured under the certificate of compliance transition program addressed in §5.4907 of this title must comply with the alternative eligibility program requirements set out in §§5.4920 - 5.4926, including obtaining an alternative certification to renew coverage after August 31, 2013. This is because the association did not insure these structures on September 1, 2009. Structures covered in the certificate of compliance transition program do not need to separately enroll in the alternative eligibility program and do not need to obtain alternative certification until their coverage is renewed after August 31, 2013.

Insurance Code §2210.251(d) and (e) apply to structures built before 1988. Structures eligible for association coverage under Insurance Code §2210.251(d) and (e) must have been built before January 1, 1988, and must either have been built in an area governed at the time by a building code recognized by the association or have been previously insured by an insurer authorized to engage in business in this state and have a certificate of compliance for each repair, alteration, enlargement, or remodeling begun after that date. Structures eligible for association insurance coverage under those subsections may also qualify for coverage under §2210.251(f) if they were insured by the association as of September 1, 2009. Structures not eligible for coverage under §2210.251(d), (e), or (f) may be eligible for coverage through the alternative eligibility program.

Section 5.4920(c) makes the alternative eligibility program part of the association's plan of operation. Insurance Code §2210.152 requires underwriting standards and application procedures to be part of the plan of operation. Additionally, Insurance Code §2210.251(a) requires structures to be inspected or approved by the department for compliance with the plan of operation.

Section 5.4921 describes the requirements for obtaining and renewing coverage for an eligible residential structure in the alternative eligibility program. Structures eligible for alternative certification are those on which initial construction began before June 19, 2009, and for which the department has issued a WPI-8 for all alterations or repairs begun on or after June 19, 2009. June 19, 2009, is the effective date of Insurance Code §2210.258 and compliance with that section is required by §2210.260. Under §2210.258, structures for which construction began on or after June 19, 2009, must have a WPI-8 for the initial structure and a WPI-8 for all alterations or repairs begun on or after June 19, 2009, to be eligible for association insurance coverage.

Additionally, §5.4921(3) states that a person applying for association insurance coverage must comply with the association's other eligibility and underwriting requirements.

Finally, §5.4921(4) addresses the initial period during which persons may obtain initial and renewal association insurance coverage through the alternative eligibility program without first obtaining a certificate of compliance. This period is set forth in Insurance Code §2210.260(d).

Section 5.4922 states the purpose of the alternative certification program and the requirements for obtaining an alternative certification.

The department anticipates that most of the applications for alternative certification will result from private market withdrawals from the catastrophe area. Alternative eligibility program applicants may seek coverage for structures which do not have all certificates of compliance required for the structure under Insurance Code §2210.251. This will include structures with a WPI-8 for a subsequent repair or alteration of the structure because their private market insurer required it.

The building code standards for the qualifying components listed in §5.4924 have not changed since February 1, 2003. This is why §5.4922 allows a structure to be covered through the alternative eligibility program based on a qualifying component on which the department has issued a WPI-8 based on standards in effect on or after February 1, 2003. Section 5.4922(b)(2) saves an applicant from having to replace an existing component with one built to the same standard simply to obtain an alternative certificate of compliance as required by proposed §5.4921(2). Because the standards under which the department issues a WPI-8 for the qualifying components listed in §5.9424 have not changed since February 1, 2003, it would be wasteful to require applicants to redo a repair to meet the same standard.

Section 5.4923 lists the requirements and explains the procedure for obtaining an alternative certification. An alternative certification provides evidence of insurability for association insurance coverage. An applicant for association insurance coverage, or someone on the applicant's behalf, including a qualified inspector, must submit an application to the department to inform the department that the inspection process is beginning. After the inspection process is complete, the applicant must submit an inspection verification form if the inspector determines that a qualifying component complies with windstorm building code standards.

Under §5.4923(b), the department must receive completed inspection information within six months after final inspection of the qualifying component as required under Insurance Code §2210.251(l). If the department does not receive the information within six months, the applicant must go through the entire inspection process again.

Section 5.4923(a)(3) also allows a structure that has a previously issued certificate of compliance for a qualifying component to be eligible for association insurance coverage. The department may have issued a certificate of compliance for only part of a structure for repair or other construction work. This situation may arise because many voluntary market insurers writing in the catastrophe area may have required their insureds to obtain a certificate of compliance on repairs and other construction. If the insurer has since discontinued the coverage, the person may need to seek association insurance coverage. A certificate of compliance covering a qualifying component demonstrates that the qualifying component was inspected and found to comply with applicable windstorm building code standards. Such a certificate of compliance is an acceptable way of demonstrating eligibility under the alternative eligibility program.

The department may issue an alternative certification if a qualifying component of a structure is inspected and found to comply with windstorm building code standards. Windstorm building code standards for qualifying components are defined in §§5.4009 - 5.4011 of this title.

Section 5.4924 lists and defines qualifying structural building components: the entire roof, windborne debris protection for all exterior openings, and exterior wall coverings for the entire structure.

Insurance Code §2210.260(c) requires the commissioner to determine which components qualify a structure for the alternative eligibility program, considering those components most proba-

ble to generate losses for the association's policyholders and the cost to upgrade them. The commissioner selects the three qualifying components in §5.4924 on the basis of the association's review of 1,605 claims received between July 1, 2011, and December 31, 2011. The majority of the 1,605 claims (85 percent) involved roof damage and the amount paid on roof damage claims averaged $6,394. Nineteen percent of the claims involved damage to exterior wall coverings. These claims had an average cost of $667. Just under eight percent of the claims involved damage to exterior openings. These claims had an average cost of $823. In addition to the cost of damage to these three components themselves, additional damage may result when one of the components is compromised. The entire roof, windborne debris protection for all exterior openings, and exterior wall coverings for the entire structure protect the entire structure. Damage to one of the three qualifying components in §5.4924 may result in additional damage to the interior of the structure or to personal property within it.

The commissioner selects roofs as a qualifying structural building component because roof damage makes up such a large percentage of claims. Roofs are a component highly probable to generate losses for the association's policyholders. As required by Insurance Code §2210.260(c), the commissioner considered the cost to upgrade a qualifying structural building component as well as the probable losses associated with that component. For a 2,000 square foot house, the commissioner estimates a cost of between $5,000 and $8,000 to bring an entire roof into compliance. This is in addition to roofing inspection costs, which may range from $275 to $425. Although repair or replacement of an entire roof may be expensive, improvement in this component across insured structures would lead to a significant reduction in claims.

The commissioner selects exterior wall coverings for the entire structure as a qualifying structural building component because they are also likely to generate losses for the association's policyholders, although to a lesser extent than roofs. For each of the qualifying structural building components, costs will vary, but for a 2,000 square foot house, the commissioner estimates a cost of $10,000 to $15,000 to upgrade the entire structure's exterior wall coverings. The commissioner estimates inspection costs ranging from $225 to $275.

The commissioner selects windborne debris protection for all exterior openings as a qualifying structural building component because it, along with the entire roof and exterior wall coverings, protect the building envelope, which encloses the entire structure. The commissioner estimates a cost of $5,000 to $31,500 for a 2,000 square foot house. The wide range in costs to upgrade windborne debris protection corresponds to the wide range in product options. These range from manual shutter systems to shutter systems which can be closed by remote control. Inspection costs for windborne debris protection range from $250 to $500. Notably, §5.4924(2) excludes wood structural panels, including plywood and oriented strand board, from the category of windborne debris protection for all exterior openings. An applicant may not use a previously issued certificate of compliance for windborne debris protection for all exterior openings based on the use of wood structural panels as windborne debris protection to obtain an alternative certification.

Section 5.4924(2) does not authorize wood structural panels as compliant with building code standards for the purpose of obtaining an alternative certification because of the difficulty in verifying their actual use in a storm. Wood structural panels must be installed over all exterior openings before a storm. Wood structural panels obtained at the time a policyholder applies for alternative certification may no longer be in good condition, may be lost, or may have been used for some other purpose by the time a storm arrives. Subject to the windstorm building code standards, wood structural panels will continue to qualify as windborne debris protection for the purpose of obtaining a certificate of compliance on an entire structure or to maintain coverage on an entire structure.

Section 5.4925 requires the association to give affected policyholders as many as three written notices of the alternative certification requirements, so policyholders have time to obtain an alternative certification before August 31, 2013. The affected policyholders are those who obtained insurance through the transition program under §5.4907 of this title or under Insurance Code §2210.260, which creates the alternative eligibility program. On and after August 31, 2013, Insurance Code §2210.260(d) prohibits the association from renewing coverage for a policyholder who does not have an alternative certification, unless the policyholder has coverage under §2210.251(d), (e), or (f).

Section 5.4925(b)(1) requires the association to send a notice via first class mail to all affected policyholders within 30 days after the rules' effective date. Under §5.4925(2), the association must send a notice, again via first class mail, to affected policyholders at least six months before each policy's first possible renewal date which falls after August 30, 2013. Section 5.4925(b)(2) requires the association to send the notice no earlier than February 28, 2013.

Under §5.4925(b)(3), the association must send a notice via first class mail to affected policyholders at least two months before each policy's first possible renewal date which falls after August 30, 2013. Section 5.4925(b)(3) requires the association to send the notice no earlier than June 30, 2013.

Pursuant to §5.4925(c), the association need not send a second or third notice to policyholders who have obtained an alternative certification.

For example, if a policyholder obtained a policy through the transition program under §5.4907, and the policy began on August 30, 2011, the association could not renew the policy on August 30, 2014, if the policyholder did not have an alternative certification by that date. Section 5.4925 would require the association to send a notice 30 days after the rule's effective date. The association would send a second notice some time on or after February 28, 2013, but before February 28, 2014. The association would send a third notice some time on or after June 30, 2013, but before June 30, 2014. The association would not need to send notices once the policyholder obtained an alternative certification.

Although the statute does not require these notices, they are critical to informing affected policyholders that they must obtain an alternative certification well before the date by which they must do so. Policyholders who need to replace or upgrade a qualifying component will need sufficient time to complete the construction before the deadline. The notices required under this section will enable policyholders to plan for the possible expense and be eligible to renew association insurance coverage after August 30, 2013.

The association is the appropriate entity to give the notices because the association has the information to identify the policyholders who became eligible for association insurance through the transition program or under §2210.260. Insurance Code §2210.260(c) requires the department to adopt reasonable and

necessary rules to implement that section. Requiring these notices is a reasonable and necessary way to ensure that applicants and policyholders receive information about the alternative eligibility program so they can take necessary steps to continue to be eligible for association insurance coverage.

Section 5.4926 adopts by reference three new forms for the alternative eligibility program. The department needs these forms to efficiently process applications and inspection information.

Nonsubstantive changes were made throughout the text to revise internal references to conform to current agency style. The changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

HOW THE SECTIONS WILL FUNCTION. Sections 5.4920 - 5.4926 establish the alternative eligibility program to implement Insurance Code §2210.260. The sections establish the three qualifying structural components that can be certified under the program, outline what structures are eligible for the program under §2210.260, identify the procedure for obtaining an alternative certification, and establish requirements for the association to notify policyholders affected by §2210.260.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Section 5.4921(4).

Comment: One commenter asks that §5.4921(4) not establish August 31, 2012, as the date after which persons must have an alternative certification in order to obtain coverage under the alternative eligibility program. The commenter writes that Insurance Code §2210.260(d) "only addresses persons insured by [the association] as of August 31, 2012." The commenter writes, "the statute does not provide a deadline to establish alternative eligibility through the program for people seeking initial [association] coverage after August 31, 2012."

The commenter also writes that establishing August 31, 2012, as the date after which structures must have an alternative certification places a burden on potential policyholders who are nonrenewed by their private market windstorm insurer after August 31, 2012. Those potential policyholders, the commenter writes, would have to go without windstorm coverage while having a qualifying structural component brought up to code so as to obtain alternative certification.

The commenter requests that the deadline to obtain alternative certification for initial coverage through the association be extended to beyond December 1, 2012.

Agency Response: The department declines to make the suggested change to §5.4921(4). Under Insurance Code §2210.260(d), all persons must have an alternative certification to get alternative eligibility coverage after August 31, 2012. Although Insurance Code §2210.260(d) only explicitly mentions persons with an insurable interest in structures insured by the association as of August 31, 2012, excluding structures *not* insured by the association as of August 31, 2012, leads to results the legislature could not have intended.

Excluding structures not insured by the association as of August 31, 2012, from the statute would allow those structures to qualify for unlimited alternative eligibility coverage without ever obtaining an alternative certification. This is because §2210.260(d) states that persons with an insurable interest in a structure that is insured by the association as of August 31, 2012, must have an alternative certification "before the association, on or after August 31, 2013, may renew coverage for the structure." If §2210.260(d) does not apply to structures which obtain initial coverage with the association after August 31, 2012, then those structures have no requirement to obtain alternative certification to renew after August 31, 2013. Structures initially covered by the association after August 31, 2012, could continue to renew coverage indefinitely, without ever getting an alternative certification. The legislature could not have intended this result.

Excluding structures not insured by the association as of August 31, 2012, leads to another possible conclusion: that the legislature intended that only structures insured by the association as of August 31, 2012, be eligible for alternative eligibility program coverage. The legislature could not have intended this result, either.

Persons with private market windstorm insurance whose insurer declines to renew after August 31, 2012, will have to have a qualifying structural component brought into compliance with windstorm building code standards. Insurance Code §2210.260(d) sets August 31, 2012, as the date after which a structure must have an alternative certification to obtain initial association coverage.

While §5.4921(4) follows the statute, the department and the association can work to reasonably accommodate those working to obtain an alternative certification, as they have historically done with those working to obtain a WPI-8.

Sections 5.4920 - 5.4926

Comment: Two commenters express support for §§5.4920 - 5.4926 as proposed.

Agency Response: The department appreciates the supportive comments.

NAMES OF THOSE COMMENTING ON THE PROPOSAL.

For, with suggested changes: Office of Public Insurance Counsel.

For: Mayor Joe A. Adame, City of Corpus Christi, and State Representative Todd A. Hunter, District 32.

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§2210.008, 2210.151, 2210.152, 2210.260, and 36.001.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210. Section 2210.151 authorizes the commissioner to adopt the association's plan of operation by rule. Section 2210.152 provides that the association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include both underwriting standards and other provisions the department considers necessary to implement the purposes of Chapter 2210.

Section 2201.260 authorizes the commissioner to adopt reasonable and necessary rules to implement this section. The rules adopted under §2210.260 must establish which structural building components are considered qualifying structural building components for the purposes of subsection (b), considering those items that are most probable to generate losses for the association's policyholders and the cost to upgrade those items. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of the state.

§5.4920. Alternative Eligibility Program.

(a) The department establishes the alternative eligibility program to implement Insurance Code §2210.260 and to provide a means for a person to obtain association insurance coverage on a residential structure without obtaining all certificates of compliance required under Insurance Code §2210.251.

(b) The alternative eligibility program does not impose additional requirements on residential structures that are insured or insurable under Insurance Code §2210.251(d), (e), and (f) and §5.4906 of this title (relating to Certificate of Compliance Approval Program).

(c) The following sections of this division constitute the alternative eligibility program, are a part of the association's plan of operation, and control over any conflicting provisions in §5.4001 of this title (relating to Plan of Operation):

(1) Section 5.4921 (relating to Requirements for Obtaining and Renewing Alternative Eligibility Program Coverage);

(2) Section 5.4922 (relating to Alternative Certification);

(3) Section 5.4923 (relating to How to Obtain an Alternative Certification);

(4) Section 5.4924 (relating to Qualifying Components);

(5) Section 5.4925 (relating to Notice); and

(6) Section 5.4926 (relating to Alternative Eligibility Forms).

(d) The windstorm building code standards referenced in this division are those set out in the association's plan of operation.

§5.4921. Requirements for Obtaining and Renewing Alternative Eligibility Program Coverage.

A residential structure is eligible for association insurance coverage under the alternative eligibility program if:

(1) initial construction on the structure began before June 19, 2009;

(2) the department has issued a Certificate of Compliance (Form WPI-8) for all alterations, remodeling, enlargements, repairs, or additions to the structure for which construction began on or after June 19, 2009;

(3) the person applying for association insurance coverage complies with all other association eligibility and underwriting requirements, including maintaining the structure in an insurable condition and payment of premium; and

(4) the structure has an alternative certification as defined in §5.4922 of this title (relating to Alternative Certification):

(A) on and after September 1, 2012, for initial coverage; and

(B) on and after August 31, 2013, for renewal coverage.

§5.4922. Alternative Certification.

(a) An Alternative Certification (Form WPI-12) provides evidence of insurability for association insurance coverage through the alternative eligibility program.

(b) The department may issue an alternative certification if a qualifying component, as defined in §5.4924 of this title (relating to Qualifying Components):

(1) has been inspected and approved by a department inspector or an appointed qualified inspector, and the department has determined that the qualifying component meets the windstorm building code standards, as set forth in the plan of operation, in effect on the day that the department receives the Alternative Certification Application (Form WPI-1-AC), except as provided in §5.4924(2)(A)(i) of this title; or

(2) the department has previously issued a Certificate of Compliance (Form WPI-8) certifying the entire qualifying component and the certificate of compliance is based on windstorm building code standards in effect on or after February 1, 2003, except as provided in §5.4924(2)(A)(ii) of this title.

(c) A department inspector or appointed qualified inspector must inspect the qualifying component. Only an appointed qualified inspector who is a Texas licensed professional engineer may inspect completed construction.

§5.4923. How to Obtain an Alternative Certification.

(a) To obtain an alternative certification, a person, or the person's agent or representative, including an appointed qualified inspector, must submit the required information to the department.

(1) Option 1: for inspections by an appointed qualified inspector, completed Alternative Certification Application (Form WPI-1-AC) and Inspection Verification for Alternative Certification (Form WPI-2-AC); or

(2) Option 2: for inspections by a department inspector, a completed Form WPI-1-AC; or

(3) Option 3: for qualifying structural components for which the department previously issued a certificate of compliance, a completed Form WPI-1-AC; and written notice that the department has issued a Certificate of Compliance (Form WPI-8) for at least one qualifying component.

(b) Forms WPI-1-AC and WPI-2-AC are adopted by reference in §5.4926 of this title (relating to Alternative Eligibility Forms).

(c) The department must receive complete inspection information within six months after the final inspection of the qualifying component, under Insurance Code §2210.251(l). If the department does not receive the information within six months, a person may submit a new Form WPI-1-AC and may have the structure reinspected. The department may issue an Alternative Certification (Form WPI-12) based on the second inspection.

§5.4925. Notice.

(a) The association must give written notice to each policyholder who obtained association insurance coverage on or after September 1, 2009, through:

(1) the transition program under §5.4907 of this title (relating to Certificate of Compliance Transition Program); or

(2) under Insurance Code §2210.260.

(b) The association must give notice by first class mail:

(1) to all policyholders described in subsection (a) of this section within 30 days after the effective date of this rule;

(2) to each policyholder described in subsection (a) of this section at least six months before, but no earlier than February 28, 2013, the first date on which the policy may be renewed which falls after August 30, 2013; and

(3) to each policyholder described in subsection (a) of this section at least two months before, but no earlier than June 30, 2013, the first date on which the policy may be renewed which falls after August 30, 2013.

(c) Subsection (b) of this section does not apply to policyholders who have obtained an alternative certification; the association does

not need to give notice to policyholders who have obtained an alternative certification.

(d) Each notice must:

(1) inform policyholders that, after August 30, 2013, the association will not renew the insurance coverage of policyholders who do not have an alternative certification;

(2) explain what an alternative certification is;

(3) list the qualifying components;

(4) explain how to obtain an alternative certification;

(5) say which rules apply to alternative certifications; and

(6) tell policyholders where they can get more information.

§5.4926. Alternative Eligibility Forms.

(a) The commissioner of insurance adopts by reference the following forms for the alternative eligibility program:

(1) Application for Alternative Certification (Form WPI-1-AC), effective September 1, 2012;

(2) Inspection Verification for Alternative Certification (Form WPI-2-AC), effective September 1, 2012; and

(3) Alternative Certification (Form WPI-12), effective September 1, 2012.

(b) These forms are available on the department website or by mail from Windstorm Inspections, MC 103-1E, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701, or P.O. Box 149104, Austin, Texas 78714-9104.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204578
Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 8. HAZARDOUS CONDITION

SUBCHAPTER A. HAZARDOUS CONDITIONS AND REMEDY OF HAZARDOUS CONDITIONS

28 TAC §8.3

The commissioner of insurance adopts amendments to the title of 28 TAC Chapter 8 and amendments to §8.3, concerning hazardous conditions for insurers. The amendments are adopted with nonsubstantive changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4558) to correct punctuation, clarify, and conform to current agency style.

REASONED JUSTIFICATION. The amendments to §8.3 update hazardous conditions and make §8.3 consistent with the National Association of Insurance Commissioners Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition. The amendments add subsection (a) to the enumerated items in §8.3, add to or clarify the hazardous conditions in subsection (a), and add new subsections (b) and (c) The amendments also correct punctuation, clarify, and conform to current agency style. The hazardous conditions enumerated in §8.3(a) do not conclusively indicate that an insurer is in hazardous condition. One or more of the conditions set forth in §8.3(a) can exist in an insurer which is in satisfactory condition. However, one or more of these conditions has often been found in an insurer which is unable to perform its obligations to its policyholders, claimants, creditors, and shareholders or has required the commissioner of insurance to initiate regulatory action to protect policyholders, claimants, creditors, and shareholders.

HOW THE SECTION WILL FUNCTION. The amendments delete "Early Warning System For" from the title of Chapter 8 and add "and Remedy of Hazardous Conditions" to the title of §8.3. Subsection (a) has been added to the enumerated items in §8.3 and hazardous conditions have been added or clarified in §8.3(a).

New §8.3(b) provides that, for purposes of making a determination of an insurer's financial condition under this section, the commissioner may take action, including: (1) disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding; (2) make appropriate adjustments, including disallowance, to asset values attributable to investments or transactions consistent with the NAIC Accounting Policies and Procedures Manual, state laws, and regulations; (3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and (4) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called on to meet the obligation undertaken within the next 12-month period.

New §8.3(c) provides that, if the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to its policyholders, creditors, or the general public, the commissioner may take any action the commissioner considers reasonably necessary to remedy the hazardous condition, including, but not limited to, those actions set forth in Insurance Code §404.003(c) and the following additional actions: (1) require the insurer to reduce, suspend, or limit the volume of business being renewed; (2) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders; (3) require the insurer to file reports, in the form acceptable to the commissioner, concerning the market value of an insurer's assets; (4) require the insurer to limit or withdraw from certain investments or discontinue certain investment practices, to the extent the commissioner deems necessary; (5) require the insurer to file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners, or in a format acceptable to the commissioner; (6) require the insurer to provide a business plan to the commissioner, in order to continue to transact business in this state; (7) adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer, notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustment; (8) document the adequacy of premium rates in relation to the risks insured;

and (9) correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the commissioner.

SUMMARY OF COMMENTS. The department received comments supporting the amendments to §8.3, stating that the changes proposed appear to strengthen the commissioner's ability to declare an insurer in hazardous financial condition and act to address any potential problems.

NAMES OF THOSE MAKING COMMENTS FOR AND AGAINST THE PROPOSAL.

For: Office of Public Insurance Counsel

Against: None

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§404.003(a), 404.003(c), 404.003(d), 404.005, 404.006, and 36.001. Section 404.003(a) provides that if the financial condition of an insurer, when reviewed as provided by §404.003(b), indicates a condition that might make the insurer's continued operation hazardous to the insurer's policyholders or creditors or the public, the commissioner may, after notice and hearing, order the insurer to take action reasonably necessary to remedy the condition. Section 404.003(c) provides that in an order issued under §404.003(a), the commissioner may take any action the commissioner considers reasonably necessary to remedy the condition described in §404.003(a), including those actions identified in §404.004(c). Section 404.003(d) states that the commissioner may use the remedies available under §404.003(c) in conjunction with the provisions of Insurance Code Chapter 83, if the commissioner determines that the financial condition of the insurer is hazardous and can be reasonably expected to cause significant and imminent harm to the insurer's policyholders or the public. Section 404.005 provides that the commissioner may, by rule, establish uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to the insurer's policyholders or creditors or the public and establish standards for evaluating the financial condition of an insurer. Standards established by the commissioner under §404.005 must be consistent with the purposes of §404.003. Section 404.006 provides that the commissioner may enter into an agreement with the insurance regulatory authority of another jurisdiction concerning the management, volume of business, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of, and type of risks to be insured by an insurer that is licensed in the other jurisdiction and considered to be in a hazardous financial condition or in need of a specific remedy that may be imposed by the commissioner and the insurance regulatory authority of the other jurisdiction. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under this code and other laws of this state.

§8.3. Hazardous Conditions and Remedy of Hazardous Conditions.

(a) An insurer may be found to be in hazardous condition when one or more of the following conditions are found to exist by the commissioner:

(1) an insurer does not file a financial statement within the time required by the Insurance Code, or as requested by the agency;

(2) an insurer files financial information which is false or misleading; releases false or misleading financial information to lending institutions or the general public; or makes a false or misleading entry or omits an entry of material amount in the insurer's books;

(3) an insurer fails to respond to inquiries related to the condition of the insurer or furnishes false and misleading information concerning an inquiry;

(4) an insurer does not amend its financial statement when requested by the agency;

(5) an insurer overstates its surplus by 25 percent or more;

(6) an insurer's unassigned surplus has a deficit which is in excess of 20 percent of surplus;

(7) an insurer's financial ratios are outside the acceptable ranges as established by the National Association of Insurance Commissioners or the insurer's financial condition is otherwise hazardous as identified in the financial analysis tools and reports of the National Association of Insurance Commissioners;

(8) adverse findings are reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries of an insurer;

(9) the net reduction (excluding net income and change in paid-in capital and change in paid-in or contributed surplus) to the insurer's surplus is greater than 25 percent of beginning surplus on the insurer's annual financial statements;

(10) an insurer's operating loss in the last 12-month period or any shorter period of time, including net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus in excess of the minimum required;

(11) an insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus in excess of the minimum required;

(12) a projection by the agency of an insurer's current financial condition indicates that the sum of its paid-in capital, paid-in surplus, and contributed surplus will be reduced within the next 12 months;

(13) an insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(14) an insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems;

(15) an insurer's aggregate net retained risk, direct or assumed, under any one insurance policy or certificate of insurance under a group policy, is more than 10 percent of the insurer's surplus, except where otherwise permitted by law;

(16) contingent liabilities, pledges, or guaranties which, either individually or collectively, involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer;

(17) an insurer has not made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

(18) management establishes reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice, or persistently engages in material under-reserving that results in adverse development;

(19) an insurer's reserves for losses and loss adjustment expenses are discounted more than 10 percent of surplus without the commissioner's prior written approval;

(20) an insurer has reinsurance reserve credits, recoverables, or receivables which are disputed by the reinsurer, or are due and payable and remain unpaid, and such reinsurance credits, recoverables, and receivables are more than 10 percent of an insurer's surplus; or a reinsurer does not have the ability to perform and the insurer's reinsurance program does not provide sufficient protection for the insurer's remaining surplus, after taking into account the insurer's cash flow, the classes of business written, and the financial condition of the reinsurer; or the reinsurer is insolvent or threatened with insolvency or delinquent in payment of its monetary or other obligations and which, in the opinion of the commissioner, may affect the solvency of the insurer;

(21) in the opinion of the commissioner, the age and collectability of the insurer's receivables may affect the solvency of the insurer;

(22) any entity within the insurer's insurance holding company system is unable to pay its obligations as they become due and payable, is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations and which, in the opinion of the commissioner, may affect the solvency of the insurer;

(23) an entity conducting business with the insurer is delinquent in the transmitting or payment of net premiums to the insurer;

(24) a life, accident, and health insurer has premium writings which result in surplus being less than 5 percent of the aggregate general account reserves for the life insurance in force plus 25 percent of the net annualized accident and health premium writings;

(25) a property and casualty insurer has net premium writings which, if annualized, would be an amount more than 300 percent of surplus;

(26) an insurer consistently issues subordinate premium or surplus debentures to finance its operations;

(27) an insurer does not maintain books and records sufficient to permit examiners to determine the financial condition of the insurer, examples of which include, but are not limited to:

(A) books and records of a domestic insurer maintained outside the state of Texas in violation of the Insurance Code Chapter 803;

(B) person(s) responsible for generating or maintaining books of original entry for a domestic insurer are officed outside the state of Texas; or

(C) an insurer moves, or maintains, the location of the books and records necessary to conduct an examination without notifying the agency of such location;

(28) an insurer has reinsurance agreements affecting 20 percent or more of the insurer's gross written premiums, direct or assumed, and the assuming insurers are not licensed to do insurance business in the state of Texas;

(29) an insurer has reinsurance credits taken or assets claimed on which there is not complete evidence of reinsurance agreements with insurers, signed by the reinsurer, and which are more than 10 percent of surplus;

(30) an insurer has transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains that do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature, or which require all surplus funds which are in excess of an insurer's statutory minimum capital and surplus, or equivalent, to be distributed;

(31) an insurer's management, including officers, directors, or any other person who directly or indirectly controls the operation of an insurer, does not have the experience, competence, fitness, reputation, or trustworthiness to operate the insurer in a safe and sound manner;

(32) an insurer's management engages in unlawful transactions, including, but not limited to, failing to meet financial and holding company filing requirements, in the absence of a reason satisfactory to the commissioner;

(33) an insurer or an affiliate does not comply with the terms of an agreement entered into between the insurer and affiliate;

(34) the administration of an insurer's business is delegated to a person who, directly or indirectly, produces more than 25 percent of the insurer's gross written premiums, or an insurer delegates an insurance function necessary to the insurer's survival without adequate controls or which creates a conflict of interest;

(35) one person, other than a full time, salaried employee, controls production of more than 10 percent of the gross written premiums of an insurer;

(36) an insurer has a pattern of not settling valid claims within a reasonable time after due proofs of loss have been received;

(37) an insurer does not follow a policy on rating and underwriting standards appropriate to the risk;

(38) an insurer violates the Insurance Code Chapters 422 and 423;

(39) a final administrative or judicial order, initiated by an insurance regulatory agency of another state, is issued against an insurer;

(40) an insurer is in any condition that the commissioner of insurance finds to present a hazard to policyholders, creditors, or the general public.

(b) For purposes of making a determination of an insurer's financial condition under this section, the commissioner may take action, including:

(1) disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments, including disallowance to asset values attributable to investments or transactions consistent with the NAIC Accounting Policies and Procedures Manual, state laws and regulations;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there

is a substantial risk that the insurer will be called on to meet the obligation undertaken within the next 12-month period.

(c) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to its policyholders, creditors, or the general public, then the commissioner may take any action the commissioner considers reasonably necessary to remedy the hazardous condition, including, but not limited to, those actions set forth in Insurance Code §404.003(c) and the following additional actions:

(1) require the insurer to reduce, suspend, or limit the volume of business being renewed;

(2) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;

(3) require the insurer to file reports, in a form acceptable to the commissioner, concerning the market value of an insurer's assets;

(4) require the insurer to limit or withdraw from certain investments or discontinue certain investment practices, to the extent the commissioner deems necessary;

(5) require the insurer to file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners, or in a format acceptable to the commissioner;

(6) require the insurer to provide a business plan to the commissioner, in order to continue to transact business in this state;

(7) adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer, notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustment;

(8) document the adequacy of premium rates in relation to the risks insured; and

(9) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner.

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

Filed with the Office of the Secretary of State on August 30, 2012.

TRD-201204579
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: September 19, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 463-6327

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES
SUBCHAPTER B. JOB APPLICATION PROCEDURES

43 TAC §4.16

The Texas Department of Transportation (department) adopts the repeal of §4.16, Veterans Employment Preference, concerning Job Application Procedures. The repeal of §4.16 is adopted without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4403) and will not be republished.

EXPLANATION OF ADOPTED REPEAL

Government Code, Chapter 657, enacted by the legislature in 1993, established a state veterans preference program for employment with a public entity. The chapter contains the details of the procedure that a state agency is to follow in applying preferences for veterans. In April 1996, the commission adopted §4.16, which contains language from Government Code, Chapter 657.

In 2009 the legislature adopted a similar preference program for individuals who were under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding their 18th birthday; those individuals are commonly referred to as foster children (Government Code, Chapter 672, Employment Preference for Former Foster Children). In reviewing the rules of the department related to employment preferences, staff determined that rules related to the employment preference programs are not required because the statutes that provide for the preferences describe the procedural requirements that a state agency must follow and do not expressly require additional rules and because implementation or interpretation of those statutes is unnecessary. Therefore, this adoption repeals §4.16 as being redundant of the statutory provisions.

COMMENTS

No comments on the proposed repeal were received.

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 657 and 672.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204590
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: September 20, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 463-8683

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT
SUBCHAPTER A. GENERAL

43 TAC §9.2, §9.6

The Texas Department of Transportation (department) adopts amendments to §9.2, Contract Claim Procedure, and §9.6, Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts. The amendments to §9.2 and §9.6 are adopted without changes to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5249) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 9.6 concerns contract claims under a comprehensive development agreement (CDA). That section authorizes the department and developer to use a dispute resolution board to resolve disputes. The rule sets forth mandatory procedures that must be in the CDA (if the parties elect to use a procedure authorized by §9.6) and discretionary procedures that may be used. Generally, the contract claim procedure provides for resolution of disputes by a dispute resolution board. A decision by a dispute resolution board may be overturned only if there is a dispute resolution board error. In the CDA, the parties may limit this to narrow issues, for example, whether the decision was procured by fraud. Otherwise, the decision by the dispute resolution board is final.

The amendments to §9.2 and §9.6 will allow the department to use the contract claim procedure authorized in §9.6 to resolve claims and disputes arising under a design-build contract entered into under Transportation Code, Chapter 223, Subchapter F, provided the highway project constructed, expanded, extended, maintained, rehabilitated, altered, or repaired under the design-build contract has estimated total project costs of $500 million or more.

The ability of design-build contractors to effectively raise construction financing will be aided by an administrative process for dispute resolution under which the decision maker is not a party to the design-build contract and that produces finality of decision within a reasonable time. The ability to use this procedure will assist the department in attracting meaningful proposals and in generating competition for design-build projects.

Section 9.2 is amended to provide that a claim under a design-build contract, as defined in §9.6, may be processed under that section if the parties agree to do so in the CDA or design-build contract or if the design-build contract does not specify otherwise. However, if the design-build contract specifies that a claim procedure authorized by §9.6 applies, then any claim arising under the design-build contract will be processed and resolved in accordance with the claim procedure authorized by §9.6 and not by that section.

Section 9.6 is amended to provide that the executive director of the department may enter into a design-build contract containing a claim procedure and provisions authorized by that section. Section 9.6 defines a design-build contract as an agreement with a design-build contractor for a highway project with estimated total project costs of $500 million or more.

If a design-build contract does not contain a claim procedure authorized by §9.6, either by express reference to that section or by inclusion of provisions required or permitted by that section, then a claim under the agreement will be processed and resolved under §9.2.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which allows the commission by rule to establish procedures for the informal resolution of a claim arising out of a contract under the statutes set forth in that section.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.112 and Transportation Code, Chapter 223, Subchapter F.

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

Filed with the Office of the Secretary of State on August 31, 2012.

TRD-201204591
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: September 20, 2012
Proposal publication date: July 13, 2012
For further information, please call: (512) 463-8683

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 Judicial Council

Title 1, Part 8

The Texas Indigent Defense Commission, a standing committee of the Texas Judicial Council, files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter A, §§174.1 - 174.4, concerning Minimum Continuing Legal Education Requirements; and Subchapter B, §§174.10 - 174.25, concerning Contract Defender Program Requirements.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The Commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Indigent Defense Commission, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Wesley Shackelford, Deputy Director/Special Counsel, Texas Indigent Defense Commission, 209 W. 14th St., Suite 202, Austin, Texas 78701 or by email to wesley.shackelford@txcourts.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201204582
Jim Bethke
Executive Director, Texas Indigent Defense Commission
Texas Judicial Council
Filed: August 30, 2012

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Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists files this notice of intent to review and consider for readoption, revision or repeal Texas Administrative Code, Title 22, Part 21, Texas State Board of Examiners of Psychologists rules.

Chapter 461. General Rulings

Chapter 463. Applications and Examinations

Chapter 465. Rules of Practice

Chapter 469. Complaints and Enforcement

Chapter 470. Administrative Procedure

Chapter 471. Renewals

Chapter 473. Fees

This review is conducted pursuant to the Texas Government Code §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years.

All comments or questions in response to this notice of rule review may be submitted in writing to Darrel Spinks, General Counsel of the Texas State Board of Examiners of Psychologists, at 333 Guadalupe, Suite 2-450, Austin, Texas 78701, telephone (512) 305-7700 or fax (512) 305-7701. The Board will accept public comments regarding the rule review within 30 days following the publication of this notice in the *Texas Register.*

TRD-201204575
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Filed: August 30, 2012

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Adopted Rule Reviews

Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Texas Administrative Code, Title 43, Part 1, Chapter 21, Right of Way.

This review and readoption have been conducted in accordance with Government Code, §2001.039. The department has reviewed these rules and received no comments on the proposed rule review, which was published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5137). The Texas Transportation Commission has determined that the reasons for adopting the specified rules continue to exist.

This concludes the review of Chapter 21.

TRD-201204583
Jeff M. Graham
General Counsel
Texas Department of Transportation
Filed: August 30, 2012

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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: 1 TAC Chapter 355--Preamble

DSH Funding Pool	Estimated Allocation
Children's Hospitals	$100,000,000
Rural Hospitals	$71,500,000
Urban Public Hospitals	$613,000,000
All other hospitals	$417,000,000
TOTAL	$1,201,500,000

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Notice - Procurement of Services by Area Agencies on Aging

The Department of Aging and Disability Services' Access and Intake Division - Area Agencies on Aging Section oversees the delivery of Older Americans Act services for individuals 60 years of age and older, their family members, and other caregivers through contracts with area agencies on aging located throughout the state. These 28 area agencies on aging are currently seeking qualified entities to provide services such as: Congregate Meals, Home Delivered Meals, Transportation, Personal Assistance, Homemaker, and Caregiver, as well as other related services. Parties interested in providing services must contact the area agency on aging operating within their service area to obtain information relating to vendor open enrollment, requests for proposals (RFP), the contracting process, the types of services being considered, and the actual funding available.

Identified in the comprehensive list are all area agencies on aging, contact information, addresses, telephone numbers, and service areas:

Area Agencies on Aging
9/5/2012

Area Agency on Aging of the Alamo Area
8700 Tesoro, Suite 700
San Antonio, Texas 78217-6228
Ph: 210-362-5561 **1-866-231-4922**
Fax: 210-225-5937

Director:
Ms. Gloria Vasquez, Director
gvasquez@aacog.com

Executive Director:
Alamo Area Council of Governments
Mr. Dean Danos, Executive Director
ddanos@aacog.com

Fiscal Director:	Contact:
Blanca Tapia	Andrew Perez
btapia@aacog.com	aperez@aacog.com

Counties Served: Atascoca, Bandera, Comal, Frio, Gillespie, Guadalupe; Karnes, Kendall, Kerr, Medina, Willson

Area Agency on Aging of Bexar County
8700 Tesoro, Suite 700
San Antonio, Texas 78217-6228
Ph: 210-362-5254 **1-800-960-5201**
Fax: 210-225-5937

Director:
Dr. Martha Spinks,Director
mspinks@aacog.com

Executive Director:
Alamo Area Council of Governments
Mr. Dean Danos, Executive Director
ddanos@aacog.com

Fiscal Director:	Contact:
Blanca Tapia	Andrew Perez
btapia@aacog.com	aperez@aacog.com

Counties Served: Bexar

Area Agency on Aging of Ark-Tex
P.O. Box 5307
Texarkana, Texas 75505-5307
Ph: 903-832-8636 **1-800-372-4464**
Fax: 903-832-3441

Director:
Ms. Diane McKinnon, Manager
dmckinnon@atcog.org

Executive Director:
Ark-Tex Council of Governments
Mr. L.D. Williamson, Executive Director
ldwilliamson@atcog.org

Fiscal Director:	Contact:
Brenda Davis	Debra Newton
bdavis@atcog.org	dnewton@atcog.org

Counties Served: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, Titus

Area Agency on Aging of Brazos Valley
P.O. Box 4128
Bryan, Texas 77805-4128
Ph: 979-595-2806 **1-800-994-4000**
Fax: 979-595-2810

Director:
Mr. Ronnie Gipson, Director
rgipson@bvcog.org

Executive Director:
Brazos Valley Council of Governments
Mr. Tom M. Wilkinson, Jr., Executive Director
twilkinson@bvcog.org

Fiscal Director:	Contact:
Deborah Krusekopf	Kay Wilson
dkrusekopf@bvcog.org	kwilson@bvcog.org

Counties Served: Brazos, Burleson, Grimes, Leon, Madison, Robertson, Washington

Area Agency on Aging of the Capital Area

6800 Burleson Rd. Bldg. 310, STE 165
Austin, Texas 78744-2306
Ph: 512-916-6062 **1-888-622-9111**
Fax: 512-916-6042

Director:
Ms. Jennifer Scott, Director
jscott@capcog.org

Executive Director:
Capital Area Council of Governments
Ms. Betty Voights, Executive Director
bvoights@capcog.org

Fiscal Director:	Contact:
James Mikolaichik	Michael Weddell
jmikolaichik@capcog.org	mjweddell@capcog.org

Counties Served: Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, Williamson

Area Agency on Aging of Central Texas

2180 North Main Street
Belton, Texas 76513-1919
Ph: 254-770-2330 **1-800-447-7169**
Fax: 254-770-2349

Director:
Mr. H. Richard McGhee, Director
richard.mcghee@ctcog.org

Executive Director:
Central Texas Council of Governments
Mr. Jim Reed, Executive Director
jreed@ctcog.org

Fiscal Director:	Contact:
Michael Irvine	Sharon Harrell
mirvine@ctcog.org	

Counties Served: Bell, Coryell, Hamilton, Lampasas, Milam, Mills, San Saba

Area Agency on Aging of the Coastal Bend

P.O. Box 9909
Corpus Christi, Texas 78469
Ph: 361-883-3935 **1-800-817-5743**
Fax: 361-883-5749

Director:
Ms. Betty Lamb, Director
betty@cbcogaaa.org

Executive Director:
Coastal Bend Council of Governments
Mr. John P. Buckner, Executive Director
john@cbcog98.org

Fiscal Director:	Contact:
Veronica Toomey	361-323-5327
veronica@cbcog98.org	

Counties Served: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio

Area Agency on Aging of Concho Valley

2801 W. Loop 306, Suite A
San Angelo, Texas 76904-6502
Ph: 325-223-5704 **1-877-944-9666**
Fax: 325-223-8233

Director:
Toni Gutierrez, Director
Toni.gutierrez@cvcog.org

Executive Director:
Concho Valley Council of Governments
Mr. Jeffrey K. Sutton, Executive Director
jsutton@cvcog.org

Fiscal Director:	Contact:
Nancy Pahira	
Nancy@cvcog.org	@cvcog.org

Counties Served: Coke, Concho, Crockett, Irion, Kimble, Mason, Mculloch, Menard, Reagan, Schleicher, Sterling, Sutton, Tom Green

Area Agency on Aging of Dallas County

1349 Empire Central, Ste. 400
Dallas, Texas 75247-4033
Ph: 214-871-5065 **1-800-548-1873**
Fax: 214-871-7442

Director:
Millie De Anda, Director
mdeanda@ccgd.org

Executive Director:
Community Council of Greater Dallas
Ms. Martha Blaine, Executive Director
mblaine@ccgd.org

Fiscal Director:	Contact:
Vicki White	Dena Boyd
vwhite@ccgd.org	dboyd@ccgd.org

Counties Served: Dallas

Area Agency on Aging of Deep East Texas

210 Premier Drive
Jasper, Texas 75951-7495
Ph: 409-384-7614 **1-800-435-3377**
Fax: 409-384-5390

Director:
Ms. Holly Anderson, Director
handerson@detcog.org

Executive Director:
Deep East Texas Council of Governments
Mr. Walter Diggles, Executive Director
wdiggles@detcog.org

Fiscal Director:	Contact:
Catina Boykin	Holly Anderson
cboykin@detcog.org	

Counties Served: Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler

Area Agency on Aging of East Texas

3800 Stone Road
Kilgore, Texas 75662-6927
Ph: 903-984-8641 **1-800-442-8845**
Fax: 903-984-4482

Director:
Bettye Mitchell, Director
Bettye.mitchell@etcog.org

Executive Director:
East Texas Council of Governments
Mr. David Cleveland, Executive Director
David.cleveland@etcog.org

Fiscal Director:	Contact:
Judy Durland	Beverly Brown
Judy.durland@twc.state.tx.us	

Counties Served: Anderson, Camp, Cherokee,Gregg, Harrision, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, VanZandt, Wood

Area Agency on Aging of the Golden Crescent Region

120 South Main St. STE 210
Victoria, Texas 77901
Ph: 361-578-1587 **1-800-574-9745**
Fax: 361-578-8865

Director:
Ms. Cindy Cornish, Director
cindyco@gcrpc.org

Executive Director:
Golden Crescent Regional Planning Commission
Mr. Joe E. Brannan, Executive Director
jbrannan@gcprc.org

Fiscal Director:	Contact:
Cynthia Skarpa	Cynthia Skarpa
cindys@gcrpc.org	

Counties Served: Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, Victoria

Area Agency on Aging of Harris County
8000 North Stadium Drive, 3rd. Floor
Houston, Texas 77054-1823
Ph: 832-393-4301
Fax: 832-393-5214

Director:
Ms. Deborah A. Moore, Director
deborahA.moore@houstontx.gov

Executive Director:
Houston Dept. of Health & Human Services
Stephen Williams, Director
stephen.williams@houstontx.gov

Fiscal Director: Contact
Monica Mitchell Celina Ridge
monica.mitchell@houstontx.gov

Counties Served: Harris

Area Agency on Aging of Houston-Galveston
P.O. Box 22777
Houston, Texas 77227-2777
Ph: 713-627-3200 **1-800-437-7396**
Fax: 713-993-4578

Director:
Mr. Curtis M. Cooper, Manager
curtis.cooper@h-gac.com

Executive Director:
Houston-Galveston Area Council
Mr. Jack Steele, Executive Director
jack.steele@H-GAC.com

Fiscal Director: Contact:
Nancy Haussler David Waller
Nancy.haussler@h-gac.com

Counties Served: Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Walker, Waller, Wharton

Area Agency on Aging of the Heart of Texas
1514 S. New Rd.
Waco, Texas 76711-1316
Ph: 254-292-1800
Fax: 254-756-0102

Director:
Mr. Gary Luft, Director
Gary.Luft@hot.cog.tx.us

Executive Director:
Heart of Texas Council of Governments
Mr. Russell Devorsky, Executive Director
russell.devorsky@hot.cog.tx.us

Fiscal Director: Contact:
John Minnix Donnis Cowan
John.minnix@hot.cog.tx.us

Counties Served: Bosque, Falls, Freestone, Hill, Limestone, McLennan

Area Agency on Aging of the Lower Rio Grande Valley
301 West Railroad St.
Weslaco, Texas 78596
Ph: 956-682-3481 **1-800-365-6131**
Fax: 956-682-8852

Director:
Mr. Jose L. Gonzalez, Director
jgonzalez@lrgvdc.org

Executive Director:
Lower Rio Grande Valley Development Council
Mr. Kenneth N. Jones, Executive Director
knjones@lrgvdc.org

Fiscal Director: Contact:
Ann Lyles Crystal Balboa
lyles@acnet.net cbalboa@lrgvdc.org

Counties Served: Cameron, Hidalgo, Willacy

Area Agency on Aging of the Middle Rio Grande Area
P.O. Box 1199
Carrizo Springs, Texas 78834-3211
Ph: 830-876-3533 **1-800-224-4262**
Fax: 830-876-9415

Director:
Mr. Conrado Longoria, Jr. Director
conrado.longoria@mrgdc.org

Executive Director:
Middle Rio Grande Development Council
Mr. Leodoro Martinez, Executive Director
leodoro.martinez@mrgdc.org

Fiscal Director: Contact:
Joe D. Cruz, Jr. Pete Perez
Joe.cruz@mrgdc.org

Counties Served: Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde,Val Verde, Zavala

Area Agency on Aging of North Central TX

P.O. Box 5888
Arlington, Texas 76005-5888
Ph: 817-695-9194 **1-800-272-3921**
Fax: 817-695-9274

Director:
Ms. Doni Green, Manager
dgreen@nctcog.org

Executive Director:
North Central Texas Council of Governments
Mr. Mike Eastland, Executive Director
meastland@nctcog.org

Fiscal Director: Contact:
Shannan Ramirez Mona Barbee
sramirez@nctcog.org

Counties Served: Collin, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Wise

Area Agency on Aging of North Texas

P.O. Box 5144
Wichita Falls, Texas 76307-5144
Ph: 940-322-5281 **1-800-460-2226**
Fax: 940-322-6743

Director:
Ms. Rhonda K. Pogue, Director
rpogue@nortexrpc.org

Executive Director:
Nortex Regional Planning Commission
Mr. Dennis Wilde, Executive Director
dwilde@nortexrpc.org

Fiscal Director: Contact:
James Springer Rhonda Pogue
jspringer@nortexrpc.org

Counties Served: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichta, Wilbarger, Young

Area Agency on Aging of the Panhandle Area
P.O. Box 9257
Amarillo, Texas 79105-9257
Ph: 806-331-2227 **1-800-642-6008**
Fax: 806-373-3268

Director:
Ms. Melissa Carter, Director
mcarter@prpc.cog.tx.us

Executive Director:
Panhandle Regional Planning Commission
Mr. Gary Pitner, Executive Director
Gpitner@theprpc.org

Fiscal Director: Contact:
Cindy Boone Christy Henderson
cboone@theprpc.org

Counties Served: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler

Area Agency on Aging of the Permian Basin
P.O. Box 60660
Midland, Texas 79711-0660
Ph: 432-563-1061 **1-800-491-4636**
Fax: 432-567-1011

Director:
Ms. Jeannie Raglin, Director
jraglin@aaapbcom

Executive Director:
Permian Basin Regional Planning Commission
Ms. Terri Moore, Executive Director
tmoore@pbrpc.org

Fiscal Director: Helen Grady
heleng@pbrpc.org

Contact: Jeannie Raglin

Counties Served: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler

Area Agency on Aging of the Rio Grande Area
1100 North Stanton, Suite 610
El Paso, Texas 79902-4155
Ph: 915-533-0998 **1-800-333-7082**
Fax: 915-544-5402

Director:
Ms. Yvette Lugo, Director
yvettel@riocog.org

Executive Director:
Rio Grande Council of Governments
Ms. Annette Gutierrez. Executive Director
anneteg@riocog.org

Fiscal Director: Hector F. Diaz
hectord@riocog.org

Contact: Lorena Estrada
lorenae@riocog.org

Counties Served: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio

Area Agency on Aging of Southeast TX
2210 Eastex Freeway
Beaumont, Texas 77703-4929
Ph: 409-924-3381 **1-800-395-5465**
Fax: 409-899-4829

Director:
Colleen Halliburton, Director
challiburton@setrpc.org

Executive Director:
South East Texas Regional Planning Commission
Mr. Shaun Davis, Executive Director
sdavis@setrpc.org

Fiscal Director: Jim Borel
jborel@setrpc.org

Contact: Teri Barnes
tbarnes@setrpc.org

Counties Served: Hardin, Jefferson, Orange

Area Agency on Aging of South Plains
P.O. Box 3730 / Freedom Station
Lubbock, Texas 79452
Ph: 806-687-0940 **1-888-418-6564**
Fax: 806-765-9544

Director:
Ms. Liz Castro, Director
lcastro@spag.org

Executive Director:
South Plains Association of Governments
Mr. Tim C. Pierce, Executive Director
tpierce@spag.org

Fiscal Director: Tim Schwartz
tschwartz@spag.org

Contact: Al Garcia

Counties Served: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum

Area Agency on Aging of South Texas
P.O. Box 2187
Laredo, Texas 78044-2187
Ph: 956-722-3995 **1-800-292-5426**
Fax: 956-722-2670

Director:
Mr. Alberto Rivera, Jr., Aging Services Director
arivera@stdc.cog.tx.us

Executive Director:
South Texas Development Council
Mr. Amando Garza, Jr., Executive Director
agarzajr@stdc.cog.tx.us

Fiscal Director: Contact:
Robert Mendiola Nancy Rodriquez
mendiola@stdc.cog.tx.us

Counties Served: Jim Hogg, Starr, Webb, Zapata

Area Agency on Aging of Texoma
1117 Gallagher, Suite 200
Sherman, Texas 75090-3107
Ph: 903-813-3580 **1-800-677-8264**
Fax: 903-813-3573

Director:
Ms. Karen Bray, Director
kbray@texoma.cog.tx.us

Executive Director:
Texoma Council of Governments
Dr. Susan B. Thomas, Executive Director
sthomas@texoma.cog.tx.us

Fiscal Director: Contact:
Terrell Culbertson Rodrigo Moyshondt
tculbertson@texoma.cog.tx

Counties Served: Cooke, Fannin, Grayson

Area Agency on Aging of Tarrant County
1500 N. Main St. Suite 200
Fort Worth, Texas 76164-0448
Ph: 817-258-8081 **1-877-886-4833**
Fax: 817-258-8074

Director:
Mr. Don Smith, Director
Don.smith@unitedwaytarrant.org

Executive Director:
United Way Metropolitan Tarrant County
Ms. Ann Rice, Sr. Vice President
ann.rice@unitedwaytarrant.org

Fiscal Director: Contact:
Mitch Leach Sarah Hummer
mitch.leach@unitedwaytarrant.org

Counties Served: Tarrant

Area Agency on Aging of West Central TX
3702 Loop 322
Abilene, Texas 79602-7300
Ph: 325-672-8544 **1-800-928-2262**
Fax: 325-793-8480

Director:
Ms. Michelle Parker, Interim Director
mparker@wctcog.org

Executive Director:
West Central Texas Council of Governments
Mr. Tom K. Smith, Executive Director
tsmith@wctcog.org

Fiscal Director: Contact:
Christy Marlar Theresa Edwards
cmarlar@wctcog.org

Counties Served: Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Kent, Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton

Contact the Department of Aging and Disability Services, Access and Intake Division - Area Agencies on Aging Section at (512) 438-3621 for questions about this general notice.

TRD-201204614
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Filed: September 5, 2012

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Office of the Attorney General

Notice of Settlement of a Texas Water Code and Texas Health and Safety Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas and the State of Texas v. Tank Pro Inc.,* Cause No. 2012-11415, in the 55th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant contracted with a Harris County municipal utility district to sandblast a tank. On at least one day during its work on the tank, Tank Pro caused, suffered or allowed the shroud surrounding the sandblasting area to release silicates into the air. This lawsuit alleges one violation of air nuisance regulations related to the silicate dust emanating from the Defendant's site.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendant to pay civil penalties of $6,000.00. The penalties will be divided equally between the State and Harris County. The Defendant will also pay the State's attorney fees in the amount of $350.00.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Mary E. Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201204615
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 5, 2012

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Bee County

Request for Comments and Proposals: Additional Medicaid Beds

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners Court of a county with no more than two (2) nursing homes to request that the Texas Department of Aging and Disability Services (DADS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Commissioners Court of Bee County is considering requesting that DADS contract for more Medicaid nursing facility beds in Bee County. The Commissioners Court is soliciting comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in Bee County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals for the Texas Department of Aging and Disability Services to contract for additional Medicaid beds in Bee County should be presented to the Commissioners Court of Bee County, Texas in the regular session Monday September 24, 2012 at 9:00 a.m. in the Commissioners Courtroom, Courthouse, 105 W. Corpus Christi, Beeville, Texas.

TRD-201204577
David Silva
County Judge
Bee County
Filed: August 30, 2012

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Comptroller of Public Accounts

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of a consulting services contract with StatCom, 3399 F.M. 102N, P.O. Box 427, Eagle Lake, Texas 77434 (Contractor), awarded under Request for Proposals (RFP 202a) under which the Contractor advises Comptroller on statistical issues and provides other related services in connection with Comptroller's Annual Property Value Study. The total amount of this contract is not to exceed $45,000.00. The original term of the contract was September 14, 2011 through August 31, 2012. The amendment extends the term of the contract through August 31, 2013. The reports will be submitted under this contract on or before August 31, 2013.

The notice of request for proposals was published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3975). The notice of award was published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6530).

TRD-201204609
Jason Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 4, 2012

♦ ♦ ♦

East Texas Regional Water Planning Group (Region I)

Notice of Application for Regional Water Planning Grant Funding

Notice is hereby given that the City of Nacogdoches will submit by 5:00 p.m. October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region I, to carry out planning activities to develop the 2016 Region I Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The East Texas Regional Water Planning Group (Region I) includes all or part of the following counties: Anderson, Angelina, Cherokee, Hardin, Henderson, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity, and Tyler counties.

Copies of the grant application may be obtained from City of Nacogdoches when it becomes available or online at **www.etexwaterplan.org.** Written comments from the public regarding the grant application must be submitted to the City of Nacogdoches and TWDB by no later than *30 days of the date on which the notice is mailed or published.* Comments can be submitted to the East Texas Regional Water Planning Group and the TWDB as follows:

Rex Hunt, P.E., Consulting Engineer for Region I, Alan Plummer Associates, Inc., 6300 La Calma, Suite 400, Austin, Texas 78752.

Melanie Callahan, Executive Administrator, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

For additional information, please contact Lila Fuller, Region I Administrative Contact, c/o City of Nacogdoches, P.O. Box 635030, Nacogdoches, Texas 75963-5030, (936) 559-2504 or email to lfuller@ci.nacogdoches.tx.us.

TRD-201204600
Rob Atherton
Attorney, City of Nacogdoches
East Texas Regional Water Planning Group (Region I)
Filed: September 4, 2012

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Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS"), in relation to a contract award to provide investment services in a Short-Term Government Treasury Bond Fund for the Texa$aver 401(k) and 457 Plans (collectively, known as the "Texa$aver Program").

The contractor is BlackRock Institutional Trust Company, N.A. ("BlackRock"), 400 Howard Street, San Francisco, California 94105. The investment fees applicable to investments by the participant in the Texa$aver Program in the BlackRock fund shall be retained by BlackRock as full compensation for services rendered. The contract was executed on August 22, 2012, and the term of the contract begins August 22, 2012, with no express termination date.

TRD-201204602
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: September 4, 2012

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Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS"), in relation to a contract award to provide investment services in a Real Assets Fund for the Texa$aver 401(k) and 457 Plans (collectively, known as the "Texa$aver Program").

The contractor is AllianceBernstein L.P. ("Alliance"), 1345 Avenue of the Americas, New York, New York 10105. The investment fees applicable to investments by the participant in the Texa$aver Program in the Alliance fund shall be retained by Alliance as full compensation for services rendered. The contract was executed on August 22, 2012, and the term of the contract begins August 22, 2012, with no express termination date.

TRD-201204603
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: September 4, 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 October 15, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on October 15, 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: Anderson Merchandisers, L.P.; DOCKET NUMBER: 2012-1259-PST-E; IDENTIFIER: RN101748846; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the underground storage tank system; PENALTY: $2,944; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Barbara Wilke dba J-N-B Quick Shop 2; DOCKET NUMBER: 2012-0999-PST-E; IDENTIFIER: RN102386893; LOCATION: Amarillo, Potter 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 release detection for the piping associated with the underground storage tank system; PENALTY: $1,754; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Betty J. Dean dba Dean's Hardware; DOCKET NUMBER: 2012-1149-PST-E; IDENTIFIER: RN101766384; LOCATION: Joaquin, Shelby 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 piping associated with the underground storage tanks; PENALTY: $3,880; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: BIG BEND TELEPHONE COMPANY, INCORPORATED; DOCKET NUMBER: 2012-0800-PST-E; IDENTIFIER: RN101654432; LOCATION: Alpine, Brewster County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued TCEQ delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form within 30 days of the expiration date; 30 TAC §334.8(c)(4)(A)(i) and TWC, §26.3475(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight, and free of liquid and debris; PENALTY: $5,861; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: Brian Dlugosch and Pete A. Dlugosch dba Double D RV Park 1; DOCKET NUMBER: 2012-0935-PWS-E; IDENTIFIER: RN106216427; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: recreational vehicle park; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis; 30 TAC §290.109(c)(3)(A)(i) and (ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *escherichia coli* sample from the facility's well within 24 hours of being notified of a distribution total coliform-positive result; and 30 TAC §290.109(f)(3) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform; PENALTY: $2,169; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: BVM ENTERPRISE, INCORPORATED dba Hobby Gas station; DOCKET NUMBER: 2012-0615-PST-E; IDENTIFIER: RN101849693; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,600; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Caillouet, Richard D. Jr.; DOCKET NUMBER: 2012-1611-WOC-E; IDENTIFIER: RN103498697; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: City of Arlington; DOCKET NUMBER: 2011-2258-WQ-E; IDENTIFIER: RN104950134; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: domestic wastewater collection system; RULE VIOLATED: TWC, §26.121, by failing to prevent an unauthorized discharge of wastewater from the collection system into water in the state; PENALTY: $11,250; Supplemental Environmental Project offset amount of $11,250 applied to the Purchase of Litter Trailer and Clean-up Events; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Big Spring; DOCKET NUMBER: 2011-1007-MLM-E; IDENTIFIER: RN101721249; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010069003, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; 30 TAC §290.109(f)(3), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform for the months of May 2011 and August 2011; 30 TAC §290.111(e)(1)(B) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to achieve the turbidity levels of combined filter effluent that is less than 0.3 nephelometric turbidity unit (NTU) in at least 95% of samples tested each month, and less than 5.0 NTU in combined filter effluent; and 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 milligrams per liter for trihalomethanes, based on the running annual average; PENALTY: $13,015; Supplemental Environmental Project offset amount of $13,015 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: City of Cameron; DOCKET NUMBER: 2012-1101-PWS-E; IDENTIFIER: RN101392215; LOCATION: Cameron, Milam County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice within 24 hours of documenting a low disinfectant residual using the prescribed notification format as specified in 30 TAC §290.47(e), and by failing to provide a copy of the boil water notice to the executive director; and 30 TAC §290.110(b)(4) and §290.46(d)(2)(A) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $8,721; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Mart; DOCKET NUMBER: 2012-0162-MSW-E; IDENTIFIER: RN100633353; LOCATION: Mart, McLennan County; TYPE OF FACILITY: closed landfill; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; PENALTY: $8,175; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Daniel Robins; DOCKET NUMBER: 2012-1610-WOC-E; IDENTIFIER: RN106435845; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: David E. Shivers dba Shan D Water Supply; DOCKET NUMBER: 2012-1226-PWS-E; IDENTIFIER: RN101189058; LOCATION: Tatum, Rusk County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: $202; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: David Moon dba A-1 Dry Cleaners; DOCKET NUMBER: 2012-0745-DCL-E; IDENTIFIER: RN102360476; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility; PENALTY: $210; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: HAIDER & SONS ENTERPRISES, INCORPORATED dba SWIF-T; DOCKET NUMBER: 2012-0796-PST-E; IDENTIFIER: RN102463460; LOCATION: Mesquite, 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: $2,250; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Hidalgo County; DOCKET NUMBER: 2012-0841-AIR-E; IDENTIFIER: RN105335459; LOCATION: Mercedes, Hidalgo County; TYPE OF FACILITY: air curtain incinerator; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2), and 122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3278/General Operating Permit Number 518, Site-Wide Requirements (b)(2), by failing to submit the annual permit compliance certification within 30 days after the end of the certification period and also by failing to submit the semi-annual deviation reports within 30 days after the end of the reporting period; PENALTY: $3,600; Supplemental Environmental Project offset amount of $2,880 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: INWOOD STORES, INCORPORATED dba Inwood Food Mart; DOCKET NUMBER: 2012-0768-PST-E; IDENTIFIER: RN102230349; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(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 §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $12,150; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Jackie C. Underwood dba Tire Outlet; DOCKET NUMBER: 2012-0195-MSW-E; IDENTIFIER: RN101858496 (Facility), RN106260870 (Site 1), RN106247448 (Site 2), and RN106247612 (Site 3); LOCATION: Boyd, Wise County; TYPE OF FACILITY: scrap tire sales, scrap tire storage and unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §328.56(a)(1) and (d)(2) and §328.60(a), by failing to obtain a generator registration and scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers, or in enclosed or lockable containers; 30 TAC §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 trailers, or in enclosed or lockable containers at Site 1 and Site 2; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $47,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Krall, Eric; DOCKET NUMBER: 2012-1617-WOC-E; IDENTIFIER: RN106429053; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Lenderman, Lynn; DOCKET NUMBER: 2012-1608-WOC-E; IDENTIFIER: RN106458797; LOCATION: Kennard, Houston County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Paske, Katie; DOCKET NUMBER: 2012-1614-WOC-E; IDENTIFIER: RN106419419; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(22) COMPANY: Robert D. Gaines dba Lakeshore Store and Bait-house; DOCKET NUMBER: 2012-0831-PST-E; IDENTIFIER: RN102248861; LOCATION: Temple, Bell 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 also by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $3,955; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: Roy Licatino; DOCKET NUMBER: 2012-1612-WOC-E; IDENTIFIER: RN106434996; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Ruiz, Sal; DOCKET NUMBER: 2012-1613-WOC-E; IDENTIFIER: RN105936702; LOCATION: Irving, Dallas County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: SAL-ALI, INCORPORATED dba Valero; DOCKET NUMBER: 2012-0722-PST-E; IDENTIFIER: RN101555704; LOCATION: Irving, 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 every month (not to exceed 35 days between each monitoring); PENALTY: $3,850; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Schultz, Jim; DOCKET NUMBER: 2012-1615-WOC-E; IDENTIFIER: RN106204486; LOCATION: Houston, Harris County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Stephen Hebert; DOCKET NUMBER: 2012-1616-WOC-E; IDENTIFIER: RN106429046; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Waste Management of Texas, Incorporated; DOCKET NUMBER: 2012-0879-IWD-E; IDENTIFIER: RN100542448; LOCATION: Alvin, Galveston County; TYPE OF FACILITY: municipal solid waste landfill and recycling facility; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0003416000, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monitoring periods ending September 30, 2011 - December 31, 2011, by the 20th day of the following month; PENALTY: $1,040; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Westlex Corporation dba Westside Lexus; DOCKET NUMBER: 2012-1082-PST-E; IDENTIFIER: RN100614783; LOCATION: Houston, Harris County; TYPE OF FACILITY: automobile dealership; 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: $3,081; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Wimberley, James D.; DOCKET NUMBER: 2012-1609-WOC-E; IDENTIFIER: RN103737342; LOCATION: Caddo, Stephens County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201204601
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 4, 2012

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Notice of Costs to Administer the Voluntary Cleanup Program

In accordance with Texas Health and Safety Code (THSC), §361.613, the executive director of the Texas Commission of Environmental Quality (TCEQ, agency, or commission) shall calculate and publish annually the commission's costs to administer the Voluntary Cleanup Program (VCP). The Innocent Owner/Operator Program (IOP), based on authority from THSC, §361.753(b), shall also calculate and publish annually a rate established for the purposes of identifying the costs recoverable by the commission. The TCEQ is publishing the hourly billing rate of $107 for both the VCP and the IOP for Fiscal Year 2013.

The VCP and IOP Programs are implemented by the same TCEQ staff. Therefore, a single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding divided by the estimated hours to complete program tasks. The hourly billing rate for the two programs was calculated and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 28% to account for non-site-specific hours. The release time includes sick leave, jury duty, holidays, etc., and is set at 21.38%. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a rate that applies to the agency. The current fringe benefit rate is 24.54%. Indirect costs include allowable overhead expenses and are also calculated at a rate that applies to the agency. The current indirect cost rate is 26.82%. The billing process for Fiscal Year 2013 will use the hourly billing rate of $107 for both the VCP and the IOP and will not be adjusted. All travel-related expenses will be billed as a separate expense. After an applicant's initial $1,000 application fee has been expended by the VCP or the IOP review and oversight costs, invoices will be sent to the applicant on a monthly basis for payment of additional program expenses.

The commission anticipates receiving federal funding during Fiscal Year 2013 for the continued development and enhancement of the VCP and the IOP. If the federal funding anticipated for Fiscal Year 2013 does not become available, the commission may publish a new rate. Federal funding of the VCP and IOP should occur prior to October 1, 2012.

For more information, please contact Mr. Robert Musick, P.G., VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-2243 or email: *robert.musick@tceq.texas.gov.*

TRD-201204604

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 4, 2012

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Notice of Water Quality Applications

The following notices were issued on August 24, 2012, through August 31, 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

BRIGGS ORGANIC LAND MANAGEMENT LLC has applied for a major amendment to TCEQ Permit No. 04470. The proposed amendment requests to increase the sludge application rate from 6.44 dry tons/acre/year for sewage sludge and 1.6 dry tons/acre/year for water treatment plant sludge to a rate not to exceed 11.26 dry tons/acre/year for both. The current permit authorizes the land application of sewage sludge, water treatment plant sludge, and domestic septage for beneficial use on 47 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sludge and domestic septage land application site is located on the northwest side of the intersection of State Highway 183 and County Road 210, approximately 1,500 feet south of Briggs, in Burnet County, Texas 78608.

MAGELLAN TERMINALS HOLDINGS LP P.O. Box 22186, MD 29, Tulsa, Oklahoma, 74121-2186, which operates the Galena Park Terminal, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No.WQ0000671000 to reduce monitoring frequencies for multiple parameters at stormwater Outfalls 002 and 003, to reroute stormwater from the Outfall 003 drainage area to Outfall 002, to add pH treatment at all outfalls, to discharge off-site wastewater from other facilities owned by Magellan Terminals Holdings, L.P., to temporarily reroute and hold stormwater flows in a diked containment area during maintenance, to reduce the monitoring frequency for flow at Outfall 001, and to lower effluent limitations for parameters at all three outfalls in order to be consistent with the Hydrostatic Test Water General Permit (TXG670000). The current permit authorizes the discharge of stormwater runoff, tank draw-down water, wastewater from tank washes, boiler blowdown, wastewater from a vehicle wash rack and wash rack hoses, hydrostatic test water, offsite stormwater and hydrostatic test water from the fire protection system at a daily average flow not to exceed 730,000 gallons per day, and a daily maximum flow not to exceed 800,000 gallons per day via Outfall 001; the discharge of stormwater runoff, hydrostatic test water and hydrostatic test water from the fire protection system on an intermittent and flow variable basis via Outfall 002, and the discharge of stormwater runoff, hydrostatic test water and hydrostatic test water from the fire protection system on an intermittent and flow variable basis via Outfall 003. This application was submitted to the TCEQ on February 16, 2012. The facility is located on company property abutting the north shore of the Houston Ship Channel at a point approximately 0.5 mile downstream from the Washburn Tunnel and approximately 1.0 (one) mile south of Interstate Highway 10, Harris County, Texas 77547. 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.

MARTIN PRODUCT SALES LLC, which operates the South Houston Plant, has applied for a renewal of TPDES Permit No. WQ0001058000, which authorizes the discharge of utility wastewater and stormwater at a daily average flow not to exceed 60,000 gallons per day, and a daily maximum flow not to exceed 175,000 gallons per day via Outfall 001. The facility is located at 300 Christi Place, approximately 500 feet southeast of the intersection of State Highway 3 and College Street, in the City of South Houston, Harris County, Texas 77587. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

TIN INC, which operates Temple Inland Orange Mill, a kraft paper and paperboard production facility, has applied for a renewal of TPDES Permit No. WQ0001185000, which authorizes the discharge of treated process wastewater, utility wastewater, treated sanitary wastewater and stormwater at a daily average flow not to exceed 31,000,000 gallons per day and a daily maximum flow not to exceed 50,000,000 gallons per day via Outfall 001 and utility wastewater and stormwater on an intermittent and flow variable basis via Outfall 002. The permittee also requested for a three-year temporary variance to the location of the tidal boundary between Segment No. 0501 (Sabine River Tidal) and Segment No. 0502 (Sabine River Above Tidal), in order to study and determine the location of this boundary in relation to the point of discharge. The variance would authorize a three-year period to conduct a study to determine if a revision to the tidal boundary is justified. Prior to the expiration of the variance period, the Commission will consider the tidal boundary proposed by the permittee and determine whether it is appropriate or the existing tidal boundary is to remain in effect. The facility is located approximately five miles north of the City of Orange, between State Highway 87 and the Sabine River, north of West Bluff Road, Orange County, Texas 77632. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) 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.

SET ENVIRONMENTAL INC., which operates an industrial solid waste management facility, has applied for a renewal of TPDES Permit No. WQ0004123000, which authorizes the discharge of stormwater on an intermittent and variable basis. The facility is located at 5743 Cheswood Street, in the City of Houston, Harris County, Texas 77087.

COMPANY LLC, which operates Lajitas Water Treatment Plant, has applied for a major amendment to TCEQ Permit No. WQ0004378000 to decrease the area available for irrigation from 140 acres to 55 acres. The existing permit authorizes the disposal of electrodialysis reversal (EDR) treatment process wastewater (reversal wastewater, membrane blowdown, waste acid solution) and filter backwash via irrigation of 140 acres of turf grass. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located approximately 400 feet south of Ranch-to-Market Road 170 and 2,000 feet east of the Rio Grande River in the City of Lajitas, Brewster County, Texas 75254.

REAGENT CHEMICAL AND RESEARCH INC, which proposes to operate Reagent Chemical - Cotulla, has applied for a new permit, proposed TPDES Permit No. WQ0004994000, to authorize the intermittent and flow variable discharge of rinse water and stormwater from a loading operation at a hydrochloric acid solution distribution center. The facility is located at 1091 Stephenson Road, Cotulla, La Salle County, Texas 78014.

CITY OF CENTER has applied for a major amendment to TPDES Permit No. WQ0010063003 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,770,000 gallons per day via new Outfall 002. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,770,000 gallons per day via Outfall 001. The combined annual average flow from Outfall 001 and Outfall 002 is an annual average flow that may not exceed 1,770,000 gallons per day. The facility is located approximately 3,000 feet southwest of the intersection of Ice Plant Road and State Highway 7 in the City of Center in Shelby County, Texas 75935.

CITY OF WASKOM has applied for a renewal of TPDES Permit No. WQ0010378001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 602 Spur 156, Waskom in Harrison County, Texas 75692.

CITY OF CRAWFORD has applied for a renewal of TPDES Permit No. WQ0010656001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 1,000 feet south of Farm-to-Market Road 185 and approximately 3,000 feet southeast of the intersection of State Highway 185 and State Highway 317 in the City of Crawford in McLennan County, Texas 76638.

GRIMES CO WATER RECLAMATION LLC has applied for a new permit, Proposed TCEQ Permit No. WQ0015032001, to authorize the disposal of treated domestic wastewater (septage), between May and September only, at a daily average flow not to exceed 80,000 gallons per day via surface irrigation of 35 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at 16005 B and R Lane, approximately 3.9 miles southwest of the intersection of Farm-to-Market Road 1774 and County Road 302 in Grimes County, Texas 77363.

TRINITY BAY CONSERVATION DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0015039001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014105001 which expired on February 1, 2012. The facility is located adjacent to the intersection of Spring Branch and White's Bayou, approximately 5,200 feet northwest of the intersection of Interstate Highway 10 and State Highway 61 in Chambers County, Texas 77560.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201204613
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 5, 2012

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: 8-Day Pre-Election Report Due May 21, 2012 for Candidates and Officeholders

Fernando Castillo, P.O. Box 903, San Juan, Texas 78589

Jason D. Ferguson, P.O. Box 10, Pampa, Texas 79066-0010

Miguel Herrera, 500 E. San Antonio, Room 1101, El Paso, Texas 79901

Matthew D. Melton, 211 Bent Creek Dr., Texas 75165

John Pena, 102 W. 10th St., La Joya, Texas 78560

Omar S. Rivero, 400 Mann St., Ste. 709, Corpus Christi, Texas 78401

Frank Salazar, 15721 Garlang St., Channelview, Texas 77530

William R. Vaden, P.O. Box 1658, Ingleside, Texas 78362

TRD-201204559
David Reisman
Executive Director
Texas Ethics Commission
Filed: August 29, 2012

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Texas Facilities Commission

Request for Proposals #303-3-20352

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-3-20352. TFC seeks a five (5) or ten (10) year lease of approximately 2,769 square feet of office space in Beaumont, Jefferson County, Texas.

The deadline for questions is September 27, 2012 and the deadline for proposals is October 5, 2012 at 3:00 p.m. The award date is October 26, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=102323*.

TRD-201204581
Kay Molina
General Counsel
Texas Facilities Commission
Filed: August 30, 2012

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Request for Proposals #303-4-20351

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-4-20351. TFC seeks a five (5) or ten (10) year lease of approximately 11,323 square feet of office space in the City of Austin or Pflugerville, Texas.

The deadline for questions is September 24, 2012 and the deadline for proposals is October 12, 2012 at 3:00 p.m. The award date is December 12, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this

notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=102319*.

TRD-201204580
Kay Molina
General Counsel
Texas Facilities Commission
Filed: August 30, 2012

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Texas Department of Insurance

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Madison National Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Madison National Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201204605
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 4, 2012

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Standard Security Life Insurance Company of New York

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Standard Security Life Insurance Company of New York to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201204606
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 4, 2012

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission filed for publication Instant Game Number 1462 "Haunted Tripler." The document was published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6975). Figures 1 and 2 are revised. In Figure 1, the spelling of Play Symbol "CAULDRON SYMBOL" is corrected; and in Figure 2, the approximate number of winners for $5 is corrected from 100,000 to 100,800. No other sections are affected by this revision. The figures are revised, as follows.

Figure 1: GAME NO. 1462 - 1.2D

PLAY SYMBOL	CAPTION
BAT SYMBOL	BAT
CANDLE SYMBOL	CANDLE
CANDY SYMBOL	CANDY
CAT SYMBOL	CAT
CAULDRON SYMBOL	CAULDRN
FROG SYMBOL	FROG
HAT SYMBOL	HAT
HAUNTED HOUSE SYMBOL	HOUSE
MONSTER SYMBOL	MONSTR
MOON SYMBOL	MOON
OWL SYMBOL	OWL
SKULL SYMBOL	SKULL
SPIDER SYMBOL	SPIDER
GHOST SYMBOL	GHOST
PUMPKIN SYMBOL	TRIPLE
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$60.00	SIXTY
$200	TWO HUND
$1,000	ONE THOU
$20,000	20 THOU

Figure 2: GAME NO. 1462 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	362,880	13.89
$3	443,520	11.36
$5	100,800	50.00
$10	70,560	71.43
$15	30,240	166.67
$20	40,320	125.00
$30	16,800	300.00
$60	12,474	404.04
$200	2,940	1,714.29
$1,000	84	60,000.00
$20,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

TRD-201204611

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Correction of Error

The Texas Lottery Commission filed for publication Instant Game Number 1472 "Double Action." The document was published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6983). Section 1.2.C is revised to delete Play Symbol "2". Section 1.2.C is revised, as follows.

"C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 2X SYMBOL, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000 and $200,000."

No other sections are affected by this revision.

TRD-201204612

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Qal-Tek Associates, LLC (TLLRWDCC #1-0015-00)

3998 Commerce Circle

Idaho Falls, ID 83401

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by October 1, 2012. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201204607
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: September 4, 2012

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Texas Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The Request for Proposals appeared in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5171). The selected con-

tractor will provide transportation services for the Hurst-Euless-Bedford Transit Project.

The contractor selected for this project is Catholic Charities, 249 W. Thornhill Drive, Fort Worth, Texas 76115. The amount of the contract will have an annual budget of $140,000 and an option to renew the contract for four (4) one-year periods for a total contract amount not to exceed $700,000.

TRD-201204560
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 29, 2012

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Public Utility Commission of Texas

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 August 28, 2012, for designation as an eligible telecommunications carrier in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Q Link Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline. Docket Number 40681.

The Application: Q Link seeks ETC designation solely to provide Lifeline service to qualifying Texas households as a prepaid wireless carrier. It will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. In its application, Q Link provided a list of non-rural wire centers in its underlying carrier's (Sprint) coverage area for which the company requests ETC designation and serves the entire wire center. Q Link also provided a list of wire centers for Sprint for which the company requests ETC designation and serves only part of the wire center. Q Link is a reseller of commercial mobile radio service (CMRS) throughout the United States. Q Link provides prepaid wireless telecommunications services to consumers by using the Sprint Nextel network.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by September 28, 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 40681.

TRD-201204598
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 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 August 29, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Total Call Mobile, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline Service. Docket Number 40704.

The Application: Total Call Mobile, Inc. (Total Call) seeks ETC designation solely to provide Lifeline service to qualifying Texas households as a prepaid wireless carrier. It will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. Total Call is a reseller of commercial mobile radio service (CMRS) throughout the United States. Total Call provides prepaid wireless telecommunications services to consumers by using the Sprint Spectrum L.P. (Sprint) network. Total Call requests designation as an ETC for the non-rural wire centers in which Sprint's spectrum covers an entire wire center, and in which it serves only part of the wire center as shown in Exhibit 6 to the application.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by September 28, 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 40704.

TRD-201204608
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 4, 2012

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Notice of Application to Amend Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on August 28, 2012, to amend designation as an eligible telecommunications carrier in the State of Texas for the limited purpose of offering wireless Lifeline services to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Express Cash and Phone, Inc. d/b/a Talk Now Telco Wireless to Amend Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(E) and P.U.C. Substantive Rule §26.418. Docket Number 40683.

The Application: Express Cash and Phone, Inc. d/b/a Talk Now Telco Wireless (Talk Now Telco Wireless or the Company) seeks to amend ETC designation throughout the State of Texas to offer prepaid wireless Lifeline Service for the purpose of receiving federal universal service support for wireless services. It will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. Talk Now Telco Wireless seeks only Lifeline Service support from the low-income program and does not seek any high-cost support. A list of each exchange for which the company is requesting

wireless ETC status in the State of Texas is attached to the application as Exhibit 4.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by September 28, 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 40683.

TRD-201204599
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 31, 2012

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Region C Regional Water Planning Group

Notice to Public - Regional Water Planning

Notice is hereby given that the North Texas Municipal Water District (NTMWD) will submit by 5:00 p.m., October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region C Water Planning Group (RCWPG) to carry out planning activities to develop the 2016 Region C Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The RCWPG area includes all or part of the following counties: Collin, Cooke, Dallas, Denton, Ellis, Fannin, Freestone, Grayson, Henderson, Jack, Kaufman, Navarro, Parker, Rockwall, Tarrant, and Wise.

Copies of the grant application may be obtained from NTMWD or online at www.regioncwater.org. Written comments from the public regarding the grant application must be submitted to NTMWD and TWDB by no later than October 6, 2012. Comments can be submitted to NTMWD and the TWDB as follows:

James M. Parks, Chairman

Administrative Agent for Region C

NTMWD

P.O. Box 2408

Wylie, Texas 75098

Melanie Callahan

Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please visit www.regioncwater.org or contact Jim Parks, RCWPG, c/o NTMWD, P.O. Box 2408, Wylie, TX 75098, (972) 442-5405, jparks@ntmwd.com.

TRD-201204595
James M. Parks
Agent for Region C
Region C Regional Water Planning Group
Filed: August 31, 2012

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Region D Regional Water Planning Group

Notice of Application for Regional Water Planning Grant Funding for the Fourth Cycle of Regional Water Planning

Notice is hereby given that the Northeast Texas Municipal Water District (NETMWD) will submit by 5:00 p.m. October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region D to carry out planning activities to develop the 2016 Region D Regional Water Plan as part of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The Northeast Texas Regional Water Planning Group (Region D) consists of a nineteen (19) county area that includes all or part of the following counties: Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Hunt, Lamar, Marion, Morris, Rains, Red River, Smith, Titus, Upshur, Van Zandt and Wood.

Copies of the grant application may be obtained from NETMWD when it becomes available or online at www.netmwd.com. Written comments from the public regarding the grant application must be submitted to NETMWD and TWDB by no later than September 30, 2012 (within 30 days of the date on which this notice was mailed). Comments can be submitted to the NETMWD and the TWDB as follows:

NETMWD:

Administrative Agent for Region D

Northeast Texas Municipal Water District

P.O. Box 955

4180 FM 2505

Hugh Springs, TX 75656

Attn: Walt Sears, Jr.

TWDB:

Melanie Callahan

Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, TX 78711-3231

For additional information, please contact Walt Sears, Jr., Northeast Texas Municipal Water District, Administrator for Region D, P.O. Box 955, Hughes Springs, TX 75656, (903) 639-7538, netmwd@aol.com.

Contact information for the TWDB Contracting and Purchasing is as follows: David Carter, Texas Water Development Board, Manager, Contracting and Purchasing, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

TRD-201204561
Walt Sears, Jr.
Attorney, Northeast Texas Municipal Water District
Region D Regional Water Planning Group
Filed: August 29, 2012

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Region H Water Planning Group

Notice of Application for Grant Funding for the Completion of the Fourth Cycle of Regional Water Planning

Notice is hereby given that the San Jacinto River Authority (SJRA) will submit by 5:00 p.m. October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region H, to carry out planning activities to develop the 2016 Region H Regional Water Plan in completion of the state's Fourth Cycle 2012-2016 of Regional Water Planning.

The Region H Water Planning Group (Region H) includes all or part of the following counties: Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Leon, Liberty, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller.

Copies of the grant application may be obtained from SJRA or online at *www.regionHwater.org*. Written comments from the public regarding the grant application must be submitted to SJRA and TWDB by October 15, 2012. Comments can be submitted to SJRA and the TWDB as follows:

Jace Houston, Deputy General Manager

San Jacinto River Authority

Administrative Agent for Region H

P.O. Box 329

Conroe, Texas 77305-0329

Melanie Callahan

Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact: Region H, c/o Jace Houston, Deputy General Manager, SJRA, P.O. Box 329, Conroe, Texas 77305-0329, telephone 936-588-3111, and email *info@regionHwater.org*.

TRD-201204629
Jace Houston
Deputy General Manager, San Jacinto River Authority
Region H Water Planning Group
Filed: September 5, 2012

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Texas Department of Transportation

Notification of Industry Conference for Toll Operations and Customer Service Center Operations

Pursuant to Texas Transportation Code, §228.052, the Texas Department of Transportation (department) may seek to enter into an agreement with one or more persons to provide personnel, equipment, systems, facilities, and/or services necessary to operate a toll project or system, including but not necessarily limited to the operation of customer service centers and the collection of tolls. The Texas Transportation Commission has promulgated rules located at 43 Texas Administrative Code §27.83, governing the requirements for soliciting proposals to operate a department toll project or system. The department is exploring options for procuring services from a prime vendor with high quality systems to support the operation of current and future toll facilities in Texas. This conference is intended to elicit discussions between the department and the vendor community. Interested parties will submit a Letter of Interest (LOI) in order to participate in the conference with the department. Submission of an LOI and participation in the conference is optional and is not a prerequisite to responding to a formal Request for Proposal (RFP). However, participation in a conference may provide the vendor opportunities, in a relatively informal forum, to discuss the procurement process and their specific approach with department officials.

Letters of Interest should include vendor contact information with number of attendees and will be accepted until 3:00 p.m. CDT, on Wednesday, September 26, 2012. On receipt of the LOI, the department will contact interested vendors to confirm participation in the conference scheduled for 9:00 a.m. to 12:00 p.m. CDT, Thursday, September 27, 2012 at the Texas Department of Transportation, Riverside Campus, 200 E. Riverside Drive, Austin, Texas 78704.

The department is providing this time to allow interested parties to discuss an approach to the project in advance of the department's issuance of a formal RFP. The department currently anticipates that a formal RFP will be issued approximately mid-October 2012.

An LOI may be submitted via mail to Kathy Garrett, Texas Department of Transportation, Toll Operations Division, 12719 Burnet Road, Austin, Texas 78727 or via email: Kathy.Garrett@txdot.gov. (Telephone: (512) 874-9723.)

The department has operated toll roads in Texas since 2006. Additional information regarding facility background and descriptions can be researched at http://www.texastollways.com.

TRD-201204625
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 5, 2012

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Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, October 8, 2012 at 10:00 a.m. at 200 East Riverside Drive, Room 1A-1, in Austin, Texas to receive public comments on the proposed updates to the 2013 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in 43 Texas Administrative Code Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2013 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5043, and on the department's website at: http://www.txdot.gov/public_involvement/utp.htm.

Persons wishing to speak at the hearing may register in advance by notifying David Plutowski, Transportation Planning and Programming Division, at (512) 486-5043 not later than Friday, October 5, 2012, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to re-

strict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2013 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2013 UTP by telephone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, October 15, 2012.

TRD-201204623
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 5, 2012

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Transportation Enhancement Program - 2012 Program Call

In accordance with 43 Texas Administrative Code Chapter 11, Subchapter E, the Texas Department of Transportation (department) issues this 2012 Program Call for the proposed projects of the department's Transportation Enhancement Program (program).

Title 23, United States Code, §133(d)(2) and §160(e)(2), require that 10% of certain funds apportioned a state pursuant to Title 23, United States Code, §104((b)(3), be used for transportation enhancement activities, as defined. The Texas Transportation Commission (commission) will allocate one-half of those funds to metropolitan planning organizations operating in transportation management areas. The commission may allocate funds to the department for activities that qualify for the program and are located on the state highway system, and may also make funds available in a statewide competitive program that enhances the surface transportation systems and facilities within the state for the benefit of the users of those systems.

Transportation enhancement activities are defined in §101(a) of Title 23, United States Code as:

(1) provision of facilities for pedestrians and bicycles;

(2) provision of safety and educational activities for pedestrians and bicycles;

(3) acquisition of scenic easements and scenic or historic sites;

(4) scenic or historic highway programs (including the provision of tourist and welcome center facilities);

(5) landscaping and other scenic beautification;

(6) historic preservation;

(7) rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals);

(8) preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails);

(9) control and removal of outdoor advertising;

(10) archaeological planning and research;

(11) environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

(12) establishment of transportation museums.

To nominate a project, the eligible nominating entity must file its nomination, in the form prescribed by the department, with the district engineer of the district office responsible for the area in which the proposed enhancement project will be implemented. The nomination for a single project located in multiple jurisdictions may be filed with the Design Division. The address and telephone number of the district offices are available on the department's internet web site at www.txdot.gov/business/governments/te.htm. Completed nominations must be received by the department no later than 5:00 p.m., Friday, November 16, 2012.

Information regarding the program, program guide, nomination forms and workshops are available from the department's internet web site at www.txdot.gov/business/governments/te.htm or by writing or calling the Design Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-3082.

TRD-201204624
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 5, 2012

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*