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# TEXAS REGISTER

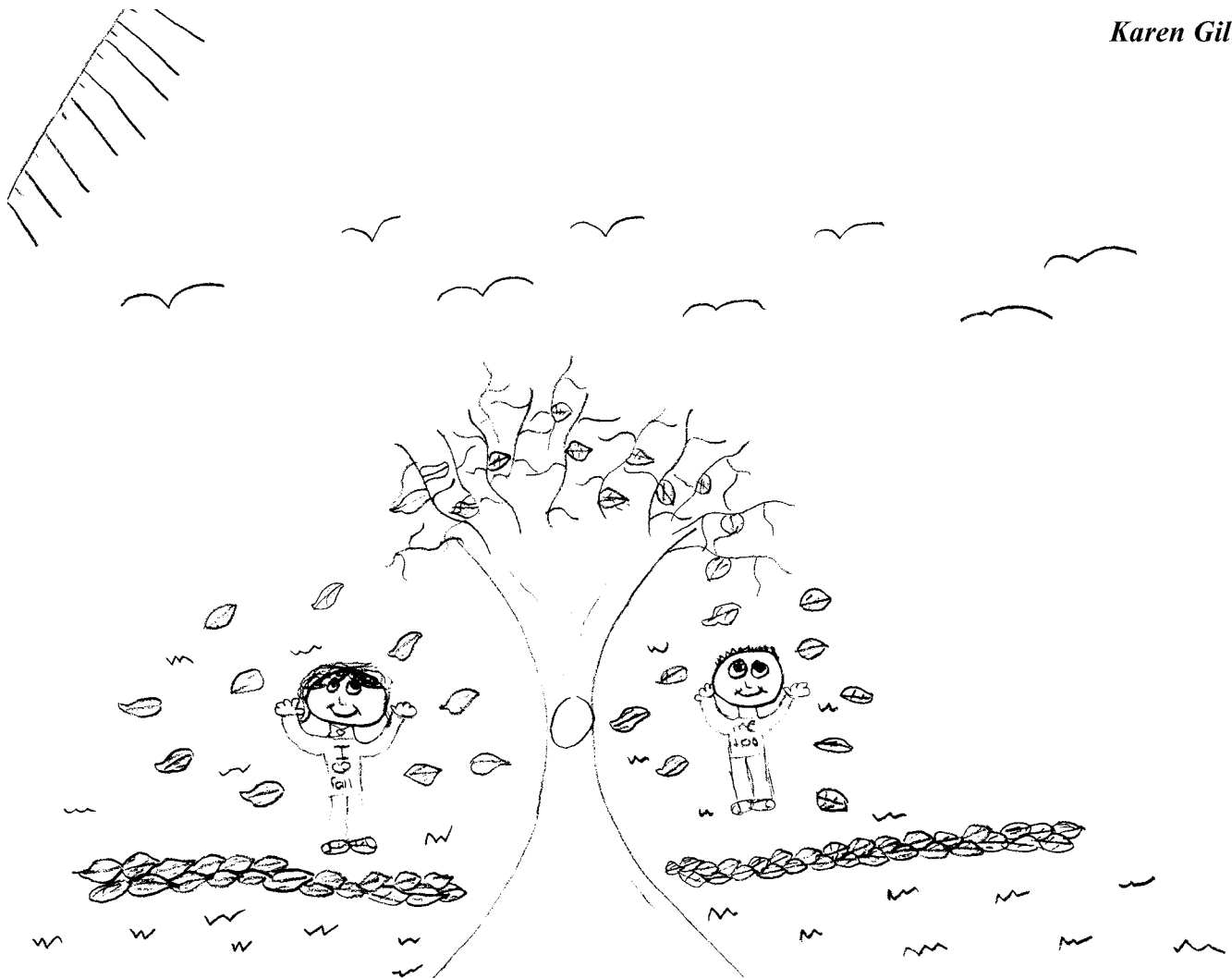
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*Karen Gil*



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

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# THE GOVERNOR

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

## Appointments

### Appointments for October 1, 2012

Appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2013, Glenn T. Martin of Edna (replacing Sherry Kay Frels of Edna who is deceased).

Appointed as Administrator for the Interstate Compact for Juveniles for a term to expire at the pleasure of the governor, Michael K. Griffiths of Austin (replacing Cheryl Townsend of Austin who resigned).

Appointed to the Employees Retirement System of Texas Board of Trustees for a term to expire August 31, 2018, Cydney C. Donnell of Fredericksburg (Ms. Donnell is being reappointed).

Appointed to the State Employee Charitable Campaign Advisory Committee for a term to expire January 1, 2014, Kathleen Irwin Wood of Austin (replacing William Wilson of Pflugerville who resigned).

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2014, Martin E. Broussard of Beaumont (Mr. Broussard is being reappointed).

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2014, G. Raymond Callas of Beaumont (replacing Travis Miller of Orange whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2017, Dennis R. Myers of Waco (replacing Esther Steinberg of Sugar Land whose term expired).

Rick Perry, Governor

TRD-201205205



# THE ATTORNEY GENERAL

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

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

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

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

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## Requests for Opinions

**RQ-1084-GA**

**Requestor:**

The Honorable John J. Carona  
Chair, Committee on Business and Commerce  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711

Re: Whether an economic development corporation may provide benefits to its employees through a risk pool established under chapter 172, Local Government Code (RQ-1084-GA)

**Briefs requested by October 29, 2012**

**RQ-1085-GA**

**Requestor:**

The Honorable Pete P. Gallego  
Chair, Committee on Criminal Jurisprudence  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether an arrested person may waive the requirement that he or she be taken before a magistrate and admonished in accordance with article 15.17, Code of Criminal Procedure (RQ-1085-GA)

## Briefs requested by November 1, 2012

**RQ-1086-GA**

**Requestor:**

The Honorable Pete P. Gallego  
Chair, Committee on Criminal Jurisprudence  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a marriage between first cousins entered into in accordance with Indian law is valid in Texas (RQ-1086-GA)

**Briefs requested by November 1, 2012**

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

TRD-201205172  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: October 2, 2012



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 207. TELECOMMUNICATIONS SERVICES DIVISION

The Texas Department of Information Resources (department) proposes the repeal of 1 TAC Chapter 207, §§207.1 - 207.8, concerning telecommunications services division, and new Chapter 207, §§207.1 - 207.4, 207.10 - 207.14, and 207.30 - 207.32, Telecommunications Services. The new rules will more accurately reflect legislative actions and resulting changes in the program. The repeal is necessary as the result of passage of House Bill 1705 (81R), effective as of September 1, 2009. The legislation repealed §2054.201 and §2054.202 and amended §§2054.091, 2054.203, 2054.204, 2054.205, 2054.2051, and 2054.207, Texas Government Code, concerning the telecommunications planning and oversight council, the basis upon which a section of these rules was originally promulgated. The passage of House Bill 1705 also amended §2170.004, Texas Government Code, concerning the use of Telecommunications Services by assistance organizations, and the new rules reflect that such organizations are now authorized users of state telecommunication services. The department published a formal notice of rule review in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1366).

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

The department proposes to repeal Chapter 207 in its entirety and replace it with a new Chapter 207, Telecommunications Services, to rename rule titles, revise rule language, and allow for the resulting renumbering of the new rules. In addition, consistent with the department's treatment of institutes of higher education, the new rules allow for any differences as to how this rule may apply to either state agencies or institutes of higher education.

In Subchapter A, the department proposes to revise rule titles and more accurately reflect the current telecommunications environment in the new rules. These changes include a provision for network security as well as changes to reflect the State's current telecommunications operations.

In Subchapter B, the department proposes to renumber previous §207.3 and §§207.5 - 207.8 and delete references to insti-

tutions of higher education in the previously numbered §207.3 and §207.5. The department proposes to delete in its entirety the current text of §207.4 to conform to the repeal of the underlying statutory requirement for the telecommunications planning and oversight council. The department proposes to replace the current text in §207.3 to reference assistance organizations and conform to provisions of House Bill 1705 (81R), amending §2170.004, Texas Government Code. The department proposes to revise language in previous §207.3 and §§207.5 - 207.8 to reflect revised definitions in the new chapter. Lastly, new §207.11 and §207.14, concerning billing, were revised to more accurately reflect the method by which costs are calculated.

In Subchapter C, the department proposes to create new rules and titles to address Telecommunications Services that apply to Institutions of Higher Education.

John Hoffman, Director, Communications Technology Services, has determined that during the first five-year period following the repeal and adoption of the new Chapter 207, there will be no fiscal impact on state agencies, institutions of higher education and local governments resulting from compliance with such changes to the rules. The elimination of unnecessary rules and clarification of terms and definitions reduce bureaucracy and increase flexibility in the conduct of business for the department and its constituents.

Mr. Hoffman has further determined that for each year of the first five years following the repeal and adoption of new Chapter 207, there are no anticipated economic costs to persons or small businesses resulting from the compliance with such changes to the rules.

Written comments on the proposed repeal and the proposed new rules may be submitted to Chad Lersch, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to [chad.lersch@dir.texas.gov](mailto:chad.lersch@dir.texas.gov). Comments will be accepted for 30 days after publication in the *Texas Register*.

#### 1 TAC §§207.1 - 207.8

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

The repeals are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

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

§207.1. *General.*

§207.2. *Definitions.*

§207.3. *TEX-AN Usage; Requests for TEX-AN Services.*

§207.4. *TSD's Support of the Telecommunications Planning and Oversight Council.*

§207.5. *TEX-AN Billing.*

§207.6. *TEX-AN User Responsibilities.*

§207.7. *CCTS User Responsibilities.*

§207.8. *CCTS Billing.*

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

Filed with the Office of the Secretary of State on September 25, 2012.

TRD-201205101

Martin Zelinsky

General Counsel

Department of Information Resources

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 475-4700



## CHAPTER 207. TELECOMMUNICATIONS SERVICES

### SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

#### 1 TAC §§207.1 - 207.4

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

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

#### §207.1. *General Purpose.*

The department is responsible for:

(1) the management of a system of telecommunications services, Texas Agency Network (TEX-AN) to meet all state agencies intercity and intracity telecommunications requirements to the extent possible and to the extent that funds appropriated are available for that purpose;

(2) the provision of centralized telephone service for state agencies, each house of the legislature, and legislative agencies in the capitol complex telephone system (CCTS);

(3) the acquisition of any or all of the facilities, telecommunications services and/or equipment necessary to provide telecommunications and CCTS services;

(4) promulgation and dissemination of appropriate guidelines, and operating procedures, and publication of CCTS telephone directories to insure efficient operation of telecommunications and CCTS services;

(5) operation of a system of billings and charges for services provided in operating and administering telecommunications and CCTS services; and

(6) the provision of network security services to state agencies and other entities as provided by §2059.051, Government Code.

#### §207.2. *Applicable Terms and Technologies for Telecommunications Services.*

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

(1) Administrative cost--Indirect personnel costs and other support costs.

(2) Bill rate intervention--The cost of legal representation provided by the Office of the Attorney General on behalf of the department before regulatory bodies with jurisdiction over telecommunications.

(3) CCTS--Capitol Complex Telephone System. The centralized telephone service for CCTS users in the capitol complex.

(4) CCTS users--State agencies, each house of the legislature, legislative agencies and other authorized government entities that contract to utilize CCTS services.

(5) The Department--Department of Information Resources.

(6) Local government--Counties, cities, districts, and other political subdivisions.

(7) New telephone equipment--The department inventory of telephone equipment never used.

(8) Network Security--The protection of computer systems and technology assets as defined by §2059.001, Government Code.

(9) Operational cost--All telecommunications services operational costs, including without limitation, staff salaries and contracted services.

(10) Reconditioned telephone equipment--Telephone equipment that is not new, has been repaired, and is warranted as if it is new.

(11) Telecommunications--The means of transmission, emission, or reception of signals as defined by §2054.003, Government Code.

(12) Telecommunications equipment--Devices or apparatus used for various modes of telecommunications services.

(13) Telecommunications service provider--Business entities or other organizations competitively selected by the department to provide telecommunications equipment or services.

(14) Telecommunications service--Any service as defined by §2170.001, Government Code.

(15) Telecommunications Services user--User of telecommunication services provided by the department including, but not limited to, CCTS, TEX-AN and Network Security Services.

(16) Telecommunications revolving account--An account in the Texas State Treasury into which funds received from telecommunications services users and CCTS users are transferred.

(17) TEX-AN--Texas Agency Network. The statewide system of telecommunications services serving authorized users.

(18) Usage sensitive services--Telecommunications services, which are billed on the basis of quantity used such as long distance per minute charges, bandwidth charges for internet services, etc.

#### §207.3. *Institution of Higher Education.*

A university system or institution of higher education as defined by §61.003, Education Code.



§207.4. State Agency.

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

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

Filed with the Office of the Secretary of State on September 25, 2012.

TRD-201205102

Martin Zelinsky

General Counsel

Department of Information Resources

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 475-4700



## SUBCHAPTER B. TELECOMMUNICATIONS SERVICES FOR STATE AGENCIES

### 1 TAC §§207.10 - 207.14

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

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

§207.10. Telecommunications Services Usage; Requests for Telecommunications Services.

(a) Authorized Users. The following categories of entities are authorized telecommunications services users:

(1) State agencies, which must use telecommunications services to the fullest extent possible;

(2) Each house of the legislature and legislative agencies, which may contract with the department for telecommunications services;

(3) Local governments; and

(4) An assistance organization, as defined by §2175.001, Government Code.

(b) Requests for telecommunications services. All requests for telecommunications services must be addressed to the department and documented as prescribed in the department procedures. Local Government must contract with the department pursuant to the Interlocal Cooperation Act, Chapter 791, Government Code.

§207.11. Telecommunications Services Billing.

(a) Each telecommunications services user shall be billed for its respective use of telecommunications goods and services on a monthly basis. Telecommunications services users will be billed for the following:

(1) variable recurring costs for usage sensitive services;

(2) fixed recurring costs for non-usage sensitive services;

(3) telecommunications services user's proportionate use of common telecommunications services, operational costs, administrative costs and/or equipment for said services provided to all or some users;

(4) telecommunications services user's nonrecurring charges for any telecommunications services and/or equipment provided by the department;

(5) employee fringe benefits; and

(6) bill rate intervention.

(b) Each telecommunications services user shall notify the department in writing within twenty-one (21) days of receipt of a billing of any errors in the bill, including all requests for additional time to research billing issues. All telecommunications services user requests for additional time beyond the twenty-one (21) day period are subject to written approval by the Chief Financial Officer of the department, or designee. The notice must provide details as to the nature of the error and all information the user may have to assist in resolution of the error(s). All allegations of errors in bills must be based on a good-faith belief that the charges in question are not the responsibility of the user. Each telecommunications services user shall make payment in the amount of the bill not found to be in error within thirty (30) days of receipt pursuant to the Prompt Payment Act, Chapter 2251, Government Code. Upon resolution of the alleged error(s), if the telecommunications services user owes the department, the payment shall be paid within ten (10) days of the date of resolution. Upon resolution of the alleged error, if the billing was found to be in error, the department shall make a notation in the user's billing record and no further collection attempts shall be undertaken against the user.

(c) In order to maintain sufficient amounts in the telecommunications revolving account to make timely payments to the telecommunications service providers, the department may require any telecommunications services users to make advance payments based on 80% of the average of each user's prior three-month billing exclusive of charges described in subsection (a)(4) of this section. Advance payments which are not equal to the actual amount due for the subsequent payment period will be adjusted accordingly.

§207.12. Telecommunications Services User Responsibilities.

(a) Each telecommunications services user shall provide the department with the name, title, postal and electronic mailing addresses, and all telephone numbers of the employee(s) authorized to initiate, change, modify, amend or terminate telecommunications services.

(b) Each telecommunications services user is responsible for insuring that telecommunications services are used solely in compliance with applicable law, policy and procedures.

(c) A telecommunications services user shall submit a request to the department to initiate telecommunications services changes, modifications or terminate telecommunications services, in accordance with the department procedures.

§207.13. CCTS User Responsibility.

(a) Each CCTS user shall provide the department with the name, title, postal and electronic mailing addresses, and all telephone numbers of the employee(s) authorized to initiate, change, modify, amend or terminate CCTS service, or listings in the CCTS directory.

(b) Each CCTS user is responsible for insuring that CCTS services are used solely in compliance with applicable law, policy and procedures.

(c) CCTS users shall submit a request to the department to initiate CCTS changes, modifications, or terminate CCTS services or listings in the CCTS directory, in accordance with the department procedures.

(d) CCTS users may procure their own telephone equipment from other sources, but the telephone equipment must be compatible

with the CCTS. Equipment provided by a CCTS user may not have an effect on charges for CCTS services.

§207.14. CCTS Billing.

(a) Each CCTS user shall be billed monthly as follows:

- (1) variable recurring costs for usage sensitive services;
- (2) fixed recurring costs for non-usage sensitive services;
- (3) CCTS user's proportionate use of common telecommunications services, operational costs, administrative cost and/or equipment for said services provided to all or some CCTS users;
- (4) CCTS user's nonrecurring charges for any telecommunications services provided by the department;
- (5) employee fringe benefits; and
- (6) bill rate intervention.

(b) Each CCTS user shall notify the department in writing within twenty-one (21) days of receipt of a billing of any errors in the bill, including all requests for additional time to research billing issues. All CCTS user requests for additional time beyond the twenty-one (21) day period are subject to written approval by the Chief Financial Officer of the department, or designee. The notice must provide details as to the nature of the error and all information the user may have to assist in resolution of the error(s). All allegations of errors in bills must be based on a good-faith belief that the charges in question are not the responsibility of the user. Each CCTS user shall make payment in the amount of the bill not found to be in error within thirty (30) days of receipt pursuant to the Prompt Payment Act, Chapter 2251, Government Code. Upon resolution of the alleged error(s), if the CCTS user owes the department, the payment shall be paid within ten (10) days of the date of resolution. Upon resolution of the alleged error, if the billing was found to be in error, the department shall make a notation in the user's billing record and no further collection attempts shall be undertaken against the user.

(c) In order to maintain sufficient amounts in the telecommunications revolving account to make timely payments to the telecommunications service providers, the department may require any CCTS user to make advance payments based on 80% of the average of each CCTS user's prior three month billing, exclusive of charges described in subsection (a)(4) of this section. Advance payments, that are not equal to the actual amount due for the subsequent payment period, will be adjusted accordingly.

(d) CCTS records shall be maintained by the department as 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 September 25, 2012.

TRD-201205103

Martin Zelinsky

General Counsel

Department of Information Resources

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 475-4700



## SUBCHAPTER C. TELECOMMUNICATION SERVICES FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §§207.30 - 207.32

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

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

§207.30. Telecommunications Services Usage; Requests for Telecommunications Services.

(a) Authorized Users. The following categories of entities are authorized telecommunications services users:

(1) Institutions of higher education; institutions of higher education may allow the use of the institution's telecommunications services purchased through the department to students who reside in the institution's housing;

(2) private institutions of higher education, as defined by §61.003(15), Education Code, that:

(A) engage in distance learning, as defined by §57.021, Utilities Code;

(B) receive federal funds for distance learning initiatives; and

(C) complete an application form provided by the department, which is found to be true and correct.

(b) Requests for telecommunications services. All requests for telecommunications services must be addressed to the department and documented as prescribed in the department procedures.

§207.31 Telecommunications Services Billing.

(a) Each telecommunications user shall be billed for its respective use of telecommunications goods and services on a monthly basis. Telecommunications users will be billed for the following:

(1) variable recurring costs for usage sensitive services;

(2) fixed recurring costs for non-usage sensitive services;

(3) telecommunications user's proportionate use of common telecommunications services, operational costs, administrative costs and/or equipment for said services provided to all or some users;

(4) telecommunications user's nonrecurring charges for any telecommunications services and/or equipment provided by the department;

(5) employee fringe benefits; and

(6) bill rate intervention.

(b) Each telecommunications user shall notify the department in writing within twenty-one (21) days of receipt of a billing of any errors in the bill, including all requests for additional time to research billing issues. All telecommunications user requests for additional time beyond the twenty-one (21) day period are subject to written approval by the Chief Financial Officer of the department, or designee. The notice must provide details as to the nature of the error and all information the user may have to assist in resolution of the error(s). All allegations of errors in bills must be based on a good-faith belief that the charges in question are not the responsibility of the user. Each telecommunications user shall make payment in the amount of the bill not found to be

in error within thirty (30) days of receipt pursuant to the Prompt Payment Act, Chapter 2251, Government Code. Upon resolution of the alleged error(s), if the telecommunications user owes the department, the payment shall be paid within ten (10) days of the date of resolution. Upon resolution of the alleged error, if the billing was found to be in error, the department shall make a notation in the user's billing record and no further collection attempts shall be undertaken against the user.

(c) Any institution of higher education extending telecommunications service to students purchased through the department is responsible for payment directly to the department of the total charges billed within thirty (30) days of receipt, regardless of whether it is able to collect the student's contribution of the payment.

(d) In order to maintain sufficient amounts in the telecommunications revolving account to make timely payments to the telecommunications service providers, the department may require any telecommunications users to make advance payments based on 80% of the average of each user's prior three-month billing exclusive of charges described in subsection (a)(4) of this section. Advance payments which are not equal to the actual amount due for the subsequent payment period will be adjusted accordingly.

*§207.32. Telecommunications Services User Responsibilities.*

(a) Each telecommunications services user shall provide the department with the name, title, postal and electronic mailing addresses, and all telephone numbers of the employee(s) authorized to initiate, change, modify, amend or terminate telecommunications service.

(b) Each telecommunications services user is responsible for insuring that telecommunications services are used solely in compliance with applicable law, policy and procedures.

(c) A telecommunications services user shall submit a request to the department to initiate telecommunications services changes, modifications or terminate telecommunications services, in accordance with the department procedures.

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

Filed with the Office of the Secretary of State on September 25, 2012.

TRD-201205104

Martin Zelinsky

General Counsel

Department of Information Resources

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 475-4700



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

**1 TAC §§352.1, 352.3, 352.5, 352.7, 352.9, 352.11, 352.13, 352.15, 352.17, 352.19, 352.21**

The Texas Health and Human Services Commission (HHSC) proposes new Chapter 352, concerning Medicaid and the Children's Health Insurance Program Provider Enrollment, consisting of §§352.1, 352.3, 352.5, 352.7, 352.9, 352.11, 352.13, 352.15, 352.17, 352.19, and 352.21.

#### Background and Justification

The Affordable Care Act (ACA), which includes new provider enrollment requirements for Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), adds new Subpart E - Provider Screening and Enrollment, to Part 455, under Title 42, Code of Federal Regulations. The federal requirements became effective on March 25, 2011; however, the final federal guidance from the Centers for Medicare and Medicaid Services (CMS) was not available at that time. The states continue to receive guidance from CMS on implementing the federal provider screening and enrollment requirements. The new rules are necessary to bring Texas Medicaid and CHIP into compliance with the new federal requirements related to provider enrollment.

The new federal provisions include:

- Requirements for providers to re-enroll in Medicare, Medicaid, and CHIP every three to five years. The time between re-enrollment is determined by the level of risk and assessed by the federal or state agencies.
- Pre- and post-enrollment site visits conducted as part of provider enrollment.
- Stricter ownership and control interest guidelines for corporations and groups.
- Fingerprinting requirement for provider types determined to have a high level of risk.
- Collection of application fees from institutional providers.
- Sharing of collected information between the state programs and the federal government.

Related to this proposal, HHSC is proposing the repeal of §§354.1006, 354.1173, and 354.1442 elsewhere in this issue of the *Texas Register*.

#### Section-by-Section Summary

Proposed new §352.1 states the purpose and authority for the enrollment of providers in Medicaid and CHIP.

Proposed new §352.3 provides definitions for the words and terms used in the chapter.

Proposed new §352.5 describes who is required to enroll, outlines the enrollment requirements, and describes the frequency of re-enrollment.

Proposed new §352.7 includes the requirements for applying for enrollment or re-enrollment and that failure to comply with the requirements results in the application not being processed.

Proposed new §352.9 describes the screening levels of "Limited," "Moderate," and "High," which is assigned to an applicant or a re-enrolling provider pursuant to federal law or by HHSC if no federal designation has been made and the requirements for each screening level.

Proposed new §352.11 describes what HHSC or its designee considers when making the provider enrollment determination, describes the conditions under which an application will be denied, and how an applicant or re-enrolling provider can request an informal desk review, if an enrollment application is denied.

Proposed new §352.13 requires that a provider, unless exempt, must be actively enrolled in Medicare or certified by Medicare (if applicable). This information is incorporated and modified from §354.1173, proposed for repeal elsewhere in this issue.

Proposed new §352.15 describes the circumstances under which a surety bond is a condition of enrollment; the requirements of the surety company and the surety bond; and the effect of failure to obtain, submit or maintain a surety bond as required. This information is incorporated and modified from §354.1006, proposed for repeal elsewhere in this issue.

Proposed new §352.17 outlines the out-of-state Medicaid provider eligibility criteria. This information is incorporated and modified from §354.1442, proposed for repeal elsewhere in this issue.

Proposed new §352.19 describes the basis for imposing temporary moratoria on newly enrolling providers or suppliers and the time frame of the moratoria.

Proposed new §352.21 requires a provider to report changes as a condition of continued enrollment in Medicaid and CHIP and that new documentation may be required as a result of the change. The rule also describes the consequences for failure to report a change.

#### 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 minimum impact to state government resulting from technology changes required for this rule is an estimated cost to general revenue of \$280,001 for state fiscal year (SFY) 2012; \$3,360,000 for SFY 2013; \$2,085,715 for SFY 2014; and \$914,286 for SFY 2015. For SFY 2016, the state is expected to have general revenue costs; however, those costs will be determined under the reproposed Medicaid Claims Administration contract, and no estimate of those costs has been provided.

In addition, the new rules provide procedures for enforcement of several new program integrity initiatives enacted in the ACA and ensuing state legislation. These activities will increase workloads and litigation for state staff. These are new initiatives and there are significant uncertainties preventing a meaningful cost estimate for their accomplishment. It is assumed that the cost of enrollment and screening will be at least partly offset by the collection of the provider application fee required in law.

The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments that are required by federal law to pay an application fee may incur additional costs.

#### Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there could be an effect on small businesses or micro-businesses to comply with the proposed new rules, as they could be required to pay the application fee even though they are providers for a Medicaid-only or CHIP-only program.

HHSC and its designee must collect the applicable application fee prior to executing a provider agreement from an applicant or re-enrolling provider. Certain providers recognized as small or micro-businesses, such as durable medical equipment or Non-emergency Medical Transportation Program providers, may be required to pay the application fee unless they have paid a fee to Medicare or another state's Medicaid or CHIP agency. The

estimated total number of providers who will be subject to the application fee requirement is 13,775. If the State demonstrates the imposition of a fee would impede beneficiary access to care, CMS may grant a hardship exception on a broader or categorical basis for certain Medicaid or CHIP provider types or geographical areas.

HHSC developed these rules in accordance with federal requirements of the Centers for Medicare and Medicaid Services. Therefore, under §2006.002 of the Government Code, HHSC is not required to undertake a regulatory flexibility analysis describing the alternative methods the agency considered to achieve the purpose of the proposed rules while minimizing adverse effects on small businesses, because the rules are required to comply with federal requirements.

#### Cost to Persons and Effect on Local Economies

HHSC anticipates that there may be economic costs to persons required to comply with this proposal. Those costs could include increased photocopying, information resources, human resources and possible payment of application fees, if not already paid to another state or to the federal government. These rules will not have an impact on local employment.

#### Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the proposed new rules are in effect, the anticipated public benefit of the proposed rules will be a more effective provider enrollment process and compliance with federal regulations.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Mandy Seago, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 13247, H390, Austin, Texas 78711; by fax to (512) 249-3731; or by e-mail to [mandy.seago@hhsc.state.tx.us](mailto:mandy.seago@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for November 2, 2012 from 9:00 a.m. to 10:00 a.m. (central time) in the John H. Winters Building, Public Hearing Room, 125-E, located at 701 W. 51st Street, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

## Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program; and Health and Safety Code §62.051, which provides HHSC with the authority to administer the Children's Health Insurance Program (CHIP) in Texas.

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

### §352.1. Purpose.

(a) The enrollment of providers in Medicaid and the Children's Health Insurance Program (CHIP) is conducted under the authority of the Texas Health and Human Services Commission (HHSC), and is administered by HHSC or its designee.

(b) The enrollment requirements in this chapter are consistent with:

(1) Title 42, Part 455, of the Code of Federal Regulations (CFR); and

(2) Chapter 531 of the Government Code.

(c) Additional enrollment requirements may be found in the following authorities:

(1) Title 1, Texas Administrative Code (TAC), Part 15 (relating to Texas Health and Human Services Commission).

(2) Policy publications issued by HHSC or a health and human services agency, such as:

(A) the *Texas Medicaid Provider Procedures Manual*;

(B) each Medicaid managed care program provider or operating manual;

(C) each CHIP provider or operating manual;

(D) each health and human services agency program handbook; and

(E) each policy update and policy explanation (such as provider banners, bulletins, and quarterly updates).

(3) 40 TAC Part 1 (relating to Department of Aging and Disability Services).

(4) 40 TAC Part 2 (relating to Department of Assistive and Rehabilitative Services).

(5) 25 TAC Part 1 (relating to Department of State Health Services).

### §352.3. Definitions.

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

(1) Applicant--An individual or an entity that submits an enrollment application to become a provider or to enroll a new practice location in Medicaid or CHIP.

(2) CHIP--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and Chapter 62 of the Health and Safety Code.

(3) Change of ownership--A change of ownership related to a partnership, sole proprietorship, corporation, or leasing arrangement as defined in 42 CFR §489.18.

(4) Designee--An entity to which HHSC has delegated certain functions for provider enrollment purposes. A designee may include:

(A) an HHSC contractor;

(B) a health and human services agency; or

(C) a managed care organization (MCO) that contracts with HHSC under Medicaid or CHIP.

(5) Disenroll--To end a provider's participation in Medicaid or CHIP before the end of the provider's current enrollment period.

(6) Enrollment--The process for applying to become a provider, including contracting and procedures for determining whether to grant approval to enter into a provider agreement.

(7) Enrollment application--A form prescribed by HHSC that an applicant or re-enrolling provider submits to HHSC or its designee to enroll or re-enroll as a provider.

(8) Enrollment type--A type of enrollment category that identifies how the applicant seeks to enroll, such as individual, group, performing provider, or facility.

(9) Entity--A provider group, a facility, an organization, or a business registered with the Texas Secretary of State.

(10) Health care practitioner--A physician or non-physician licensed or certified health care provider who is recognized by federal law or by HHSC as a provider who can bill for medical services or benefits, submits orders or referrals for services to treat, certifies medical need for services, or supervises other individuals providing services and benefits to Medicaid or CHIP recipients.

(11) Health and human services agency--A state agency identified in §531.001(4) of the Government Code.

(12) HHSC--The Texas Health and Human Services Commission.

(13) Medicaid--The medical assistance program, a state and federal cooperative program authorized under Title XIX of the Social Security Act that pays for certain medical and health care costs for people who qualify.

(14) National Provider Identifier--A unique ten-digit identification number assigned by the Centers for Medicare & Medicaid Services.

(15) Overpayment--A payment made to a provider in excess of the amount that is allowable for the service provided, plus any accrued interest.

(16) Person with an ownership or control interest--Has the meaning assigned by §371.1003 of this title (relating to Definitions).

(17) Provider--An applicant that successfully completes the enrollment process outlined in this chapter and in Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

(18) Provider agreement--An agreement between HHSC and a provider wherein the provider agrees to certain contract provisions as a condition of participation.

(19) Re-enrolling provider--A provider that submits an enrollment application before the end of the provider's current enrollment period.

(20) Recipient--A person receiving benefits under Medicaid or CHIP.

(21) Surety bond--One or more bonds issued by one or more surety companies under 31 U.S.C. §§9304 - 9308 and 31 CFR parts 223, 224, and 225.

(22) Terminate--To take an adverse action against a provider whose participation in Medicaid or CHIP has ended at federal or state agency direction due to violation of state rules or federal regulations.

(23) Third-party billing vendor--A vendor registered with HHSC or its designee that submits claims for reimbursement on behalf of a provider.

§352.5. Provider Enrollment Requirements.

(a) Enrollment in Medicaid or CHIP is required for:

(1) a person or an entity seeking to provide health care services or benefits in Medicaid or CHIP; and

(2) a health care practitioner who:

(A) refers, orders, prescribes, certifies, or renders health care services or benefits for eligible recipients; or

(B) supervises or is supervised by another health care practitioner who performs the functions described in subparagraph (A) of this paragraph.

(b) Prerequisites for enrollment.

(1) Prior to submitting an enrollment application, the applicant or re-enrolling provider must conduct an internal review to confirm that neither the applicant or the re-enrolling provider, nor any of its employees, owners, managing partners, or contractors (as applicable), have been excluded from participation in a program under Title XVIII, XIX, or XXI of the Social Security Act.

(2) The applicant must apply and receive a National Provider Identifier (NPI) in accordance with §1128J(e) of the Social Security Act (42 U.S.C. §1320a-7k(e)). If the applicant provides a service that is not recognized for an NPI, the state may, in its sole discretion, issue an atypical provider identifier to the applicant.

(3) An applicant or re-enrolling provider must meet the criteria in §352.13 of this chapter (relating to Medicare Certification or Enrollment in Medicare).

(4) An applicant or re-enrolling provider must not be terminated from participation in Medicare, another state's medical assistance program, or CHIP.

(5) An applicant or re-enrolling provider must be licensed, certified, or accredited to the extent required by federal and state laws, regulations, statutes, rules, and policy. The applicant or re-enrolling provider must be in good standing related to licensure, certification, and accreditation to be considered for enrollment.

(6) An applicant or re-enrolling provider that is considered out-of-state must meet the requirements for out-of-state provider eligibility in accordance with §352.17 of this chapter (relating to Out-of-State Medicaid Provider Eligibility).

(7) An applicant or re-enrolling provider must consent to criminal background checks, including fingerprinting when required to do so by state or federal law.

(8) As applicable, an applicant or re-enrolling provider must obtain a surety bond pursuant to §352.15 of this chapter (relating to Surety Bond Requirements) for each enrollment location.

(9) An applicant or re-enrolling provider must ensure that, if a third-party billing vendor is used for claim submission, the third-party billing vendor is registered with HHSC pursuant to §354.1187 of this title (relating to Responsibilities of Third-Party Billing Vendors).

(10) An applicant or re-enrolling provider must consent to unscheduled and unannounced pre- and post-enrollment site visits conducted by HHSC or its designee.

(11) An applicant or re-enrolling provider must certify that it has a compliance program containing the core elements as established by the Secretary of Health and Human Services referenced in §1866(j)(8) of the Social Security Act (42 U.S.C. §1395cc(j)(8)), as applicable.

(c) A provider must submit a new enrollment application and comply with §352.7(a) of this chapter (relating to Applying for Enrollment) at least every five years. The time frame for re-enrollment is based on the provider's screening level unless HHSC determines a shorter enrollment period.

§352.7. Applying for Enrollment.

(a) To apply for enrollment or re-enrollment, an applicant or re-enrolling provider must:

(1) meet the requirements outlined in §352.5 of this chapter (relating to Provider Enrollment Requirements) and Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity);

(2) complete an enrollment application for each practice location in accordance with the criteria specified by HHSC or its designee and the instructions contained in the application;

(3) submit an application fee for each practice location, as described in subsection (b) of this section;

(4) submit documentation to show proof of registration and good standing with the Texas Comptroller of Public Accounts, the Texas Secretary of State, or any other documentation requested by HHSC or its designee, as applicable;

(5) provide a copy of a surety bond obtained pursuant to §352.5 of this chapter;

(6) certify that the information contained in the application is true and accurate to the best of the applicant's or re-enrolling provider's knowledge; and

(7) submit a signed provider agreement with each enrollment application. By signing the provider agreement, the applicant or re-enrolling provider acknowledges that the applicant or re-enrolling provider will comply with all terms and conditions of the provider agreement.

(b) If an applicant or re-enrolling provider must pay an application fee pursuant to 42 CFR §455.460 in an amount determined by 42 CFR §424.514, the applicant or re-enrolling provider must submit:

(1) the application fee; or

(2) documentation showing proof of payment of the application fee within the current enrollment period (as defined by 42 CFR §424.515) under Title XVIII or any other state's program under Title XIX or Title XXI of the Social Security Act.

(c) An applicant or re-enrolling provider must provide all additional information requested by HHSC or its designee in connection with the processing of the enrollment application, by the deadline and in the manner indicated in the request. If the applicant or re-enrolling provider fails to comply with this requirement, the enrollment application will be closed.

(d) If an applicant or re-enrolling provider fails to meet any of the requirements in this section, HHSC or its designee will consider the enrollment application incomplete and the application will not be processed.

§352.9. Screening Levels.

(a) HHSC assigns an applicant or re-enrolling provider a screening level of "Limited," "Moderate," or "High" based on:

(1) the federal screening level for the type of provider as provided by 42 CFR §424.518, if applicable;

(2) the federal screening level for the type of provider as provided by 42 CFR §455.450; or

(3) HHSC's assessment of:

(A) the risk level for potential fraud, waste, or abuse associated with the type of provider or the geographical area; or

(B) other factors as determined by HHSC, including:

(i) a change in business structure or organization;

(ii) past practices and circumstances; and

(iii) access to care in a geographical area.

(b) For a screening level of "Limited" or "Moderate" assigned under subsection (a) of this section, HHSC may assign a higher screening level based on provider, type of provider, or geographical area.

(c) Requirements for screening levels.

(1) Limited.

(A) For a provider assigned a screening level of "Limited," HHSC:

(i) verifies that a provider meets any federal or state requirements for that type of provider;

(ii) verifies licensure certifications, including licensure certifications in Texas and any other state; and

(iii) conducts database checks pursuant to 42 CFR §455.436.

(B) A provider assigned a screening level of "Limited" must submit a new enrollment application at least every five years, unless HHSC determines a shorter enrollment period.

(2) Moderate.

(A) For a provider assigned a screening level of "Moderate," HHSC:

(i) performs the screening described in paragraph (1)(A) of this subsection; and

(ii) performs at least one unscheduled and unannounced pre- and post-enrollment site visit in accordance with 42 CFR §455.432.

(B) A provider assigned a screening level of "Moderate" must submit a new enrollment application at least every five years, unless HHSC determines a shorter enrollment period.

(3) High.

(A) For a provider assigned a screening level of "High," HHSC:

(i) performs the screening described in paragraph (2)(A) of this subsection;

(ii) conducts a criminal background check; and

(iii) requires the submission of a set of fingerprints if applicable under 42 CFR §455.434.

(B) A provider assigned a screening level of "High" must submit a new enrollment application at least every three to five years, unless:

(i) HHSC determines a shorter enrollment period; or

(ii) the provider meets the requirements of §371.1007 of this title (relating to Screening Levels).

(d) In addition to the screening requirements provided under this section, additional screening may be performed under §371.1009 of this title (relating to Verifications Required for Each Screening Level).

(e) A screening level assigned under subsection (a)(3) of this section is within the sole discretion of HHSC and is not subject to administrative review.

§352.11. Provider Enrollment Determinations.

(a) HHSC or its designee, in its sole discretion, approves, conditionally approves, or denies each enrollment application submitted in accordance with the requirements of this chapter. HHSC or its designee provides notice of the enrollment determination to the applicant or re-enrolling provider.

(1) Approval. If an enrollment application is approved, the approval is for a time-limited period of participation as specified in the provider agreement or notice of the enrollment determination.

(2) Conditional approval. An enrollment application may be approved with conditions as specified in the notice of the enrollment determination.

(3) Denial. If an enrollment application is denied, HHSC will provide notice of the enrollment determination by certified mail to the address of record on the enrollment application. The reason or reasons for denial are specified in the notice.

(b) In rendering the enrollment determination, HHSC or its designee will consider the following:

(1) the applicant's or re-enrolling provider's compliance with the requirements of this chapter;

(2) the applicant's or re-enrolling provider's current or previous participation in Medicaid and CHIP;

(3) whether access to care is sufficient; and

(4) the recommendation of HHSC's Office of Inspector General made pursuant to Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

(c) HHSC or its designee may deny an enrollment application for:

(1) failure to meet the requirements of participation for the category of service provided;

(2) failure to repay an overpayment;

(3) termination from participation in the Medicare program;

(4) exclusion from participation in Medicaid or CHIP;

(5) failure to comply with Chapter 371 of this title;

(6) failure to provide true and accurate information during the enrollment process;

(7) failure to cooperate with required unscheduled and unannounced pre- and post-enrollment site visits; or

(8) other reasons as determined by HHSC in its sole discretion.

(d) If an enrollment application is denied, the applicant or re-enrolling provider may request that the determination be reviewed by:

(1) HHSC OIG, if the reason for denial is based on subsection (b)(4) of this section pursuant to §371.1015(c) of this title (relating to Types of Provider Enrollment Recommendations) and follow the process outlined in §371.1011 of this title (relating to Recommendation Criteria); or

(2) HHSC or its designee, if the denial is based on any other reason, as follows:

(A) The applicant or re-enrolling provider must submit a request for an informal desk review within 20 calendar days from the date of the notice.

(B) The request for an informal desk review must be made in writing, state the basis for disagreement, and describe any mitigating circumstances that would support a reconsideration of the enrollment determination.

(C) Upon conclusion of the resulting informal desk review, HHSC or its designee will send a written notice of the final enrollment determination to the address of record on the enrollment application.

(D) The final enrollment determination is not subject to further administrative review or reconsideration.

#### §352.13. Medicare Certification or Enrollment in Medicare.

(a) To participate in Medicaid or CHIP, an applicant or re-enrolling provider must be actively enrolled in Medicare or certified by Medicare (if applicable), or both, unless otherwise specified by HHSC or its designee or specifically exempted in subsection (b) of this section.

(b) HHSC or its designee, in its sole discretion, may exempt an applicant or re-enrolling provider from subsection (a) of this section if:

(1) the type of practice or service is not covered by Medicare;

(2) an HHSC rule or other state agency's rule expressly exempts an applicant or re-enrolling provider from Medicare enrollment or Medicare certification; or

(3) the applicant's or re-enrolling provider's exclusion from participating in Medicaid or CHIP will prevent recipients from having access to needed medical services.

(c) This section is applicable only to applicants or re-enrolling providers that:

(1) have not been terminated or excluded from Medicare, any other state's medical assistance program, or CHIP; and

(2) meet the requirements in §352.5 of this chapter (relating to Provider Enrollment Requirements).

#### §352.15. Surety Bond Requirements.

(a) A surety bond may be required for each enrolled location pursuant to the requirements of this section if:

(1) a provider or type of provider has been identified by federal or state agencies to have a significant history of, or potential for, fraud, waste, or abuse; or

(2) HHSC, in its sole discretion, has determined that a provider, based on the provider's conduct, including falsifying information or any material misrepresentation, will be subject to this requirement.

(b) If a surety bond is required, a provider must maintain a current surety bond to continue participation in Medicaid or CHIP.

(c) HHSC or its designee will not reimburse a provider for items or services furnished during a period in which the provider does not have a current surety bond, if a surety bond is required.

(d) An entity operated or administered by a federal, state, local, or tribal government agency is exempt from the requirements of subsection (a) of this section if, during the preceding five years, the entity has not had any uncollected overpayments associated with Medicaid or CHIP.

(e) A surety bond required pursuant to this section must:

(1) include a statement that the surety company issuing the bond:

(A) is licensed by the Texas Department of Insurance; and

(B) maintains a valid Certificate of Authority with the United States Department of Treasury in accordance with 31 U.S.C. §§9304 - 9308 and Title 31 of the Code of Federal Regulations parts 223, 224, and 225 as a surety;

(2) state on the face of the bond the Parties, to include:

(A) the provider as Principal;

(B) HHSC as Oblige; and

(C) the surety company (and its heirs, executors, administrators, successors, and assignees, jointly and severally) as Surety; and

(3) include an effective date and expiration date for the bond.

(f) The amount of the surety bond must be no less than \$50,000 or 15 percent of the annual payments made to the provider by Medicaid or CHIP for covered services for which federal financial participation is available, whichever is greater. HHSC computes the 15 percent based on payments made to the provider for the most recent state fiscal year for which information is available.

(g) The surety bond must provide that:

(1) the Surety is liable for uncollected overpayments determined during the term of the bond, regardless of when the overpayments are discovered;

(2) the Surety remains liable:

(A) for an additional two years after the date of expiration of the bond for overpayments that occurred during the term of the bond, if the provider fails to furnish a new, updated, or renewed bond that meets the requirements of this section; and

(B) for an additional two years after the date the provider's participation is terminated for services provided during the bond period, if HHSC or its designee terminates the provider agreement;



(3) the Surety's liability to HHSC is not affected, diminished, or concluded by:

(A) any action by the provider or the Surety to terminate, reduce, or limit the scope or term of the bond;

(B) any action by the provider to:

(i) cease operation;

(ii) sell or transfer any assets or ownership interest;

(iii) file for bankruptcy; or

(iv) fail to pay the Surety; or

(C) the provider's failure to exercise available appeal rights under Medicaid or CHIP;

(4) the Surety's liability may be terminated only if:

(A) the Surety furnishes HHSC with written notice of its intent to terminate the bond no later than 30 days before the effective date of termination; or

(B) the provider furnishes HHSC with a new bond that meets the requirements of this section; and

(5) the Surety guarantees that upon receipt of written request for payment by HHSC or its designee, the Surety will reimburse Medicaid or CHIP the amount in the request up to the stated amount of the bond.

§352.17. Out-of-State Medicaid Provider Eligibility.

(a) This section applies only to an out-of-state Medicaid applicant or re-enrolling provider. An applicant or re-enrolling provider is considered out-of-state if:

(1) the physical address where services are or will be rendered is located outside the Texas state border and within the United States;

(2) the physical address where the services or products originate or will originate is located outside the Texas state border and within the United States when providing services, products, equipment, or supplies to a Medicaid recipient in the state of Texas; or

(3) the physical address where services are or will be rendered is located within the Texas state border, but:

(A) the applicant or re-enrolling provider maintains all patient records, billing records, or both, outside the Texas state border; and

(B) the applicant or re-enrolling provider is unable to produce the originals or exact copies of the patient records or billing records, or both, from the location within the Texas state border where services are rendered.

(b) An applicant or re-enrolling provider that is considered out-of-state under subsection (a) of this section is ineligible to participate in Medicaid unless HHSC or its designee approves the applicant or re-enrolling provider for enrollment on the basis of a determination that the applicant or re-enrolling provider has provided, is providing, or will provide services under one or more of the following criteria:

(1) The services are medically necessary emergency services provided to a recipient who is located outside the Texas state border, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year.

(2) The services are medically necessary services provided to a recipient who is located outside the Texas state border, and in the expert opinion of the recipient's attending physician or other provider,

the recipient's health would be or would have been endangered if the recipient were required to travel to Texas, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year.

(3) The services are medically necessary services that are more readily available to a recipient in the state where the recipient is located, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee.

(4) The services are medically necessary to a recipient who is eligible on the basis of participation in an adoption assistance or foster care program administered by the Texas Department of Family and Protective Services under Title IV-E of the Social Security Act, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee.

(5) The services are medically necessary and have been prior authorized by HHSC or its designee, and documented medical justification indicating the reasons the recipient must obtain medical care outside Texas is furnished to HHSC or its designee before providing the services and before payment, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee.

(6) The services are medically necessary and it is the customary or general practice of recipients in a particular locality within Texas to obtain services from the out-of-state provider, if the provider is located in the United States and within 50 miles driving distance from the Texas state border, or as otherwise demonstrated on a case-by-case basis.

(A) Enrollment under this paragraph may be time-limited for an appropriate period as determined by HHSC or its designee.

(B) An out-of-state provider does not meet the criterion in this paragraph merely on the basis of having established business relationships with one or more providers that participate in Medicaid.

(7) The services are medically necessary services to one or more dually eligible recipients (i.e., recipients who are enrolled in both Medicare and Medicaid) and the out-of-state provider may be considered for reimbursement of co-payments, deductibles, and co-insurance, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee, and the enrollment will be restricted to receiving reimbursement only for the Medicaid-covered portion of Medicare crossover claims.

(8) The services are provided by a pharmacy that is a distributor of a drug that is classified by the U.S. Food and Drug Administration (FDA) as a limited distribution drug.

(c) An out-of-state provider that applies for enrollment in Medicaid must submit documentation along with the enrollment application to demonstrate that the provider meets one or more of the criteria in subsection (b) of this section. The provider must submit any additional requested information to HHSC or its designee before enrollment may be approved.

(d) If HHSC or its designee determines that an out-of-state provider meets one or more of the criteria in subsection (b) of this section, the provider must meet all other applicable enrollment eligibility requirements, including those specified in Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity) before enrollment may be approved.

(e) Other applicable requirements.

(1) An out-of-state provider that is enrolled pursuant to subsections (b) - (d) of this section must follow all other applicable

Medicaid participation requirements identified by HHSC or its designee for each service provided. Other applicable requirements that must be followed may include:

- (A) service benefits and limitations;
- (B) documentation procedures;
- (C) obtaining prior authorization for the service whenever required; and
- (D) claims filing deadlines as specified in §354.1003 of this title (relating to Time Limits for Submitted Claims).

(2) Certain out-of-state providers are not entitled to utilize the extended 365-day claim filing deadline provided in §354.1003(a)(5)(H) of this title that is otherwise available to out-of-state providers, and must comply with the same claims filing deadlines that apply to in-state providers under that section. Those out-of-state providers are:

(A) providers that are approved for enrollment under the criterion specified in subsection (b)(6) of this section, where the specific basis for approval is that the provider is located within 50 miles driving distance from the Texas state border; and

(B) providers that are approved for enrollment under the criterion specified in subsection (b)(7) of this section regarding dually eligible recipients.

(f) An out-of-state provider that is enrolled pursuant to subsections (b) - (d) of this section must:

- (1) comply with the terms of the Medicaid provider agreement;
- (2) provide services in compliance with all applicable federal, state, and local laws and regulations related to licensure and certification in the state where the out-of-state provider is located; and
- (3) comply with all state and federal laws and regulations relating to Medicaid.

(g) HHSC or its designee determines the basis and amount of reimbursement for medical services provided outside Texas and within the United States in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

§352.19. Temporary Moratoria.

(a) HHSC or its designee may enforce temporary moratoria imposed pursuant to the requirements of §1867 and §1902 of the Social Security Act (42 CFR, §455.470 and §457.990) on enrollment of new providers or suppliers or impose numerical caps or other limits.

(b) HHSC may determine to impose a temporary moratorium in the Texas Medicaid and CHIP programs based on provider or supplier type, geographical area, new practice locations, or a category of provider or supplier identified as having an increased risk or a potential risk of fraud, waste, or abuse, with the concurrence of the Secretary of Health and Human Services.

(c) A temporary moratorium that is imposed in accordance with this section will be for an initial period of six months, and may be extended in six-month increments at the direction of or in concurrence with the Secretary of Health and Human Services.

(d) HHSC will not process an application if a moratorium or other limit on enrollment is in effect. If an enrollment application is denied solely as the result of a temporary moratorium, HHSC will refund any application fee submitted with the enrollment application.

§352.21. Duty to Report Changes.

(a) As a condition of continued enrollment, a provider must notify HHSC or its designee in writing of any change in its status or condition with respect to the information disclosed in an enrollment application, including:

- (1) National Provider Identifier or associated taxonomy code;
- (2) Medicare number;
- (3) Medicare certification status;
- (4) federal tax identification number;
- (5) responsible billing party for the provider;
- (6) physical address for the provider or responsible billing party;
- (7) the name, address, date of birth, and Social Security number of any managing employee of the provider;
- (8) enrollment type;
- (9) provider licensure, certification, accreditation;
- (10) any change of ownership as required by 42 CFR §489.18;
- (11) a change in the person with an ownership or control interest in the provider;
- (12) information required to be disclosed under Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity);
- (13) third-party billing vendor services; or
- (14) any other information required by HHSC or its designee.

(b) Time frame for reporting changes.

(1) If a change described in subsection (a) of this section occurs due to a change of ownership or control interest, the provider must report the change to HHSC or its designee within 30 days of the change of ownership.

(2) For all other changes, the provider must report the change to HHSC or its designee within 90 days of the occurrence.

(c) Upon notification of a change that is reported in accordance with this section, HHSC or its designee may require the submission of a new enrollment application and fee, if applicable, provider agreement, provider licensure or certification, or other documentation necessary to verify the reported change.

(d) If a provider does not report a change as required by this section or 42 CFR §489.18, or does not submit an item HHSC or its designee requires under subsection (c) of this section, HHSC or its designee may, retroactive to the date that the change should have been reported:

- (1) disenroll the provider or terminate the provider's participation in Medicaid or CHIP;
- (2) deny further reimbursement; and
- (3) recoup payments made to the provider.

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 October 1, 2012.



## CHAPTER 354. MEDICAID HEALTH SERVICES

### SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §354.1006, concerning Surety Bond Requirements; §354.1173, concerning Provider Certification/Enrollment in Medicare; and §354.1442, concerning Out-of-State Provider Eligibility, in Chapter 354, Medicaid Health Services.

#### Background and Purpose

The purpose of the repeals is to remove the Medicaid and Children's Health Insurance Program (CHIP) provider enrollment requirements regarding surety bonds, certification and enrollment in Medicare, and out-of-state provider eligibility from Chapter 354 and put them in new Chapter 352, Medicaid and Children's Health Insurance Program Provider Enrollment. New Chapter 352 is proposed elsewhere in this issue of the *Texas Register*. Provisions of the rules proposed for repeal have been modified and incorporated into the new rules in Chapter 352.

#### Section-by-Section Summary

Section 354.1006 governs surety bond requirements. Provisions of this section are being modified and incorporated as proposed new §352.15.

Section 354.1173 requires a Medicaid provider to be approved for and participating in Medicare, unless the requirement is waived. Provisions of this section are being modified and incorporated as proposed new §352.13.

Section 354.1442 outlines the out-of-state provider eligibility criteria. Provisions of this section are being incorporated as proposed new §352.17.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years after the repeals, there are no foreseeable implications relating to costs or revenues of state or local governments. There are no anticipated economic costs to persons who are required to comply with the proposed repeals. There is no anticipated effect on employment in a local economy.

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

Ms. Rymal has also determined that the proposed repeals will have no adverse economic effect on small businesses or micro-businesses, because the repeals will not require them to alter their business practices.

#### Public Benefit

Chris Traylor, Chief Deputy Executive Commissioner for Health Services Operations, has determined that, for each year of the

first five years after the repeals are in effect, the public benefit expected as a result of repealing the sections is that the provisions in the repealed sections will be relocated to a more suitable place in the Texas Administrative Code with other provider enrollment rules.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Mandy Seago, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 13247, H390, Austin, Texas 78711; by fax to (512) 249-3731; or by e-mail to [mandy.seago@hhsc.state.tx.us](mailto:mandy.seago@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for November 2, 2012 from 9:00 a.m. to 10:00 a.m. (central time) in the John H. Winters Building, Public Hearing Room, 125-E, located at 701 W. 51st Street, 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 §354.1006

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

#### Legal Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and the Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.1006. *Surety Bond Requirements.*

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 October 1, 2012.

TRD-201205150

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 11, 2012

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



## DIVISION 11. GENERAL ADMINISTRATION

### 1 TAC §354.1173

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

#### Legal Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and the Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.1173. *Provider Certification/Enrollment in Medicare.*

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 October 1, 2012.

TRD-201205151

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 11, 2012

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



## DIVISION 34. OUT-OF-STATE SERVICES

### 1 TAC §354.1442

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

#### Legal Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and the Human Resources Code, §32.021 and Texas Government Code, §531.021, which

authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.1442. *Out-of-State Provider Eligibility.*

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 October 1, 2012.

TRD-201205152

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 11, 2012

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



## SUBCHAPTER F. PHARMACY SERVICES

### DIVISION 1. PARTICIPATION

The Texas Health and Human Services Commission (HHSC) proposes to amend §§354.1801, 354.1803, 354.1809, and 354.1811, concerning requirements for participation, confidentiality, termination of participation, and provider sanctions. HHSC proposes new §354.1807 and §354.1813, concerning access to records and placing a pharmacy on vendor hold. HHSC also proposes to repeal §§354.1802, 354.1804, 354.1807, 354.1813, and 354.1815, concerning applications for participation, access to records, disclosure of criminal convictions, and definition of placing a pharmacy on vendor hold and reasons for placing a pharmacy on vendor hold.

#### Background and Justification

The changes to the rules governing participation in the Vendor Drug Program (VDP) are being proposed in association with new rules in Chapters 352 and 371 of Title 1, Part 15. The rules in Chapters 352 and 371 are being proposed in order to comply with provisions of the Affordable Care Act (ACA). The ACA includes new enrollment requirements for providers of Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) services, including providers of covered outpatient drugs. The proposed rules governing VDP pharmacy participation requirements reflect the proposed rules in Chapters 352 and 371 and clarify how they apply to pharmacies providing services under the Medicaid program.

The rules also include several changes not related to the ACA. HHSC proposes to codify the existing requirement that pharmacies must enroll in Medicaid in order to participate in CHIP, the Kidney Health Care program, or the Children with Special Health Care Needs program. Additionally, HHSC proposes to add a new enrollment requirement for pharmacies that fill prescription drug orders for Medicaid clients on behalf of enrolled Medicaid pharmacies that submit claims (referred to as central fill pharmacies). These central fill pharmacies are not currently required to enroll in Medicaid and therefore have not been required to give HHSC access to their Medicaid records. It is important, however, that a pharmacy providing services for Medicaid clients, including a central fill pharmacy, adhere to certain Medicaid standards and allow HHSC access to records so that the agency can con-

duct post payment review. HHSC also proposes to clarify that claims are subject to post payment review and recoupment if fraud is discovered. This is a current VDP practice that HHSC seeks to codify in rule. The rules also update outdated language.

#### Section-by-Section Summary

The proposed amendment to §354.1801 adds a definition of pharmacy provider applicable to the entire subchapter. The amendment also adds language to refer to proposed rules in Chapter 352 (Medicaid and Children's Health Insurance Program Provider Enrollment) and in Chapter 371 (Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity). The amendment also clarifies that pharmacies seeking to dispense covered outpatient drugs to recipients of Medicaid are not required to enroll in Medicare. The new language specifies that pharmacies must enroll in Medicaid in order to participate as a provider in CHIP, the Kidney Health Care program, or the Children with Special Health Care Needs program. The proposed amendment also adds language that may require pharmacies that fill prescriptions for billing Medicaid pharmacies to enroll in accordance with the procedures outlined in Chapters 352 and 371 in order to receive payment for drugs dispensed for Medicaid clients. The proposed amendment also adds a requirement that subjects outpatient pharmacy providers' claims to post-payment review and possible recoupment if fraud is discovered. The proposed amendment removes unnecessary language related to special contract agreements and a reference to out-of-state pharmacies and updates outdated language.

The proposed repeal of §354.1802 removes outdated application requirements. Current provisions in §354.1802 related to the State's ability to enter into special reimbursement agreements are moved to §354.1801.

The proposed amendment to §354.1803 clarifies that providers must comply with state and federal laws related to client confidentiality and that penalties for violation are provided in state and federal laws.

The proposed repeal of §354.1804 allows for current information to be proposed in new §354.1807.

The proposed repeal of §354.1807 deletes information related to disclosure of criminal convictions that is included in the new rules in proposed Chapter 352. Proposed new §354.1807 includes clarified language related to access to records moved from §354.1804.

The proposed amendments to §354.1809 and §354.1811 clarify and update outdated language.

The proposed repeal of §354.1813 moves the vendor hold definition to proposed new §354.1813, which also includes language to allow HHSC to place a pharmacy on a vendor hold and lists justifications for starting a vendor hold that were previously in §354.1815. The new rule adds a credible allegation of fraud as an additional reason for a vendor hold. The new rule also clarifies and updates outdated language.

The proposed repeal of §354.1815 allows for current information to be proposed in new §354.1813.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed repeals, amendments, and new rules are in effect, there will be no fiscal impact to state government. The proposed

rules will not result in any fiscal implications for local health and human 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 repeals, amendments, and new rules as they will not be required to alter their business practices as a result of the proposal. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

#### Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the repeals, amendments, and new rules are in effect, the public will benefit from the adoption of the rules by having a more cohesive and standard process by which pharmacy providers can enroll in and service recipients of medical assistance services and more protections against fraud, waste, and abuse.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Michelle Erwin, Senior Policy Analyst, Vendor Drug Program, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, Mail Code H-630; by fax to (512) 491-1145; or by e-mail to michelle.erwin@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for November 2, 2012 from 12:00 noon to 1:00 p.m. (central time) in the John H. Winters Building, Public Hearing Room, 125-E, located at 701 W. 51st Street, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

**1 TAC §§354.1801, 354.1803, 354.1807, 354.1809, 354.1811, 354.1813**

#### Statutory Authority

The amendments and new rules are proposed under Texas Government Code §531.033, which provides the Executive Com-

missioner of HHSC with broad rulemaking authority; and 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.

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

*§354.1801. Requirements for Participation.*

(a) For the purposes of this subchapter, "pharmacy provider" means a provider of outpatient pharmacy services enrolled in the Medicaid program.

(b) ~~(a)~~ Any pharmacy ~~[or pharmacist]~~ who has a current license or registration with the Texas State Board of Pharmacy or is licensed under the laws of another ~~[his respective]~~ state and is free from any pharmacy board restriction may apply to become a pharmacy provider ~~[in this program]~~. Prescribing practitioners who are authorized and licensed to practice the healing arts, as defined and limited by federal and state laws, and choose to provide their own pharmaceuticals may also apply to become pharmacy providers.

(c) ~~(b)~~ Except as stated in §354.1809 of this title (relating to Termination of Participation), Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment), and Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity), the Health and Human Services Commission (HHSC) and its designee maintain ~~[the Commission maintains]~~ open enrollment for in-state pharmacies licensed as Class A or C by the Texas State Board of Pharmacy. Pharmacies ~~[Out-of-state pharmacies or pharmacies]~~ holding any other class of pharmacy license may be subject to special application procedures. ~~[These procedures are used to determine how Medicaid recipients benefit from contracts with specialized pharmacies. Contracts are not granted to applicants unless additional benefits to the recipient are established.]~~

(d) A pharmacy must be enrolled as a pharmacy provider to participate as a provider in the Children's Health Insurance Program (CHIP), the Kidney Health Care (KHC) program, or the Children with Special Health Care Needs (CSHCN) program.

(e) A pharmacy does not have to be enrolled in the Medicare program to dispense covered outpatient drugs to clients enrolled in the Medicaid program.

(f) A pharmacy that fills prescriptions for Medicaid clients on behalf of an enrolled Medicaid pharmacy that submits Medicaid claims (e.g., a central fill pharmacy or a pharmacy that provides medication fulfillment services) may be required to enroll in accordance with Chapters 352 and 371 of this title and is subject to other participation requirements in this division, including §354.1807 of this division (relating to Access to Records).

(g) A pharmacy applying for enrollment as a pharmacy provider is subject to the enrollment and application requirements in Chapters 352 and 371 of this title.

(h) Claims are subject to post-payment review for compliance with state and federal laws and regulations and HHSC policy. Reimbursement paid to a pharmacy provider for claims that do not comply may be subject to recoupment of overpayment.

(i) HHSC may enter into special negotiated reimbursement arrangements with other state or local entities, such as a Department of State Health Services hospital, to maximize federal financial participation in state or locally funded programs. If a state or local entity is

unwilling to participate in such an arrangement, a contract or agreement may be denied.

*§354.1803. Confidentiality.*

A pharmacy ~~[The]~~ provider must comply with all privacy requirements in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any other state or federal law related to client confidentiality ~~[not reveal to the public the identity of any recipient of medical assistance]~~. Federal and state laws provide ~~[State law provides a]~~ criminal penalties ~~[penalty]~~ for violation.

*§354.1807. Access to Records.*

On request, a pharmacy provider must allow staff of the Health and Human Services Commission, the Texas Office of the Attorney General's Medicaid Fraud Control Unit, and the U.S. Department of Health and Human Services, or their designees, immediate access to financial and other records that pertain to the Medicaid program for review or audit.

(1) The pharmacy provider must give the staff access to and a sample of the prescription files of the provider's non-Medicaid customers to determine the provider's usual and customary price.

(2) The pharmacy provider may remove information that can be used to identify a particular Medicaid client or non-Medicaid customer.

(3) The pharmacy provider must cooperate in regular reviews (general audits and utilization reviews) of the records of its customers who are Medicaid clients.

*§354.1809. Denial or Termination of Participation.*

(a) The Health and Human Services Commission (HHSC) reserves the right to deny an application ~~[reject any request]~~ for participation in the Medicaid program or to immediately suspend or terminate participation in the program should the pharmacy provider conduct ~~[his]~~ pharmaceutical practices in violation ~~[of the criteria]~~ of HHSC's ~~[the Title XIX]~~ Vendor Drug Program rules, state or federal laws, or the ethics adopted by the profession.

(b) HHSC or its designee ~~[The Commission]~~, on receipt of written request, provides an ~~[a contract]~~ appeal to the provider if HHSC or its designee ~~[the Commission]~~ suspends or terminates ~~[cancels]~~ the pharmacy provider's participation in the program for a violation described in subsection (a) of this section.

*§354.1811. [Provider] Sanctions.*

(a) The Health and Human Services Commission (HHSC) reserves the right to impose administrative sanctions on a pharmacy provider who conducts ~~[his]~~ pharmaceutical practices ~~[practice]~~ in violation of the ethics adopted by the profession, any applicable federal or state laws, or the criteria of HHSC's ~~[the]~~ Vendor Drug Program; or the Commission's rules regarding fraud or abuse involving medical providers. Sanctions include, but are not limited to, termination or suspension from participation, suspension of payments, and recoupment of overpayments.

(b) On receipt of a written request, HHSC ~~[the Commission]~~ provides an ~~[a contract]~~ appeal to a pharmacy provider on whom HHSC ~~[who has had Commission]~~ sanctions have been placed for a violation described in subsection (a) of this section ~~[on him]~~.

*§354.1813. Placing a Pharmacy Provider on Vendor Hold.*

(a) Definition. In the context of this subchapter, the term vendor hold means detaining accrued vendor payments from the effective date of the hold until the release date.

(b) Reasons for placing a pharmacy provider on vendor hold are as follows:

(1) violation of the provisions of the pharmacy provider agreements and/or amendments;

(2) failure to pay, within the allotted period of time, the amount of restitution as revealed by an audit of the pharmacy provider;

(3) a request by the Office of Inspector General or the Office of Attorney General, pursuant to an investigation of a pharmacy provider for possible fraud;

(4) failure to file a required cost report according to applicable instructions and within the prescribed time period;

(5) failure to allow access to financial and other records in accordance with §354.1807 of this division (relating to Access to Records); or

(6) a credible allegation of fraud, as defined in 42 CFR §455.2.

(c) HHSC will lift a vendor hold when it determines that the reason for the placement of the vendor hold is no longer present.

(1) A vendor hold placed due to a violation of a pharmacy provider agreement and/or amendments, as described in subsection (b)(1) of this section, will be lifted when the provider proves to be compliant with the pharmacy provider agreements and/or amendments.

(2) A vendor hold placed due to a failure to pay restitution within the allotted time period, as described in subsection (b)(2) of this section, will be lifted when restitution is paid in full.

(3) A vendor hold placed pursuant to an investigation of fraud, as described in subsection (b)(3) of this section, will be lifted when the investigation of possible fraud ends. If fraud is found, however, the pharmacy provider's participation in the Medicaid program will be terminated.

(4) A vendor hold placed due to a pharmacy provider's failure to file a required cost report, as described in subsection (b)(4) of this section, remains in effect until all cost-reporting deficiencies are corrected. If the cost reporting deficiencies are not corrected within three months following the due date of the report, the pharmacy provider's agreement may be cancelled. The pharmacy provider is notified of agreement cancellation when this action is taken. Notice is considered to have been made as of the date of delivery to the United States Postal Service.

(5) A vendor hold placed due to a pharmacy provider's failure to allow access to financial and other records, as described in subsection (b)(5) of this section, remains in effect until access to the requested records is allowed. If access to the requested records is not provided within 31 days of the refusal, the pharmacy provider's agreement may be cancelled. The pharmacy provider is notified of agreement cancellation when the action is taken.

(6) A vendor hold placed due to a credible allegation of fraud, as described in subsection (b)(6) of this subsection, will be lifted when the investigation of the fraud allegation ends. If fraud is found, however, the pharmacy provider's participation in the Medicaid program will be terminated.

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

Filed with the Office of the Secretary of State on October 1, 2012.  
TRD-201205154

Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: November 11, 2012  
For further information, please call: (512) 424-6900



### **1 TAC §§354.1802, 354.1804, 354.1807, 354.1813, 354.1815**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### **Statutory Authority**

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

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

§354.1802. *Applications for Participation.*

§354.1804. *Access to Records.*

§354.1807. *Disclosure of Criminal Convictions.*

§354.1813. *Definition of Placing a Pharmacy on Vendor Hold.*

§354.1815. *Reasons for Placing a Pharmacy on Vendor Hold.*

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 October 1, 2012.

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



## **CHAPTER 390. INFORMATION PRACTICES SUBCHAPTER A. STANDARDS RELATING TO THE ELECTRONIC EXCHANGE OF HEALTH INFORMATION**

### **1 TAC §390.1, §390.2**

The Texas Health and Human Services Commission (HHSC) proposes new §390.1, concerning definitions, and §390.2, concerning standards relating to the electronic exchange of health information, in new Chapter 390, Subchapter A, Standards Relating to the Electronic Exchange of Health Information.

Background and Justification

House Bill (HB) 300, 82nd Legislature, Regular Session, 2011, in part, amended Chapter 182, Subchapter C of the Health and Safety Code, which directs HHSC to review privacy and security standards relating to the electronic exchange of health information developed by the Texas Health Services Authority (THSA) and to ratify the standards as rules as appropriate. The THSA developed the standards and submitted them to HHSC for consideration, as required by §182.108 of the Health and Safety Code.

The new rules are proposed to identify statutory and regulatory requirements that covered entities must follow to be in compliance with the law.

#### Section-by-Section Summary

Section 390.1 provides the definitions for terms used in the chapter.

Section 390.2(a) requires a covered entity that electronically exchanges, uses, or discloses protected health information (PHI) to comply, at a minimum, with the standards for confidential information listed in the subsection, including the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security and Breach Notification Regulations; the Texas Medical Records Act, Chapter 181 of the Texas Health and Safety Code; the Texas Identity Theft Act, Chapter 521 of the Texas Business and Commerce Code; and any other applicable state or federal law or regulation requiring confidential information to be safeguarded, used, or disclosed only for authorized purposes by authorized users.

Section 390.2(b) states that the standards do not apply to de-identified information (that is, information excluded from the definition of PHI for which there is no reasonable basis to believe that the information could be used to identify an individual when individual identifiers have been removed from the information in accordance with HIPAA).

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed new rules are in effect, there will be no foreseeable implications relating to costs or revenues of state or local governments. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

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

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the proposed rules do not establish any new requirements and do not require businesses to alter their practices.

#### Public Benefit

Dr. Mark Chassay, Deputy Executive Commissioner for Health Policy and Clinical Services, has determined that, for each year of the first five years the new sections are in effect, the anticipated public benefit expected as a result of enforcing the new sections is that the privacy and security of health information electronically transmitted by organizations within the state will be better protected as organizations will have a more straightforward set of standards to reference for protecting electronic health information.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Stephen Palmer, Health and Human Services Commission, Office of e-Health Coordination, MC-4100, 4900 N. Lamar, Austin, Texas 78751-2316 or by e-mail to [stephen.palmer@hhsc.state.tx.us](mailto:stephen.palmer@hhsc.state.tx.us) within 30 days after publication of this proposal in the *Texas Register*.

#### Legal Authority

The new sections are proposed under §531.0055 of the Texas Government Code, which provides the Executive Commissioner of HHSC with rulemaking authority, and §182.108 of the Texas Health and Safety Code, which directs HHSC to review privacy and security standards relating to the electronic exchange of health information developed by the Texas Health Services Authority and to adopt acceptable standards by rule.

The new sections affect Texas Government Code Chapter 531 and Texas Health and Safety Code Chapter 182. No other statutes, articles, or codes are affected by this proposal.

#### §390.1. Definitions.

Unless otherwise defined in this section, each term used in these rules has the meaning assigned by the Health Insurance Portability and Accountability Act (HIPAA), or other applicable law.

(1) Access--The physical or logical capability to interact with or otherwise make use of information.

(2) Authorized purpose--A purpose expressly authorized by applicable law, regulation, or agreement.

(3) Authorized user--A person:

(A) who is authorized to process, view, handle, examine, interpret, or analyze confidential information;

(B) who has a demonstrable need to know and have access to the confidential information; and

(C) who has agreed in writing to be bound by the use and disclosure requirements pertaining to confidential information.

(4) CFR--The Code of Federal Regulations.

(5) Confidential information--Any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of or includes any or all of the following information that must be protected from unauthorized use or disclosure as required by applicable state or federal law (e.g. constitutional, statutory, judicial, and legal agreement requirements):



(A) information designated as confidential under the laws of the State of Texas and of the United States;

(B) personally identifiable information (PII), meaning information that can be used to uniquely identify, contact, or locate a single individual or can be used with other sources to uniquely identify a single individual;

(C) PII about or concerning an individual who receives government benefits under one or more public assistance programs administered or overseen by HHSC (also referred to as "client information");

(D) protected health information (PHI), including without limitation electronic PHI (ePHI) or unsecured PHI, as defined by HIPAA;

(E) sensitive personal information (SPI), with the meaning assigned by the Texas Identity Theft Act, Chapter 521 of the Texas Business and Commerce Code;

(F) federal tax information, with the meaning assigned in the Internal Revenue Code, Title 26 of the United States Code (U.S.C.) and regulations adopted under that code;

(G) Social Security Administration data, meaning information or data made by the Social Security Administration and disclosed to a state agency for its administration of federally funded benefit programs under various provisions of the Social Security Act, such as §1137 (42 U.S.C. §1320b-7), including the state-funded state supplementary payment programs under Title XVI of the Act, in accordance with the requirements of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. §552a;

(H) to the extent permitted under the laws and constitution of the State of Texas, all information designated by HHSC or any other state agency as confidential, including all information designated as confidential under the Texas Public Information Act, Texas Government Code, Chapter 552; and

(I) information that is used, developed, received, or maintained by HHSC or any other state agency, its contractor, or other participating state agencies for the purpose of fulfilling a duty or obligation under an agreement that has not been publicly disclosed.

(6) Covered entity--Has the meaning assigned by the Medical Records Privacy Act, Health and Safety Code §181.001(b)(2).

(7) De-identified information--Information excluded from the definition of PHI, for which there is no reasonable basis to believe that the information can be used to identify an individual when individual identifiers have been removed from the information in accordance with HIPAA, 45 CFR §164.514(b)(2).

(8) Disclose--Has the meaning assigned by the Medical Records Privacy Act, Health and Safety Code §181.001(b)(2-a). See also the definition of "exchange" in this section.

(9) Exchange--To disclose.

(10) HHSC--The Health and Human Services Commission.

(11) HIPAA--Collectively, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1320d et seq., and regulations adopted under that act, as modified by the Health Information Technology for Economic and Clinical Health Act (HITECH) (P.L. 111-105), and regulations adopted under that act at 45 CFR Parts 160 and 164.

(12) Individual--The subject of confidential information, and includes the subject's legally authorized representative who qualifies under HIPAA as a legally authorized representative of the individual, as defined by Texas law, for example, without limitation as provided in Texas Occupations Code §151.002(6); Texas Health and Safety Code §166.164; or Texas Probate Code §3.

(13) State agency--A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government that is created by the Constitution or a statute of this state.

(14) Use--Has the meaning assigned by HIPAA.

§390.2. Standards.

(a) A covered entity that electronically exchanges, uses, or discloses PHI, at a minimum, must comply with the following standards for confidential information in any form, to the extent applicable:

(1) HIPAA Privacy, Security and Breach Notification Regulations;

(2) the Texas Medical Records Act, Chapter 181 of the Texas Health and Safety Code;

(3) the Texas Identity Theft Act, Chapter 521 of the Texas Business and Commerce Code; and

(4) any other applicable state or federal law or regulation that requires that confidential information be safeguarded, used, or disclosed only for authorized purposes by authorized users, including without limitation:

(A) requirements applicable to the following specific types of data:

(i) Cancer: Texas Health and Safety Code §82.008 and §82.009; Title 25 Texas Administrative Code (TAC) §91.9 (relating to Confidentiality and Disclosure);

(ii) HIV/AIDS: Texas Health and Safety Code §81.103, HIV/AIDS Test Results, and 40 TAC §8.288 (relating to Confidentiality of Test Results);

(iii) Genetic: Genetic Information Nondiscrimination Act of 2008 (GINA) Pub. L. No. 110-233 and applicable regulations promulgated under that act; Texas Insurance Code, Chapter 546, Subchapter C; Texas Labor Code §21.403 and §21.404; Texas Occupations Code, Chapter 58;

(iv) Sexual assault: Texas Health and Safety Code, Chapter, 44, Subchapter C;

(v) Communicable diseases: Texas Health and Safety Code §81.046; 25 TAC §97.10 (relating to Confidential Nature of Case Reporting and Records);

(vi) Mental health: Texas Health and Safety Code, Chapter 611, Mental Health Records/Substance Abuse Records;

(vii) Substance abuse or substance use disorder: 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; Texas Health and Safety Code, Chapter 611, Mental Health Records/Substance Abuse Records;

(viii) Immunizations: Texas Health and Safety Code §161.0073 and §161.009; 25 TAC §100.2 (relating to Confidentiality);

(ix) Bureau of Vital Statistics: Texas Government Code §552.115; Texas Health and Safety Code Chapters 192 and 193, §195.005; 25 TAC Chapter 181 (relating to Vital Statistics);

(x) Reports of abuse or neglect: Texas Human Resources Code, Chapter 48, Report of Abuse or Neglect of Elderly or Disabled Persons; Texas Health and Safety Code §161.132; Family Code Chapter 261, Reports of Child Abuse;

(xi) Federal tax information: Internal Revenue Code, Title 26, 26 U.S.C. §6103; IRS Publication 1075;

(xii) Social Security Administration data: 42 U.S.C. §1306, 20 CFR Part 401;

(xiii) Occupational diseases: Texas Health and Safety Code §84.006; 25 TAC §99.1 (relating to General Provisions);

(xiv) Family planning: 25 TAC §56.11 (relating to Confidentiality); and

(xv) Recipients of government benefits: requirements for use of disclosure of client information about or concerning recipients of government benefits such as Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or the Children's Health Insurance Program (CHIP), by HHSC or its designee(s), third party, or business associate: 7 CFR §272 (SNAP); 45 CFR §205.50 (TANF); 42 CFR §431.300 et seq. (Medicaid); 42 CFR §457.1110 (CHIP);

(B) requirements applicable to data held by the following specific types of providers, facilities, and services:

(i) Hospitals: Texas Health and Safety Code, Chapter 241, Subchapter G, Hospital Disclosures of Health Care Information; 25 TAC §133.42 (relating to Patient Rights);

(ii) Nursing facilities: Texas Health and Safety Code, Chapter 242, §242.134 and §242.501(8), Nursing Home Resident Rights; 40 TAC §19.407 (relating to Privacy and Confidentiality);

(iii) Intermediate care facilities for persons with an intellectual disability or related conditions (ICF/IID): Texas Health and Safety Code, Chapter 252, §252.126 and §252.134;

(iv) Freestanding emergency medical care facilities: Texas Health and Safety Code Chapter 254; 25 TAC §131.53 (relating to Medical Records);

(v) Ambulatory surgical centers: Texas Health and Safety Code, Chapter 243, 25 TAC §135.5 (relating to Patient Rights);

(vi) Emergency medical services: Texas Health and Safety Code, Chapter 773, §§773.079 - 773.096; 25 TAC §157.11 (relating to Requirements for an EMS Provider License);

(vii) Physicians: Texas Occupations Code, Chapter 159, Physician-Patient Communication;

(viii) Chiropractors: Texas Occupations Code §§201.402 - 201.405, Chiropractor-Patient Confidentiality;

(ix) Dentists: Texas Occupations Code §§258.051 et seq., Dental-Patient Confidentiality;

(x) Labs: Clinical Laboratory Improvement Amendments (CLIA) (1988); 42 CFR §493.1291;

(xi) Pharmacists: Texas Occupations Code, Chapter 562, §562.052, Confidential Records of Pharmacists;

(xii) Podiatrists: Texas Occupations Code, Chapter 202, Subchapter I, §§202.401 et seq., Podiatrist Privilege and Confidentiality;

(xiii) Personal health record vendors: Health Breach Notification Rule for Vendors of Personal Health Records, 16 CFR Part 318;

(xiv) End stage renal disease facilities: Texas Health and Safety Code §251.011; 25 TAC §117.42 (relating to Patient Rights);

(xv) Special care facilities (AIDS): 25 TAC §125.33 (relating to Resident Rights);

(xvi) Private psychiatric hospitals and crisis stabilization units: Texas Health and Safety Code §577.013; 25 TAC Chapter 134 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);

(xvii) Birthing centers: 25 TAC §137.53 (relating to Clinical Records);

(xviii) Applicable health professions regulated by 25 TAC Chapter 140 (relating to Health Professions Regulation) confidentiality requirements under 25 TAC Chapter 140 or other applicable law for, such as:

(I) licensed chemical dependency counselors and treatment facilities, Texas Occupations Code §504.251; 25 TAC §140.424 (relating to Standards for Private Practice); Texas Health and Safety Code, Chapter 464; 25 TAC Chapter 448 (relating to Standard of Care);

(II) medical radiologic technologists, 25 TAC §140.514 (relating to Disciplinary Actions);

(III) dyslexia therapists and dyslexia practitioners, 25 TAC §140.586 (relating to Code of Ethics; Duties and Responsibilities of License Holders); and

(IV) promotores or community health workers: 25 TAC §146.11 (relating to Professional and Ethical Standards); and

(C) requirements applicable to data about the following specific types of individuals:

(i) Minors: Texas Family Code §§32.003, 32.004, 151.003, 153.073, 153.074, and 153.132; Texas Occupations Code §159.005; Texas Civil Practice and Remedies Code §129.001;

(ii) Children with Special Health Care Needs Services Program: 25 TAC §38.5 (relating to Rights and Responsibilities of a Client's Parents, Foster Parents, Guardian, or Managing Conservator, or an Adult Client); and

(iii) Early and Periodic Screening, Diagnosis, and Treatment: 25 TAC §33.30 (relating to Confidentiality of Records).

(b) These standards do not apply to de-identified information.

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 October 1, 2012.

TRD-201205166

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 11, 2012

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



## TITLE 4. AGRICULTURE

## PART 2. TEXAS ANIMAL HEALTH COMMISSION

### CHAPTER 33. FEES

#### 4 TAC §33.2

The Texas Animal Health Commission (commission) proposes new §33.2, Certificate of Veterinary Inspection, in Chapter 33 which is entitled "Fees".

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously repeals §59.11. The rule is repealed because the subject matter is moved to §33.2 as it is better located within the fee chapter. The Certificate of Veterinary Inspection fee process, structure or amount are not changing.

#### FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for local or state government as a result of enforcing or administering the rule. The proposed new rule and any resultant increase in revenue will support existing disease programs administered by the commission.

#### PUBLIC BENEFIT NOTE

Mr. Chadli has also 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 that it is located in the same chapter with other fees.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

#### STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Under §161.060, the commission may charge a fee, as provided by commission rule, for an inspection made by the commission. During the 82nd Texas Legislative Session, House Bill 1992 was passed which provides the commission with broader based fee assessment authority. HB 1992 amends §161.060 which will allow the commission to set and collect a fee for most services provided, including: 1) inspecting animals or facilities; 2) obtaining samples from animals for disease diagnostic test; 3) testing

animals for disease; 4) disease prevention, control/eradication and treatment efforts; 5) services related to the transport of livestock; 6) control and eradication of ticks and other pests; and 7) any other service for which the commission may incur a cost.

Section 161.0601 authorizes the commission through rulemaking to issue and to set the fee for a certificate of veterinary inspection for the transport of domestic and exotic livestock and fowl. Furthermore, the commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054.

The new rule affects Texas Administrative Code, Title 4, Chapter 59.

#### §33.2. Certificate of Veterinary Inspection.

(a) All veterinarians, licensed and accredited in Texas, that utilize a Certificate of Veterinary Inspection (CVI) for livestock, exotic livestock or domestic fowl shall use a current CVI issued by the Commission on or after September 1, 2005. All certificates printed and issued prior to September 1, 2005, will be null and void for issuance after October 31, 2005.

(b) The Commission shall assess a fee of \$7.00 for each individual CVI. CVIs will be sold in books of ten certificates per book.

(c) The CVI may be obtained from the Commission through a written request, accompanied by a check or money order, for the full amount to cover the requested number of CVIs. The written request shall be sent to Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966. When established, the Commission may also accept phone orders paid for by an accepted credit card. Phone orders may be made by calling 1-800-550-8242.

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

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

TRD-201205141

Gene Snelson  
General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 719-0724



## CHAPTER 35. BRUCELLOSIS

## SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

### 4 TAC §35.4

The Texas Animal Health Commission (commission) proposes amendments to §35.4, concerning Entry, Movement, and Change of Ownership. The purpose of the amendment is to add an exception to the identification requirement for adult cattle going to slaughter.

The commission recently adopted identification requirements that all sexually intact cattle that are parturient or post parturient or 18 months of age and older, changing ownership within Texas, shall be officially identified with commission-approved permanent identification. The commission is considering an exception to this requirement. Basically, commission personnel may exempt from the permanent identification requirement beef cattle presented for sale at a livestock market if, upon consultation with market ownership or management, it is determined that the animal's physical condition makes the handling required to apply permanent identification unsafe or injurious in nature. Also, beef cattle exempted from the permanent identification requirement under this subsection must be sold and consigned to a state or federally approved slaughter establishment and movement may be permitted by commission representatives.

#### FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule.

#### PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that for each year of the first five years the rule is in effect, the public benefit will be that cattle producers will not have to officially identify beef cattle if it would injure the animals in doing so.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendment is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7 and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

#### STATUTORY AUTHORITY

The amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the re-

quirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. That subsection also provides that the commission also is authorized to adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Section 161.056 provides that in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, the commission may develop and implement an animal identification program that is consistent with the United States Department of Agriculture's National Animal Identification System. Also, subsection (c) provides that the commission may require the use of official identification numbers assigned as part of the animal identification program for animal disease control, animal emergency management, and other commission programs.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Chapter 163 has statutory authority for Brucellosis control. Section 163.002 provides that in order to bring about effective control of bovine brucellosis, to allow Texas cattle to move in interstate and international commerce with the fewest possible restrictions, and to accomplish those purposes in the most effective, practical, and expeditious manner, the commission may enforce this chapter and enter into cooperative agreements with the United States Department of Agriculture.

As a control measure, the commission by rule may regulate the movement of cattle. The commission may restrict the intrastate movement of cattle even though the movement of the cattle is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another procedure that is epidemiologically sound before or following the movement of cattle. This is found in §163.066.

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

§35.4. *Entry, Movement, and Change of Ownership.*

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note:

Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. Sexually intact cattle must obtain an "E" permit from the Texas Animal Health Commission prior to moving to a destination in Texas other than direct to slaughter, quarantined feedlot or designated pens. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2) Branding requirements.

(A) Sexually intact cattle destined for a quarantined feedlot or designated pen must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen.

(B) Spayed heifers shall be identified by branding prior to entry as specified in §35.1 of this title (relating to Definitions).

(3) Vaccination requirement. Nonvaccinated sexually intact female cattle between four and 12 months of age entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be placed under quarantine on arrival and officially brucellosis vaccinated as outlined in §35.2(m) of this title (relating to General Requirements). The quarantine may be released after meeting test requirements.

(4) Testing requirements for bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. Bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine and retested 120 to 180 days after arrival. The quarantine will be released following a negative brucellosis test.

(5) Testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. All sexually intact female cattle entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine on arrival and retested for brucellosis in no less than 120 days nor more than 180 days after arrival for release of the quarantine; however, if the sexually intact female cattle have not had their first calf prior to the 120 to 180 day post entry test, the quarantine will not be released until a second negative test for brucellosis is conducted no sooner than 30 days after the animal has had its first calf and the second negative test has been confirmed.

(6) Testing requirements for sexually intact cattle moving directly to a quarantined feedlot or designated pen. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot or designated pen must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen, and may move to the quarantined feedlot or designated pen only in sealed trucks with a VS 1-27 permit issued by a representative of TAHC or USDA.

(7) Responsibility for costs. All costs of calfhood vaccination, testing, and retesting shall be borne by the owner.

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All non vaccinated female cattle between four and 12 months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements are:

(A) Female cattle entering for purposes of shows, fairs and exhibitions and returning to their original location.

(B) Female cattle moving within commuter herds.

(C) Spayed heifers.

(D) Female cattle from free states.

(E) Female cattle from other than free states shall be vaccinated as follows:

(i) Entering from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, a feedlot for feeding for slaughter, or direct to slaughter. These cattle may be vaccinated at the market at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(ii) Entering from an out-of-state livestock market to a Texas livestock market, a feedlot for feeding for slaughter or direct to slaughter will be accompanied by an "S" brand permit or certificate of veterinary inspection. Individual identification is not required. These cattle may be vaccinated at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter, or direct to slaughter, and accompanied by an "S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(iii) Entering from any out-of-state location and destined for a Texas premise may enter on a calfhood vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.

(2) Testing. All non-quarantined cattle that are parturient or post parturient or that are 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers entering Texas:

(A) shall be moved directly from:

(i) a class free state or area; or

(ii) a certified free herd; or

(iii) a commuter herd as defined in these sections; or

(B) Cattle not from class free states or areas, certified brucellosis free herds, or commuter herds shall be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit, or moved directly from a farm of origin to a USDA specifically approved livestock market to be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter accompanied with an "S" permit; or

(C) shall be tested negative one or more times as described in this subparagraph:

(i) cattle from a Class "A" state or area shall:

(I) be tested negative within 30 days prior to entry; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test prior to sale;

(ii) cattle from a class "B" state or area shall:

(I) be tested negative within 30 days prior to entry, accompanied with an "E" permit, and held under quarantine for a negative retest 45-120 days at a farm, ranch, or feedlot; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test and held under quarantine for a negative retest 45-120 days after sale to a farm, ranch, or feedlot.

(c) Change of ownership within Texas.

(1) Vaccination. It is recommended that all female cattle between four and 12 months of age being purchased or sold for use in grazing, breeding, or dairying operations be officially vaccinated.

(2) Identification. All cattle that are parturient or post parturient or 18 months of age and older except steers and spayed heifers changing ownership within Texas shall be officially identified with an official eartag or other form of official permanent identification as approved by the Commission except: [-]

(A) Commission personnel may exempt from the permanent identification requirement beef cattle presented for sale at a livestock market if, upon consultation with market ownership or management, it is determined that the animal's physical condition makes the handling required to apply permanent identification unsafe or injurious in nature.

(B) Beef cattle exempted from the permanent identification requirement under this subsection must be sold and consigned to a state or federally approved slaughter establishment and movement may be permitted by Commission representatives.

(d) Movement to Mexico. All cattle 18 months of age and older except steers and spayed heifers must be tested negative within 120 days prior to export to Mexico for slaughter. Steers, spayed heifers, and feedlot finished bulls and heifers are not required to be tested prior to export. Test results must be recorded on the Certificate of Veterinary Inspection.

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

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 719-0724



## CHAPTER 38. TRICHOMONIASIS

### 4 TAC §§38.1 - 38.4, 38.6

The Texas Animal Health Commission (commission) proposes amendments to §38.1, concerning Definitions, §38.2, concerning General Requirements, §38.3, concerning Infected Bulls and Herds, §38.4, concerning Certified Veterinary Practitioners, and §38.6, concerning Official Trichomoniasis Tests. The amendments are for the purpose of making changes to the Trichomoniasis control program based on recommendations made by the Trichomoniasis Working Group (TWG), which met on May 15, 2012.

Bovine Trichomoniasis (aka Trichomonosis or Trich) is a venereal disease of cattle caused by the protozoa *Trichomonas foetus*. The organism lives in the folds of the prepuce and internal sheath in bulls and colonizes the vagina, cervix, uterus and oviducts of cows. It causes abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after two to three heat cycles. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts) creating a more favorable environment for Trich.

Certain herd management practices are risk factors for infection; commingled grazing or fence-line contact with other herds is one documented risk factor. Control of *T. foetus* in an infected herd includes testing bulls and culling those infected. Although use of younger bulls has been recommended as a control strategy because they have a lower prevalence of infection than older bulls, such use will not eliminate the possibility of infection. Artificial insemination is considered the classic method for controlling venereal diseases of cattle. However, this is often impractical in range cattle operations due to lack of facilities, expertise or management practices. Additionally, annual pregnancy testing and culling of non-pregnant cows can help control herd infection. Also, vaccination of females can decrease duration and severity of infection. If exposure to other risk factors cannot be avoided, vaccination is believed to help reduce economic loss.

The TWG discussed requiring the testing of all bulls in a herd when a cow has been diagnosed positive. The TWG did agree that if a laboratory diagnosis has been made on a cow, fetus or bull, that all bulls in that herd should be placed under quarantine and tested for Trich. The TWG did not want to address a female management program at this time, but if a positive test on routine laboratory screening did show a positive Trich cow in a herd, then all bulls in that herd must test negative for Trich as per existing rule before the herd can be released from quarantine.

The TWG also discussed the maximum transport time for samples--is 96 hours still valid with 48-hour incubation? Does Texas Veterinary Medicine Diagnostic Lab (TVMDL) also incubate samples for 48 hours even if private veterinarians incubate samples for 48 hours before sending them to the lab for testing? For example, if a vet obtains blood samples on a Friday, incubates over the weekend, and then sends to the lab, does TVMDL incubate for an additional 48 hours before running test? After consultation with TVMDL staff, the commission will extend the maximum shipping time for private vets to 120 hours provided that they indicate on the test chart that the sample has been incubated as per specifications prior to shipping.

The group also recommended allowing laboratory pooled samples for change of ownership and allowing laboratory pooled samples for both releasing tests from quarantine, instead of just one of the tests as it is now.

The group agreed to two of the proposals regarding Trich feeding facility issues. The first was to allow untested bulls permitted originally to the feeding facility to return to a market for sale to slaughter or to allow bulls to return to a market for a test. All untested bulls will be permitted in and out of feeding facilities whether headed direct to slaughter or back to a market. Also, allowing untested bulls that entered a feeding facility on a permit to later be tested at the facility and sold by private treaty or return to market as tested was not approved by the group.

Section 38.1 is entitled "Definitions" and adds a definition for Official Laboratory Pooled Trichomoniasis test samples.

Section 38.2 is entitled "General Requirements" and provides for another authorized type of movement for untested bulls. Under §38.2(d), an exemption now provides that they may be sold for movement to an approved feedlot and then moved to slaughter or transported back to a livestock market under permit, issued by commission personnel, to be sold in accordance with this chapter.

Section 38.3 is entitled "Infected Bulls and Herds" and creates a requirement that when Trich is diagnosed in female cattle or fetal tissue, then all breeding bulls associated with the herd will be restricted under a Hold Order for testing in accordance with this subsection. The title of the section is also being changed to "Infected Herds".

Section 38.4 is entitled "Certified Veterinary Practitioners" and provides that certified veterinarians shall submit all Trich samples to the TVMDL in accordance with §38.6 of this chapter.

Section 38.6 is entitled "Official Trichomoniasis Tests" and is being amended to allow arrival of the sample at the laboratory within 120 hours instead of 96 hours if the sample is incubated by the collecting veterinarian for 48 hours after collection. An additional change to this section provides that Trich samples pooled at the laboratory may qualify as official tests at a ratio of up to five individually collected samples pooled for one test.

#### FISCAL NOTE

Mr. Sami Chadli, Director for Administration and Finance, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact on cattle breeders or raisers. The purpose of the rules is to determine whether or not an infected animal exists in a herd. If an undisclosed Trich bull is discovered in a herd, then they will be spreading the disease and infecting other animals in the herd. Also, if these undisclosed animals are infected and sold they will spread the disease to other herds and animals. The purpose of the rules is to control and prevent the spread of the disease which protects the Texas cattle industry. For these reasons, the commission has determined that there is not an adverse impact on these cattle raisers and breeders and there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

#### PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that for each year of the first five years the rules are in effect, the public benefit to individuals is limited to ensuring that the health status of these animals is known which protects the livestock industry in this state.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendments will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

#### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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

#### §38.1. Definitions.

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

(1) Accredited Veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Affected Herd--Any herd in which any cattle have been classified as *Trichostrongylus axei* positive on an official test and which has not completed the requirements for elimination of the disease from the herd.

(3) Cattle--All dairy and beef animals (genus *Bos*) and bison (genus *Bison*).

(4) Certified Veterinarians--Veterinarians certified with, and approved by the Commission to collect Trichomoniasis samples for official Trichomoniasis testing and to perform any other official function under the Trichomoniasis program.

(5) Commission--The Texas Animal Health Commission.

(6) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(7) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered incapable of intromission at a facility recognized by the TAHC.

(8) Exposed Cattle--Cattle that are part of an affected herd or cattle that have been in contact with Trichomoniasis infected cattle.

(9) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Approved feedlots and approved pastures are not considered to be herds.

(10) Herd Test--An official test of all non-virgin bulls in a herd.

(11) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(12) Infected Cattle--Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected.

(13) Infected Herd--The non-virgin bulls in any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected.

(14) Movement Permit--Authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals

to a location where the animals will be held under hold order until testing has been accomplished.

(15) [(14)] Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the Commission to restrict the movement of livestock or exotic livestock.

(16) [(15)] Negative--Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis.

(17) [(16)] Official Identification/Officially Identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of APHIS that provides unique identification for each animal. Official identification included USDA alpha-numeric metal eartags (silver bangs tags), 840 RFID tags, 840 bangle tags, official breed registry tattoos, official breed registry individual animal brands, and official Trich tags issued by the animal health official of the state of origin of imported bulls.

(18) [(17)] Official Trichomoniasis test--A test for bovine Trichomoniasis, approved by the Commission, applied and reported by TVMDL or any other laboratory classified as an official laboratory by the Commission. The test document is valid for 60 [sixty (60)] days and may be transferred within that timeframe with an original signature of the consignor.

(19) Official Laboratory Pooled Trichomoniasis test samples--Up to five samples individually collected by a veterinarian and packaged and submitted to an official laboratory which can then pool the samples.

(20) [(18)] Positive--Cattle that have been tested with official test procedures and found to be infected with Trichomoniasis.

[(19) Permit (VS 1-27)--A premovement authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals to a location where the animals will be held under hold order until testing has been accomplished.]

(21) [(20)] Quarantine--A written Commission document or a verbal order followed by a written order restricting movement of animals because of the existence of or exposure to Trichomoniasis. The Commission may establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may establish a quarantine to prohibit or regulate the movement of any article or animal that the commission designates to be a carrier of Trichomoniasis and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(22) [(21)] Test-Eligible Cattle--All sexually intact non-virgin male cattle and all sexually intact male cattle which have erupted or erupted permanent incisor teeth (or older), which are being [imported into the state of Texas or is being] sold, leased, gifted or exchanged in the state of Texas for breeding purposes.

(23) [(22)] Trichomoniasis--A venereal disease of cattle caused by the organism *Trichostrongylus axei*.

(24) [(23)] TVMDL--The official laboratory for testing is the Texas Veterinary Medical Diagnostic Laboratory.

(25) [(24)] Virgin Bull--Sexually intact male cattle which have not serviced a cow and which are not more than 24 months of age as determined by the presence of the two permanent central incisors in



wear or birth date on breed registry papers certified by the breeder; or not more than 30 months of age and certified by both the breeder based on birth date and confirmed by his veterinarian that the bull facility is sufficient to prevent contact with female cattle. The certification by the breeder is valid for 60 [sixty (60)] days and may be transferred within that timeframe with an original signature of the consignor.

### §38.2. General Requirements.

(a) Test Requirements: All Texas origin bulls sold, leased, gifted, exchanged or otherwise change possession for breeding purposes in the State of Texas shall meet the following testing or certification requirements prior to sale or change of ownership in the state:

(1) Be certified as virgin, by the breeder or his representative, on and accompanied by a breeder's certificate of virgin status; or

(2) If from a herd of unknown status (a herd that has not had a whole herd test), be tested negative on three consecutive culture tests conducted not less than seven [(7)] days apart or one RT-PCR test conducted within 60 days of sale or movement, be held separate from all female cattle since the test sample was collected, and be accompanied by a Trich test record showing the negative test results.

(b) Identification of Bulls: All bulls certified as virgin bulls shall be identified by an official identification device or method on the breeder's certification of virgin status. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. Official identification includes: Official Alpha-numerical USDA metal ear tags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands. That identification shall be recorded on the test documents prior to submittal.

(c) Confirmatory Test: The owner of any bull which tests positive for Trichomoniasis may request in writing, within five [(5)] days of the positive test, that the Commission allow a confirmatory test be performed on the positive bull. If the confirmatory test is positive the bull will be classified as infected with Trichomoniasis. If the confirmatory test is negative the bull shall be retested in not less than seven days to determine its disease status. If the confirmatory test reveals that the bull is only infected with fecal trichomonads, the test may be considered negative.

(d) Untested Bulls: Bulls presented for sale without a breeder's certification of virgin status or a Trich test record showing negative test results may:

(1) Be sold for movement only directly to slaughter; or

(2) Sold for movement to an approved [a] feedlot and then moved to slaughter or transported back to a livestock market under permit, issued by Commission personnel, to be sold in accordance with this chapter; or

(3) Be sold and moved under a Hold Order to such place as specified by the Commission for testing to change status from a slaughter bull to a breeding bull. Such bulls shall be officially individually identified with a permanent form of identification prior to movement, move to the designated location on a movement [VS 4-27] permit, be held in isolation from female cattle at the designated location for not less than 21 days where the bull shall undergo three culture tests or for not less than seven [7] days where the bull shall undergo one RT-PCR test. If the results of any test are positive the bull shall be classified as infected and be permitted for movement only directly to slaughter or to a market for sale directly to slaughter.

### §38.3. Infected [Bulls and] Herds.

(a) Bulls that have been determined to be infected by culture or by RT-PCR test and/or by confirmatory RT-PCR test shall be placed under hold order along with all other non-virgin bulls in the bull herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition or as directed by the Commission. Breeding bulls which have been disclosed as reactors may be retested provided: the owners, or their agents initiate a request to the TAHC Regional Director where the bull is located; that retests are conducted within 30 days after the date of the original test; test samples for retests are submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing; and the positive bull is held under quarantine along with all other exposed bulls on the premise. If they are retested, they must have two negative tests by PCR to be released within 30 days of the initial test.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a [VS 4-27] movement permit authorized by the Commission from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results) or as directed by the Commission.

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional culture tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests) within 60 days of the initial test unless handled in accordance with subsection (d) of this section. All bulls remaining in the herd from which an infected bull(s) has been identified would have to be tested two more times by culture or one more time by RT-PCR test. Any bull positive on the second or third test would be classified as positive. All bulls negative to all three culture tests or both RT-PCR tests would be classified as negative and could be released for breeding.

(d) A quarantined herd with breeding bulls that tested negative on the initial test may be maintained with the herd if they develop a Trichomoniasis herd control plan, with the herd owner and their private veterinarian, that will address herd management practices to address this disease and have all breeding bulls tested annually. This will only be authorized for a maximum of three [(3)] years, then all exposed bulls shall be tested in accordance with this section.

(e) When diagnosed in female cattle or fetal tissue, then all breeding bulls associated with the herd will be restricted under a Hold Order for testing in accordance with this section.

### §38.4. Certified Veterinary Practitioners.

(a) Only veterinarians certified through the Commission may perform Trichomoniasis program procedures, including but not limited to, collection of samples for official tests for Trichomoniasis within the state of Texas, submission of samples to official laboratories, identification of tested bulls and virgin bulls, management of Trichomoniasis infected bull herds, movement of infected bulls, and reporting of test results. In order to collect and submit Trichomoniasis samples a veterinary practitioner shall be certified to perform Trichomoniasis program procedures. In order to be certified, a veterinarian shall also be licensed to practice veterinary medicine in the state of Texas and be accredited through USDA.

(b) All veterinarians desiring to perform Trichomoniasis program functions shall participate in a certification program on Trichomoniasis program requirements and procedures before performing any Trichomoniasis program functions, including but not limited to review of the disease, proper sample collection techniques, sample preser-

vation and laboratory submission, identification of animals, management of infected herds and shipment of infected or exposed animals to slaughter. The official certification program shall be conducted by or under the auspices of the Commission. Certified veterinarians shall be recertified every three years.

(c) Certified veterinarians shall utilize approved procedures for collection of samples, identification of animals and submission of samples to laboratories.

(d) Certified veterinarians shall only utilize the official laboratories for culture of Trichomoniasis samples.

(e) Certified veterinarians shall submit all Trichomoniasis samples including all official identification on official Trichomoniasis test and report forms to the TVMDL in accordance with §38.6 of this chapter (relating to Official Trichomoniasis Tests). [within the following time lines: Samples submitted for culture tests shall be submitted to arrive at the laboratory within forty-eight hours of collection of the samples. Samples submitted for RT-PCR tests shall be submitted to arrive at the laboratory within 48 hours of collection or be incubated by the collecting veterinarian for 48 hours, then be submitted to arrive at the laboratory within 96 hours of collection.]

#### §38.6. Official Trichomoniasis Tests.

Approved Tests. Approved tests for Trichomoniasis [trichomoniasis] testing within the State of Texas shall include the culture or Real Time Polymerase Chain Reaction (RT-PCR) testing of samples collected into an InPouch by certified veterinarians following approved collection, handling and shipping protocols, then tested in approved laboratories.

(1) Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, within 48 [forty-eight (48)] hours of collection and such sample is tested according to the "Official Protocol for Culture of Trichomoniasis." Samples in transit for more than 48 [forty-eight (48)] hours will not be accepted for official culture testing. During transportation, the organisms should be protected from exposure to daylight and extremes of temperature, which should remain above 15 degrees Celsius (59 degrees Fahrenheit) and below 37 degrees Celsius (98.6 degrees Fahrenheit).

(2) Official Polymerase Chain Reaction Tests. Polymerase Chain Reaction is accepted as an official test or an official confirmatory test when completed by a qualified laboratory, approved by the Executive Director, and the sample is received in good condition by the laboratory within 48 [forty-eight (48)] hours after collection, or is incubated by the collecting veterinarian for 48 hours after collection, then submitted to arrive at the laboratory within 120 [96] hours of collection. Trichomoniasis samples pooled at the laboratory may qualify as [the] official tests at a ratio of up to five individually collected samples pooled for one test [for one of the two tests required to release the quarantine if approved by the TAHC Regional Office where the animals are located]. Veterinary practitioners may not submit pooled samples for an official [either releasing] test.

(3) Other Official Tests. Other tests for Trichomoniasis may be approved by the Commission, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

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

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0724



## CHAPTER 40. CHRONIC WASTING DISEASE

### 4 TAC §§40.1 - 40.3, 40.5, 40.7

The Texas Animal Health Commission (commission) proposes amendments to §40.1, concerning Definitions, §40.2 concerning General Requirements, §40.3, concerning Herd Status Plans for Cervidae, and §40.5, concerning Testing Requirements for Elk, and new §40.7, Executive Director Declaration of a CWD Movement Restriction Zone. The proposed amendments and new rule are for the purpose of revising a number of the current requirements to address a variety of recent actions involving CWD.

The commission currently provides a voluntary herd monitored status program for species that are susceptible to CWD. Currently, all breeders of white-tailed deer, through the direction of the Texas Parks and Wildlife Department (TPWD), participate in a CWD monitoring program through either TPWD or the commission. The commission is proposing to require additional cervid species to participate in surveillance for CWD. There have recently been two different CWD actions which greatly affected Texas. The TPWD recently harvested mule deer for CWD surveillance testing with the disclosure of two positive animals in Texas. The commission acted on recommendations on a strategy to address the risk of exposure of CWD to susceptible species in Texas. The recommendations led to the creation of CWD Movement Restriction Zone(s) with restrictions put in place to protect against the exposure and spread of CWD into additional regions of Texas. These actions are being taken in a coordinated effort by both TPWD and the commission.

Also, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) recently announced an interim final rule to establish a national CWD Herd Certification Program and minimum requirements for interstate movement of deer, elk and moose, or cervids, in the United States. Participation in the program will be voluntary. The interim final rule amends the USDA's 2006 final rule which was never put into effect. The amendments to their CWD rule are intended to help control the spread of this disease by establishing acceptable program standards for interstate movement. The federal CWD Herd Certification Program is found in 9 CFR Subchapter B, Part 55.

Also, the commission announced in June that red deer (*Cervus elaphus*) and Sika deer (*Cervus Nippon*) must meet the same entry requirements as other cervid species regulated by the agency such as elk and moose because they were "susceptible species" for CWD. The new entry rules for red deer and Sika deer require that they originate from herds with at least five years of participation in an approved CWD monitoring program.

The agency decision was based in part on the disclosure that a farmed red deer herd in Minnesota was confirmed positive for CWD in May of this year. Furthermore, the USDA released an interim final CWD rule on June 8, 2012, which designates Sika deer and red deer as susceptible species. The USDA rule is intended to establish minimum requirements for interstate movement of deer, elk, moose, and other susceptible cervids and to

also establish a national CWD certification program. Based on the inclusion of red deer and Sika deer as susceptible species, the commission is also changing §40.5 entitled "Testing Requirements for Elk". This section is being renamed "Requirements for CWD Susceptible Species" in order to be applicable to all cervid species known to be susceptible to CWD.

In §40.1, entitled "Definitions", the commission is amending or adding definitions that will be used in the various other CWD sections. The commission is adding definitions for Approved Laboratory, Certified CWD Sample Collector, CWD Susceptible Species, CWD Test Eligible, Commingled/Commingling, Farmed or Captive, Limited Contact, Official Animal Identification, and Physical Herd Inventory. The commission is amending the definitions for Chronic Wasting Disease (CWD), CWD Profile, Herd, Official Eartag, Positive Herd, and Trace Herd.

In §40.2, entitled "General Requirements", the standard for restricting animals that are classified as trace-backs in response to the new federal standards is being amended. It is being changed from the current standard of 48 months to 60 months.

In §40.3, entitled "Herd Status Plans for Cervidae", subsection (a) provides the enrollment requirements and stipulates that herd owners who enroll must agree to maintain their herds in accordance with these requirements. Subsection (b) provides the testing requirements. Subsection (c) establishes the various levels within the herd status program. Subsection (d) provides identification requirements and that each animal required to be identified by this section must have at least two forms of animal identification attached to the animal. Subsection (e) provides the record keeping requirements that the herd owner shall maintain records for animals, including any movements and transfers of ownership, and provide those to commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years. The records shall include the following information: all identifications (tags, tattoos, electronic implants, etc.), birth date, species, sex, date of acquisition, and source of each animal that was not born into the herd (owner name, city, state), date of removal and destination of any animal removed from herd (owner name, city, state), date and cause of death for animals dying within the herd (if cause is known), date of CWD sample submission, submitter, owner, premises, and animal information, and official CWD test results from approved laboratory. Subsection (f) provides that a premise where a herd is located may be inspected by the commission to determine compliance with the requirements. Subsection (g) requires that a fee be paid for participation in a commission CWD Herd Status Program for Cervidae as provided for in §33.5, entitled "Herd Status/Certification Fees". An annual inventory verified by commission personnel is assessed a fee of \$100.00 per hour. Subsection (i) provides for cancellation or suspension of enrollment by the Executive Director.

In §40.5, subsection (a) is being changed to add definitions which are specific for this section. The rule is then amended throughout to indicate that the requirements are applicable to include North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and native species under the jurisdiction of TPWD are excluded from this definition.

Section 40.7 is a new rule which will delegate authority to the Executive Director to issue an order to declare a CWD high risk area or county based on sound epidemiological principles for disease detection, control, and eradication. Subsection (a) outlines

the definitions and subsection (b) provides that the Executive Director may issue an order to declare a CWD high risk area or county. The epidemiological criteria used for designating an area or county as high risk may include the presence of disease, multiple positive animals in the area, and common husbandry and animal use practices that could lead to disease exposure. Subsection (c) indicates the necessary elements for an order and subsection (d) provides for the publication of notice.

#### FISCAL NOTE

Mr. Sami Chadli, Director for Administration and Finance, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules because the commission will use already appropriated resources to service these programs and the fees that will be assessed for participation in the herd certification program or for inspection of a herd inventory. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on micro businesses. The agency has evaluated the requirements and determined that there is an economic impact because the program's certification and participation standards do create a cost to comply, but it also provides a benefit to program participants. The purpose of the program is to provide standards and quality assurance that animals moving interstate, as well as intrastate, have been monitored and can be deemed low risk for having CWD. Movement of animals creates a higher risk of exposure and transmission of a disease and therefore merits required participation in a surveillance program because of the serious negative impact to the affected industries in the state, as well as to any area where CWD is disclosed. The participation of CWD susceptible species is to provide surveillance for the disease and traceability of exposed cervids should infection be disclosed. This program also equitably mirrors a surveillance program for white-tailed deer, as all white-tailed deer breeder facilities within the state, at the direction of TPWD, participate in a CWD monitoring program through either TPWD or the commission. The purpose of the rules is to protect a very valuable resource in wildlife cervids, as well as those under private ownership. The impact of CWD infection in herds in the state will greatly reduce the value of the animals causing a much greater adverse economic impact to these industries and resources than the cost of program participation.

#### PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the commission has a herd monitored program that can meet the new federal interstate movement requirements. Exotic livestock that are included as susceptible species are required to participate in a stronger surveillance system in order to create a surveillance safety net to prevent the spread of CWD to another part of the state or to other cervids. The delegation to the Executive Director to designate high risk areas will improve the commission's ability to quickly respond and control disease issues related to cervids.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendments will not impact local economies.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

#### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Texas Agriculture Code §161.0541 entitled Elk Disease Surveillance Program. The section provides that the commission by rule may establish a disease surveillance program for elk. Rules adopted under this section must: (1) require each person who moves elk in this state to have elk tested for chronic wasting disease or other diseases as determined by the commission; (2) be designed to protect the health of the elk population in this state; and (3) include provisions for testing, identification, transportation, and inspection under the disease surveillance program. The section also provides that a person commits an offense if the person knowingly violates a rule adopted by the commission under this section. Also, an offense under subsection (c) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

The commission is also vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

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

#### §40.1. Definitions.

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

(1) Approved Laboratory--A diagnostic laboratory approved by the APHIS Administrator to conduct official tests for CWD in accordance with 9 CFR §55.8.

(2) Certified CWD Sample Collector--An individual who has completed appropriate training recognized by his or her State on the collection and preservation of samples for CWD testing and on proper recordkeeping, and who has been certified to perform these activities by the Commission.

(3) [(4)] Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy (TSE) of susceptible species [deer and elk].

(4) Commingled/Commingling--Farmed cervids are commingled if they are housed or penned together having direct physical contact with each other, have less than 10 feet of physical separation (except in cases of "limited contact"; see definition) or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, or sharing equipment, pens or stalls, pasture, or water sources/watershed (i.e., housed in a pen that receives runoff or shares a natural or manmade body of water with another pen). Commingling includes contact with bodily fluids or excrement from other farmed animals. Farmed cervids commingled with other farmed cervids assume the status of the lowest program status animal in the group.

[(2)] CWD Profile--A deer or elk 16 months of age or older that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.]

(5) [(3)] Commission--The Texas Animal Health Commission.

(6) CWD Exposed Animal--An animal that is part of a CWD-positive herd, or that has been commingled with a CWD-positive animal or resided on contaminated premises within the five years before diagnosis.

(7) CWD Profile--A cervid 12 months of age or older that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

(8) CWD Susceptible Species--All species in the cervidae family determined to be susceptible to CWD, which means any species that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS. This includes white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus columbianus*), North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids.

(9) CWD Test Eligible--Unless otherwise specifically provided in these rules, all cervidae 12 months of age and over.

(10) Farmed or Captive--Privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined area, or temporarily captured from a wild population for interstate movement and release.

(11) Herd--An animal or group of animals that are:

(A) Under common ownership, control, or supervision and are grouped on one or more parts of any single premises (lot, farm, or ranch) where commingling of animals occurs; or

(B) A single herd also is considered to be all animals under common ownership, control, or supervision on two or more premises which are geographically separated but on which animals have been commingled or had direct contact with one another. If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. Herds must be separated by a distance of 30 feet or more. No commingling of animals may occur. If movement of animals does occur between herds, this movement must be recorded as it would if they were separately owned herds.

(12) Limited Contact--Any brief contact with a farmed animal such as in sale or show rings and alleyways at fairs, livestock auctions, sales, shows, and exhibitions. Limited contact does not include penned animals having less than ten feet of physical separation or contact through a fence, or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, sharing equipment, food, or water sources, or contact with bodily fluids or excrement. Pens at fairs, livestock auctions, sales, shows, and exhibitions must be thoroughly cleaned and all organic material removed after use and before holding another animal.

(13) Official Animal Identification--A device or means of animal identification approved by APHIS for use in the Certification Program to uniquely identify individual animals. The official animal identification must include a nationally unique animal identification number that adheres to one of the following numbering systems:

(A) National Uniform Eartagging System;

(B) Animal Identification Number (AIN);

(C) Premises-based number system using a Premises Identification Number (PIN) in conjunction with a livestock production numbering system; or

(D) Any other numbering system approved by the Commission for the identification of animals in commerce.

(14) Physical Herd Inventory--One in which all animals in the herd must be restrained and individual identification recorded must be validated by the person officially performing the inventory verification.

{(4) Herd--A group of deer or elk maintained on common ground, or two or more groups of deer or elk under common owner-

ship or supervision that are geographically separated but can have an interchange or movement without regard to health status.}

{(5) High Risk Animal--A deer or elk which has had direct contact with an animal which has been confirmed to be affected with CWD. In herds with evidence of transmission, as determined by an epidemiological investigation, high risk animals include all animals that have had contact with the affected animal(s) at any time during a 12 month period preceding the initial observation of clinical signs. In herds without evidence of transmission, as determined by an epidemiological investigation, high risk animals include all animals that have had contact with the affected animal at any time during a 12 month period preceding death of the affected animal.}

{(6) Official Eartag--An identification eartag that provides unique identification for each individual animal by conforming to the alphanumeric National Uniform Eartagging System.}

{(7) Official Laboratory--The National Veterinary Services Laboratory, United States Department of Agriculture, Ames, Iowa, is the reference laboratory for CWD diagnostic procedures.}

{(8) Positive Herd--A herd in which a CWD-positive animal resided at the time it was diagnosed [diagnosis of CWD has been confirmed by the National Veterinary Services Laboratory].}

{(9) Suspicious Animal--A cervid [deer or elk] which has clinical signs that [which] resemble the CWD profile.}

{(10) Suspicious Herd--A herd in which one or more animals are observed with clinical signs that [which] resemble the CWD profile.}

{(11) Trace Herd--The term includes both trace-back [traceback] and trace-forward [traceforward] herds. A trace-back [traceback] herd is any herd where an affected animal has resided during a 60 [36] month period prior to death. A trace-forward herd is any herd which has received animals from a positive herd during a 60 [30] month period prior to death of the affected animal.}

#### §40.2. General Requirements.

(a) Procedures for issuing hold orders and quarantines.

(1) All herds suspicious of CWD, in which one or more animals are observed with signs which resemble the CWD profile, shall be reported to a representative of the Commission. The herd shall be restricted by hold order until the investigation and diagnosis have been completed.

(2) Trace herds shall be restricted by hold order until an epidemiologic investigation has been completed and the herd has met all requirements specified in a herd plan.

(3) CWD positive herds shall be restricted by quarantine until the herd has met all requirements specified in a herd plan.

(4) All suspicious, trace, and positive herds not complying with the requirements of an investigation or herd plan shall be restricted by quarantine.

(b) Procedures in suspicious, trace, and positive herds.

(1) CWD suspicious animals shall be presented to a representative of the Commission for the purpose of collection and submission of appropriate samples to an official laboratory for diagnosis.

(2) Disposition of a positive herd without evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the herd owner, and their veterinarian (if requested by the owner).

The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 [+6] months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed [High risk] animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 [48] months from the last case of CWD.

(3) Disposition of a positive herd with evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 [+6] months of age or older shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed [High risk] animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 [48] months from the last case of CWD.

(E) The herd shall remain under quarantine for 60 [36] months from the last case of CWD.

(4) Disposition of trace herds. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of three years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals 12 [+6] months of age or older shall be immediately reported to a TAHC or USDA veterinarian

for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed [High risk] animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 [48] months from the last potential exposure.

(c) Destruction of suspicious and CWD exposed [high risk] animals. Animals destroyed due to a presumptive diagnosis of CWD, including CWD exposed [high risk] animals in positive and trace herds, shall be humanely euthanized, appropriate samples collected to confirm the diagnosis, and disposed of by deep burial or incineration, including all animal products, by-products, and contaminated materials:

(1) on the premises where disclosed; or

(2) at a facility approved by the executive director.

(d) Payment of indemnity. The Commission may participate in paying indemnity to purchase and destroy CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the state payment for any such animals will be five [~~5~~] percent of the appraised value established in accordance with 9 CFR [~~Part 55, Section~~] §55.3. This payment is in participation with any Federal payments made in accordance with 9 CFR [~~Part 55,~~] §55.2.

#### §40.3. Herd Status Plans for Cervidae.

(a) Enrollment Requirements. Herd owners who enroll must agree to maintain their herds in accordance with the following conditions:

(1) Each animal must be identified before reaching 12 months of age. All animals less than one year of age shall be officially identified on a change of ownership or when moved from the premise of origin.

(2) Herd premises must have perimeter fencing of a minimum of eight feet in height and adequate to prevent ingress or egress of cervids.

(3) The herd owner shall:

(A) Report, within five business days, all animals that escape or disappear, and all wild cervids that enter the facility; and

(B) Test all deaths (including animals killed on premises maintained for hunting and animals sent to slaughter) aged 12 months or older, in accordance with subsection (b) of this section.

(4) An annual inventory:

(A) An annual inventory shall be verified by TAHC personnel, USDA personnel or an accredited veterinarian. If requested by a producer to verify the inventory, the Commission will assess a fee of \$100.00 per hour.

(B) The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all escaped or disappeared animals and all test results for those animals that died.

(C) For animals seeking to qualify for movement in interstate commerce, a complete physical herd inventory must be performed on at the time a herd is enrolled and a complete physical herd inventory must be performed for all herds enrolled in the CWD Herd Certification Program no more than three years after the last complete physical herd inventory for the herd.

(D) The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(5) To maintain separate herds, a herd owner shall:

(A) Maintain separate herd inventories and records;

(B) Separate working facilities;

(C) Separate water sources;

(D) Separate equipment or clean and maintain in accordance with Appendix V of the CWD Program Standards; and

(E) There shall be at least 30 feet between the perimeter fencing around separate herds, and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds.

(6) New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program. Addition of animals from a lesser status herd will result in the receiving herd's status being lowered to that of the contributing herd.

(b) Testing Requirements. CWD test samples shall be collected and submitted to an official laboratory for CWD diagnosis using a United States Department of Agriculture (USDA) validated test. Test reporting shall be directed to the appropriate TAHC Regional Office. The samples may be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Sample Collector. Tissue samples submitted must include the obex and at least one retropharyngeal lymph node from each animal being tested. If samples are missed, or poor quality samples are submitted, the state epidemiologist or his designee will review the circumstances and determine if the herd status will be advanced, held, reduced, or removed.

(c) Herd Status. Herd status designation shall be assigned on the basis of the number of years of participation provided that CWD is not confirmed in the herd:

(1) First Year - starts on enrollment when the herd is in compliance with the requirements of the CWD Herd Certification Program.

(2) Second Year - starts on the anniversary date of the first year after full completion of the requirements for first year status.

(3) Third Year - starts on the anniversary date of the second year after full completion of the requirements for second year status.

(4) Fourth Year - starts on the anniversary date of the third year after full completion of the requirements for third year status.

(5) Fifth Year - starts on the anniversary date of the fourth year after full completion of the requirements for fourth year status.

(6) Certified Status - achieved after five years participation in the program and in compliance with all the program requirements.

(7) Additions to enrolled herds.

(A) Additions may originate from herds of equal or higher status with no change in the status of the receiving herd.

(B) Additions may originate from herds of lower status with the receiving herd acquiring the lower status of the herd(s) involved.

(d) Identification Requirements. Each animal required to be identified by this section must have at least two forms of animal identification attached to the animal.

(1) One of the animal identifications must be a nationally unique animal identification number that is linked to that animal in the CWD National Database.

(2) Second identification must be unique for the individual animal within the herd and linked to the CWD National Database.

(e) Record Keeping. The herd owner shall maintain records for animals including any movements and for a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years. The records shall include the following information:

(1) All identifications (tags, tattoos electronic implants, etc.);

(2) Birth date;

(3) Species;

(4) Sex;

(5) Date of acquisition and source of each animal that was not born into the herd (owner name, city, state);

(6) Date of removal and destination of any animal removed from herd (owner name, city, state);

(7) Date and cause of death for animals dying within the herd (if cause is known); and

(8) Date of CWD sample submission, submitter, owner, premises, animal information, and official CWD test results from approved laboratory.

(f) Inspection. A premise where a herd is located may be inspected by the Commission to determine compliance with the requirements.

(g) Fees. Participation in a Commission CWD Herd Status Program for Cervidae requires that a fee be paid as provided for in §33.5 of this title (relating to Herd Status/Certification Fees). An annual inventory verified by Commission personnel is assessed a fee of \$100.00 per hour.

(h) Cancellation or suspension of enrollment by the Executive Director. The Executive Director may cancel or suspend enrollment after determining that the herd owner failed to comply with any requirements of this chapter. Before enrollment is canceled or suspended, notification will be provided which will inform the herd owner of the reasons for the action.

(1) The herd owner may appeal the cancellation of enrollment of a herd, or loss or suspension of herd status, by writing to the Executive Director within 15 days after receipt of the action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the action are incorrect or do not support the action.

(2) The herd owner may request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the action and set forth a short, plain statement of the issues that shall be the subject of the meeting, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(3) Upon receipt of a decision or order by the Executive Director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(4) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(5) If the Executive Director determines, based on epidemiological principles, that other action is necessary, the Executive Director shall provide the herd owner with written notice of the action.

[Complete Monitored Herd.]

[(1) Participating herds must have adequate perimeter fencing to prevent ingress and egress of cervids.]

[(2) Surveillance in participating herds is accomplished by collection and submission of appropriate samples from all cases of mortality in animals over 16 months of age. Exemptions are provided for animals consigned to commercial slaughter operations with state or federal meat inspection.]

[(3) An annual inventory in participating herds shall be verified by a TAHC, USDA or Accredited veterinarian. If requested by a producer to verify the inventory, the Commission hereby assesses a fee of \$100.00 per hour. All animals over one year of age shall be identified with an official eartag or other approved identification device. All animals less than one year of age shall be officially identified on a change of ownership.]

[(4) Herd status designation shall be assigned on the basis of the number of years of participation provided that CWD is not confirmed in the herd:]

[(A) Level A - One full year of participation.]

[(B) Level B - Two to three years of participation.]

[(C) Level C - Four to five years of participation.]

[(D) Level D - Six years or more of participation.]

[(5) Additions to Complete Monitored Herd.]

[(A) Additions may originate from herds of equal or higher status with no change in the status of the receiving herd.]

[(B) Additions may originate from herds of lower status with the receiving herd acquiring the lower status of the herd(s) involved.]

§40.5. Movement [Testing] Requirements for CWD Susceptible Species [Elk].

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

(1) Captive CWD Susceptible Species [elk]--Any CWD susceptible species [elk] captured or privately or publicly maintained or held within a perimeter fence or confined area that is designed to retain the CWD susceptible species [elk] under normal conditions at all times with a height of eight [seven (7)] feet or greater.

(2) CWD Susceptible Species--All cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS. This includes North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), and Sika deer (*Cervus nippon*), moose (*Alces alces*), and any associated subspecies and hybrids. All mule deer and white-tailed

deer and native species under the jurisdiction from the Texas Parks and Wildlife Department are excluded from this definition.

(3) [(2)] Free ranging CWD Susceptible Species [elk]--Any CWD susceptible species [elk] that is not captured or contained within a fence intended to retain CWD susceptible species [elk] under normal conditions at all times with a height of eight [seven (7)] feet or greater.

(4) [(3)] Premises--A physical location(s) which is contiguous, that is under common ownership or management, and represent a unique and describable geographic location.

(5) [(4)] Transport--Movement of an animal from one non-contiguous property or premises to another.

(b) Surveillance Requirements:

(1) Free ranging CWD susceptible species. [elk:] In order to transport or move free ranging live CWD susceptible species [elk] within the state the person controlling the CWD susceptible species [elk] shall have tested a CWD susceptible species [an elk], that is 12 [sixteen (16)] months of age or older and from the same population as the CWD susceptible species [elk] being moved, in accordance with the schedule in subparagraphs (A) - (D) of this paragraph. Tests are valid for one [(4)] year from date of issuance of the test results. Any CWD test results indicating "detected" means the positive CWD susceptible species [elk] shall be restricted by quarantine and handled in accordance with §40.2 of this chapter (relating to General Requirements), nor may any CWD susceptible species [elk] associated with this CWD susceptible species [elk] be moved or transported. All CWD susceptible species [elk] being transported or moved from a premise shall be individually identified in accordance with subsection (e) of this section.

(A) To authorize movement of between one [(4)] to ten CWD susceptible species [(4) elk], prior to movement, there shall be one [(4)] valid not-detected CWD test result filed prior to movement.

(B) To authorize movement of between 11 [eleven (11)] to 20 CWD susceptible species [twenty (20) elk], prior to movement, there shall be two [(2)] valid not-detected CWD tests results filed prior to movement.

(C) To authorize movement of between 21 [twenty-one (21)] to 30 CWD susceptible species [thirty (30) elk], prior to movement, there shall be three [(3)] valid not-detected CWD test results filed prior to movement.

(D) To authorize movement of more than 30 CWD susceptible species [thirty (30) elk], prior to movement, there shall be one valid not-detected CWD test result for every ten CWD susceptible species [elk] filed prior to movement.

(2) Captive CWD susceptible species. [elk:] In order to transport or move live captive CWD susceptible species [elk] within the state the person controlling the CWD susceptible species [elk] shall have tested a CWD susceptible species [an elk] that is 12 [sixteen (16)] months of age or older, within his control, in accordance with the schedule in subparagraphs (A) - (D) of this paragraph. Test results are valid for one [(4)] year from date of issuance of the test result. Any CWD test results of "detected" means all CWD susceptible species [elk] associated, and including, the positive CWD susceptible species [elk] shall be restricted by quarantine and handled in accordance with §40.2 of this chapter (relating to General Requirements). All CWD susceptible species [elk] being transported or moved from a premise shall be individually identified in accordance with subsection (e) of this section.

(A) To authorize movement of between one [(4)] to five [(5) elk], prior to movement, there shall be one [(4)] valid not-detected CWD test result filed prior to movement.



(B) To authorize movement of between six ~~[(6)]~~ to ten CWD susceptible species ~~[(10) elk]~~, prior to movement, there shall be two ~~[(2)]~~ valid not-detected CWD test results, filed prior to movement.

(C) To authorize movement of between 11 to 15 CWD susceptible species ~~[eleven (11) to fifteen (15) elk]~~, prior to movement, there shall be three ~~[(3)]~~ valid not-detected CWD test results ~~[result]~~, filed prior to movement.

(D) To authorize movement of more than 15 CWD susceptible species ~~[fifteen (15) elk]~~, prior to movement, there shall be one ~~[(1)]~~ valid not-detected CWD test result for every five CWD susceptible species ~~[(5) elk]~~, filed prior to movement.

(E) Exemptions:

(i) Captive CWD susceptible species ~~[elk]~~ enrolled with the Commission in a ~~[monitored]~~ herd certification program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae). After the date of January 1, 2011, a herd with Level "A" status or higher as established through §40.3 of this chapter, is exempted from the testing schedule provided for in subparagraphs (A) - (D) of this paragraph, but CWD susceptible species ~~[elk]~~ movement must be reported in accordance with subsection (d) of this section; or

(ii) CWD susceptible species ~~[Elk]~~ that are moved directly from the premises where they were trapped or held to a recognized slaughter facility. A recognized slaughter facility is a slaughter facility operated under the state or federal meat inspection laws and regulations.

(c) Testing Requirements.~~[:]~~ CWD test samples shall be collected and submitted to an official laboratory for CWD diagnosis using a United States Department of Agriculture (USDA) validated test. Test reporting shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species ~~[Elk Movement]~~ Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0777 or by e-mail at [comments@tahc.state.tx.us](mailto:comments@tahc.state.tx.us).

(d) Movement Reporting Requirements.~~[:]~~ A report of all CWD susceptible species ~~[elk]~~ that are moved onto or off of premises shall be submitted to the Commission, either in hard copy on forms provided or authorized by the Commission, or an electronic copy. The person moving the CWD susceptible species ~~[elk]~~ must have documentation with the CWD susceptible species ~~[elk]~~ being moved to show compliance with the requirements of this subsection. Such report shall be submitted within 48 ~~[forty-eight (48)]~~ hours of the movement. Movement reporting shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species ~~[Elk Movement]~~ Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0777; or by e-mail at [comments@tahc.state.tx.us](mailto:comments@tahc.state.tx.us). The movement report shall include the following information:

- (1) Premises of origin;
- (2) Premises of the destination;
- (3) Number of CWD susceptible species ~~[elk]~~ being moved;
- (4) Official individual identification device number;
- (5) Other official or unofficial identification numbers;
- (6) Age/Gender; and
- (7) Test results from the testing laboratory.

(e) Identification Requirements.~~[:]~~ CWD susceptible species ~~[Elk]~~ moved or transported within this state shall be identified with

an official identification device, which may include an eartag that conforms to the USDA alphanumeric national uniform ear tagging system, which is a visible and legible animal identification number (AIN) such as a Radio Frequency Identification Device (RFID) ear tag, or other identification methods approved by the Commission.

(f) Record Keeping.~~[:]~~ The buyer and seller must maintain records for all CWD susceptible species ~~[elk]~~ transported within the state or where there is a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five ~~[(5)]~~ years. The records shall include the following information:

- (1) Owner's name;
- (2) Location where the animal was sold or purchased;
- (3) Official ID and/or Ranch tag (additional field for retag);
- (4) Gender/age of animal;
- (5) Source of animal (if purchased addition);
- (6) Movement to other premises; and
- (7) Disposition.

(g) Inspection.~~[:]~~ In order to authorize movement, a premise where CWD susceptible species ~~[elk]~~ are located may be inspected by the Commission.

(h) Violations.~~[:]~~ A person commits an offense if the person knowingly violates a rule adopted by the Commission under this section.

(1) A violation of this section is a Class C misdemeanor, under §161.0541 of the Texas Agriculture Code. If the violation is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

(2) Under §161.148 of the Texas Agriculture Code the Commission may impose an administrative penalty against a person who violates this section. The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty shall not be based on a per head basis.

#### §40.7. Executive Director Declaration of a CWD Movement Restriction Zone.

(a) Definitions.

(1) High risk area or county--An area or county that is epidemiologically judged to have a high probability for species susceptible for having, developing or being exposed to Chronic Wasting Disease (CWD).

(2) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of its disease status.

(b) Order Declaring a CWD High Risk County or Area. The Executive Director of the Texas Animal Health Commission may issue an order to declare a CWD high risk area or county based on sound epidemiological principles for disease detection, control, and eradication. The epidemiological criteria used for designating an area or county as high risk may include the presence of disease, multiple positive animals in the area, and common husbandry and animal use practices that could lead to disease exposure.

(c) The Order shall contain the following elements:

## CHAPTER 51. ENTRY REQUIREMENTS

### 4 TAC §51.8, §51.10

The Texas Animal Health Commission (commission) proposes amendments to §51.8, concerning Cattle, and §51.10, concerning Cervidae, in Chapter 51 which is entitled "Entry Requirements". The purpose of the amendments is to change the Bovine Trichomoniasis (Trich) testing requirements and the Cervidae entry requirements.

The Trich control program was an industry driven initiative that was implemented in 2009. The concept included an annual review by commission staff and interested stakeholder organizations of the program's rules and policies in order to subsequently suggest non-binding recommendations to the commission. The Trich Working Group met on May 15, 2012, to evaluate the Trich program. The group discussed the program overview to date, the management of infected herds, entry requirements, and ultimately discussed the need for possible changes to the program. There were two recommendations for rule changes for the interstate movement of breeding bulls into Texas that the commission is proposing to consider. The first is to allow a bull to enter Texas on a laboratory pooled negative test sample (no greater than 5 total in sample). The second is to lengthen the time in which a test result is valid from 30 days to 60 days to coincide with the existing intrastate time limit for a valid negative test.

The commission announced in June it had been determined that red deer (*Cervus elaphus*), and Sika deer (*Cervus Nippon*) are "susceptible species" for Chronic Wasting Disease (CWD) and therefore must meet the same entry requirements as other cervid species regulated by the agency such as elk and moose. The new entry rules for red deer and Sika deer will require that they originate from herds with at least five years of participation in an approved CWD status program. The agency decision was based in part on the disclosure that a farmed Red deer herd in Minnesota was confirmed positive for CWD in May of this year. Also, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) recently announced an interim final rule to establish a national CWD Herd Certification Program (HCP) and minimum requirements for interstate movement of deer, elk and moose, or cervids, in the United States. Participation in the program will be voluntary. The interim final rule amends the Agency's 2006 final rule which was never put into effect. These amendments to their CWD rule are intended to help control the spread of this disease by establishing minimum program standards for interstate movement. The federal Chronic Wasting Disease Herd Certification Program is found in 9 CFR Subchapter B, Part 55. As part of that rule change they are establishing that these species need to have participated for a minimum of five years in a CWD approved status program in order to move interstate. In recognition the commission is amending the entry requirements to remove the three year standard for cervid originating from states that had not detected CWD within their borders.

#### FISCAL NOTE

Mr. Sami Chadli, Director for Administration and Finance, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and therefore, there is

(1) The epidemiological criteria for which the order is being issued.

(2) A description of the area or county determined to be high risk that enables a person to identify the area and determine if a premise is included in the area.

(3) A statement that movement of CWD susceptible species is prohibited, if the Executive Director determines the threat of disease spread warrants such action.

(4) Any exceptions, terms, conditions, or provisions prescribed under this chapter must be stated in the order.

(5) State the class of persons authorized by the commission or the Executive Director to issue certificates or permits permitting movement.

(6) Any authorized movement certificate or permit must be issued in conformity with the requirements stated in the high risk notice:

(A) The Executive Director may provide for a written certificate or written permit authorizing the movement of CWD susceptible species from locations where the CWD susceptible species have been restricted.

(B) The certificate or permit must be issued by a Commission personnel or other person authorized by the Commission to issue a certificate or permit.

(7) If the order prohibits the movement of any CWD susceptible species until tested negative for the disease, the Executive Director may prescribe:

(A) any exceptions;

(B) terms;

(C) conditions; or

(D) provisions that the Executive Director considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the equine without endangering those objectives or the health and safety of other CWD susceptible species.

(d) Publication of Notice. The Executive Director shall give notice of the Order:

(1) By publishing notice in a newspaper published in the county in which the high risk area is established; or

(2) By delivering a written notice to the owner or caretaker of the animals or places to be restricted.

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

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

TRD-201205144

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 719-0724



no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses.

#### PUBLIC BENEFIT NOTE

Mr. Chadli, has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to conform our entry requirements to the standards accepted and utilized by other states and USDA.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed rules are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Texas Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

#### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instru-

ments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

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

#### §51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle, which are parturient, postparturient, or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers, being shipped to a feedyard prior to slaughter shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

#### (b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two (2) months of age or older may enter provided that they are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two (2) months of age must obtain an entry permit from the Commission, as provided in §51.2(a) of this chapter (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two (2) months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with an entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this chapter and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within twelve months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the TAHC or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold-Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(c) Trichomoniasis Requirements:

(1) All breeding bulls entering the state more than 12 months of age shall be tested negative for Trichomoniasis with an official Polymerase Chain Reaction (PCR) test within 60 [30] days prior to entry. Trichomoniasis samples pooled at the laboratory may qualify as the official test if no more than five total samples are pooled. Breeding bulls shall be individually identified by an official identification device and be accompanied with a certificate of veterinary inspection, indicating the age. The official identification number shall be written on the certificate of veterinary inspection. Official identification includes: Official Alpha-numeric USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands, or official state of origin Trichomoniasis tags. Bulls older than 12 months of age shall be tested one time by an official PCR test prior to entry into Texas. Breeding bulls, entering Texas as a recent resident, enrolled at a CSS certified artificial insemination facility where the bull(s) was isolated from female cattle and accompanied by documents with an original signature by the veterinarian or manager of the facility, are exempt from the test requirements. Untested bulls from out of state can enter Texas directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement, and are on a VS 1-27 permit and accompanied with an entry permit number issued by the Commission.

(2) All bulls entering Texas for the purpose of participating at fairs, shows, exhibitions and/or rodeos, which are 12 [twelve (12)] months of age or older and capable of breeding may enter the state without testing for Trichomoniasis, but shall obtain a permit, in accordance with §51.2(a) of this chapter, prior to entry. Bulls permitted for entry into the State of Texas under the provisions of this subsection shall not be commingled with female cattle or used for breeding. Bulls that stay in the state more than 60 [sixty (60)] days must be tested negative for Trichomoniasis with an official PCR test.

(3) All breeding bulls entering from Mexico or from any country that does not have an established Trichomoniasis testing program, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Trichomoniasis with not less than three official culture tests conducted not less than seven [(7)] days apart, or an official PCR test, within 30 [thirty (30)] days after entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

(4) All breeding bulls entering from Canada or from any country that has an established Trichomoniasis testing program but for which the animals are not tested to meet the certification and testing requirements of paragraph (1) of this subsection, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Trichomo-

niasis with not less than three [(3)] official culture tests conducted not less than seven [(7)] days apart, or an official PCR test within 30 [thirty (30)] days of entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

§51.10. *Cervidae*.

(a) Chronic Wasting Disease (CWD). If either the Commission or Texas Parks and Wildlife Department issues a quarantine or a prohibition on susceptible species entering the state, that quarantine or prohibition supersedes these rules for the quarantined species. This includes white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus columbianus*), North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids [All black-tailed deer and elk (or other cervid species determined to be susceptible to CWD, which means an animal that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS)] shall obtain an entry permit from the Commission prior to entering Texas. All mule deer and white-tailed deer are also required to obtain an entry permit from the Texas Parks and Wildlife Department in order to enter the state. All requests for entry must be made in writing and accompanied with the information necessary to support import qualifications of the animal(s). This should be received by the TAHC at least ten [10] working days prior to the proposed entry date. The processing of the application can be expedited by assuring that all of the necessary documentation has been provided and that the necessary staff is available for review. The application must be accompanied by an owner's statement stating that to his/her knowledge the animals (or donor animals) to be imported have never come in contact with equipment or resided on a premise where CWD was ever diagnosed.

(b) Requirements for entry. The applicant must identify the herd of origin and the herd of destination on both the permit application and the certificate of veterinary inspection. The cervid(s) to be imported into this state, shall be identified to their herd of origin by a minimum of two official/approved unique identifiers to include, but not limited to, legible tattoo, USDA approved eartag, breed registration, RFID device or other state approved permanent identification methods. If a microchip is used for identification, the owner shall provide the necessary reader. The shipment shall be accompanied by a certificate of veterinary inspection completed by an accredited veterinarian. Additionally, the applicant [herd of origin] must provide documentation showing that the animal(s) originate from a herd that has successfully participated in a complete CWD herd certification program that is in compliance with the interstate movement requirements of the July 2012, USDA Edition of "Chronic Wasting Disease Program Standards" and the Code of Federal Regulations, Title 9, Parts 55 and 81, for a minimum of five years. [meet the following criteria:]

[(1) In states where there is a state approved CWD monitoring program which meets the requirements provided in subsection (e) of this section and where CWD has not been identified in a susceptible species, then all elk, white-tailed deer, mule deer and black-tailed deer to be imported must originate from a herd that has been in a state-approved complete herd certification program for a minimum of three (3) years (or current federal standards).]

[(2) From states which do not have a CWD monitoring program which meets the standards provided in subsection (e) of this section and where CWD has not been identified in a susceptible species, then all elk, white-tailed deer, mule deer and black-tailed deer shall

originate from herds that have complete herd records, including, but not limited to, complete and detailed herd inventories, records of deaths, laboratory results, and sales and purchase receipts, for a minimum of five (5) years. Complete documents which support this type of status shall be submitted with the permit application.]

[(3) In states where CWD has been identified in a susceptible species, then all elk, white-tailed deer, mule deer and black-tailed deer (or other susceptible species) to be imported must originate from a herd that has been in a state-approved complete herd monitoring program, as provided for in subsection (e) of this section for a minimum of five (5) years.]

[(e) A state-approved chronic wasting disease monitoring program must be certified by the Texas state veterinarian as meeting the following minimum standards:]

[(1) In states where CWD has been found in free-ranging wildlife, the state program shall have perimeter fencing requirements adequate to prevent ingress, egress or contact with susceptible cervids.]

[(2) Surveillance based on testing of susceptible cervid deaths over 16 months of age is required of all herds within a complete herd monitoring program. Surveillance at commercial slaughter and at shooter operations should be at least 10 percent of the number slaughtered annually.]

[(3) A good quality sampling program where state and federal officials have the authority to adjust herd status if poor quality samples, particularly samples that are from the wrong portion of the brain, are routinely submitted from a premise. Laboratory analysis of the brain stem by a USDA approved lab is recognized as the current standard for CWD diagnosis. Other laboratory analyses may be accepted as validated or accepted by USDA/APHIS.]

[(4) Physical herd inventory with annual verification reconciling animals and identification with records by an accredited veterinarian or state or federal personnel is required. Inventory is to include a cross-check of all animal identifications with the herd inventory and specific information on the disposition of all animals not present.]

[(5) Premise locations must be specifically identified by GPS or detailed description during the initial herd inventory.]

[(6) Herd additions are allowed from herds with equal or greater time in an approved state CWD monitoring program with no negative impact on the certification status of the receiving herd. If herd additions are acquired from a herd with a later date of enrollment, the receiving herd reverts to the enrollment date of the sending herd. If a herd participating in the monitoring program acquires animals from a non-participating herd, the receiving herd must start over with a new enrollment date based upon the date of acquisition of the animal(s). If a new herd begins with animals of a given status, that status will be retained by the new herd, based upon the lowest status of animals received. Animals of different status which are commingled during marketing or transport will revert to the lowest status.]

[(7) Elk, white-tailed deer, mule deer and black-tailed deer will only be allowed to enter the state of Texas if the state of origin lists CWD as a reportable disease and imposes an immediate quarantine on a herd and/or premise when a CWD positive animal is disclosed.]

[(8) Animal health officials in the state of origin must have access to herd records for the appropriate number of years (three to five), including records of deaths and causes of death.]

(c) [(d)] Tuberculosis. No animal with a response to any tuberculosis test is eligible for entry unless that animal is subsequently classified negative for tuberculosis based upon an official tuberculosis test, or is consigned directly to slaughter.

(1) Accredited-Free herds. Cervids that originate from Accredited-Free herds may enter without further tuberculosis testing provided they are accompanied by a certificate stating such cervids originated from an Accredited-Free herd.

(2) Qualified herds. Cervids not known to be affected with or exposed to tuberculosis that originate from Qualified herds may enter if they are accompanied by a certificate stating that such cervids originate from a qualified herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement. If the qualifying herd test was administered within 90 days of movement, the animal(s) do not require an additional test.

(3) Monitored herds. These cervids not known to be affected with or exposed to tuberculosis that originate from Monitored herds may enter if they are accompanied by a certificate stating that such cervids originate from a monitored herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement.

(4) All other herds. These cervids not known to be affected with or exposed to tuberculosis that originate from all other herds may enter if they are accompanied by a certificate stating that such cervids have been classified negative to two official tuberculosis tests, which were conducted no less than 90 days apart; that the second test was conducted within 90 days prior to the date of movement; and that the animals were isolated from all other members of the herd during the testing period.

(5) Cervids less than 12 months of age that originate from and were born in accredited, qualified, or monitored herds. These cervids may enter without further tuberculosis testing provided they are accompanied by a certificate stating that such cervids originated from such herds and have not been exposed to cervids from a lower status.

(6) American Zoo and Aquarium Association (AZAA) accredited facility. Cervids moving from an American Zoo and Aquarium Association (AZAA) accredited facility directly to another facility accredited by the AZAA are exempt from these entry requirements provided those cervids being moved are not commingled with cervids from other sources during the transfer. Cervids sold or transferred from an AZAA accredited facility located either in Texas or another state to an owner/agent in Texas, other than another AZAA accredited facility, must comply with these testing requirements.

(7) TB restricted area in Michigan. Cervids originating from the TB restricted zone(s) in Michigan shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, §§77.10 - 77.19, prior to entry with results recorded on the certificate of veterinary inspection.

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

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

TRD-201205145

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 719-0724



## CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

### 4 TAC §59.11

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

The Texas Animal Health Commission (commission) proposes the repeal of §59.11, concerning Certificate of Veterinary Inspections, in Chapter 59 entitled "General Practices and Procedures". Elsewhere in this issue of the *Texas Register*, the commission contemporaneously proposes new §33.2, which replaces the repealed rule in a different chapter.

#### FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, has determined there will be no significant additional fiscal implications for local or state government as a result of repealing the rule.

#### PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that the public benefit anticipated as a result of repealing the rule will be that it is located in the same chapter with other fees.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed repeal will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed repeal will not affect private real property and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

#### STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Government Code §2001.039, which authorizes a state agency to repeal a rule.

The repealed rule affects Texas Administrative Code, Part 4, Chapter 33.

*§59.11. Certificate of Veterinary Inspections.*

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 October 1, 2012.

TRD-201205155

Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Earliest possible date of adoption: November 11, 2012  
For further information, please call: (512) 719-0724



#### 4 TAC §59.11

The Texas Animal Health Commission (commission) proposes new §59.11, Executive Director Declaration of a High Risk Disease Movement Restriction Zone, in Chapter 59 which is entitled "General Practices and Procedures". The new section authorizes the Executive Director to issue an order which will classify an area or a county as being high risk for animals to be infected with or exposed to a disease.

The proposal provides for definitions in subsection (a) for high risk area or county, hold order, and individual herd plan. Subsection (b) provides that the Executive Director may issue an order to test animals in a high risk area or county based on sound epidemiological principles. Subsection (c) provides the elements contained in the order; subsection (d) contains the testing procedures; subsection (e) provides the notice of the order; and subsection (f) provides a procedure for protesting the individual herd test plan.

#### FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

#### PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated is a more efficient and rapid agency response to address areas where there is a high disease risk.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

#### STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.057 provides the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications. In subsection (b), the commission by rule may designate as a particular classification an area consisting of one or more counties.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

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

#### §59.11. Executive Director Declaration of a High Risk Disease Movement Restriction Zone.

##### (a) Definitions:

(1) High risk area or county--An area or county that is epidemiologically judged to have a high probability for animals to be either infected with or exposed to a disease.

(2) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(3) Individual herd or flock plan--A herd disease management and testing plan to test a herd or flock of animals at high risk for exposure to a disease.

(b) Order to Test Animals in a High Risk County or Area. The Executive Director may eradicate or control any disease or agent of transmission that affects livestock, exotic livestock, domestic fowl, or exotic fowl, by issuing an order designating an area or county as high risk for a disease based on sound epidemiological principles. The order may designate standards to require testing, movement, inspection, and treatment. The epidemiological criteria used for designating an area

or county as high risk may include the presence of disease vectors, multiple animals in the area, and common husbandry and animal use practices that could lead to disease exposure.

(c) The order shall contain the following elements:

(1) The epidemiological criteria for which the order is being issued;

(2) A description of the area or county determined to be high risk for a disease that enables a person to identify the area or premises;

(3) If the seriousness of the disease is sufficient to warrant prohibiting the movement of animals using a hold order, the order must state that the movement is prohibited;

(4) Any exceptions, terms, conditions, or provisions prescribed under this chapter must be stated in the order;

(5) The class of persons authorized by the Commission or the Executive Director to issue certificates or permits authorizing movement; and

(6) Any authorized movement certificate or permit must be issued in conformity with the requirements stated in the order.

(A) The Executive Director may provide for a written certificate or written permit authorizing the movement of animals from locations where the animals have been restricted.

(B) The certificate or permit must be issued by a veterinarian or other person authorized by the Commission to issue a certificate or permit.

(d) If the order prohibits the movement of an animal until tested negative for a disease, the Executive Director may prescribe:

(1) any exceptions;

(2) terms;

(3) conditions; or

(4) provisions that the Executive Director considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the animal without endangering those objectives or the health and safety of other animals.

(e) Testing Procedures:

(1) All animals located or maintained in an area shall be presented for testing or retesting at intervals stated in the herd plan until the hold order is released.

(2) All animals to be added to the herd shall be tested prior to commingling with the herd.

(3) All stray animals found in the area shall be presented for testing by the caretaker of the property where located.

(4) All animals identified as positive shall be removed in accordance with Commission requirements.

(f) Publication of Notice. The Executive Director shall give notice of the order:

(1) by publishing notice in a newspaper published in the county in which the quarantine is established; or

(2) by delivering a written notice to the owner or caretaker of the animals or places to be quarantined.

(g) Procedure to Protest the Individual Herd Test Plan. A person may protest an initial test or a herd plan for testing their animals

for a disease due to being classified as high risk, after consultation with the state or federal veterinarian assigned to the testing.

(1) To protest, the herd owner must request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(2) Upon receipt of a decision or order by the Executive Director, the herd owner may file an appeal within 15 days in writing with the chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits, as set out in paragraph (1)(A) and (B) of this subsection, to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

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

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0724



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 163. LICENSURE

##### 22 TAC §§163.1, 163.2, 163.11

The Texas Medical Board (Board) proposes amendments to §163.1, concerning Definitions, §163.2, concerning Full Texas Medical License, and §163.11, concerning Active Practice of Medicine.

The amendment to §163.1 amends the definition of two-year training program to delete that residency training required for certification must be acceptable for board certification.

The amendment to §163.2 amends the rule to clarify that licensure applicants who are foreign medical school graduates, including Fifth pathways, must demonstrate board certification at time of application or prior to licensure during the licensure ap-



plication process if physician intends to use board certification as an alternate grounds for eligibility.

The amendment to §163.11 amends the rule to provide remedies for out of active practice issues and to allow for granting a license under a remedial plan.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to not place requirements on applicants for licensure that are unreasonable. The residency training will remain accredited by a recognized entity, but as not all training leads to board certification, the Board determined that the current language was not appropriate and to provide that as long as an applicant is board certified at any time during the licensure application process that the licensee has demonstrated compliance with the Board's rules and to have rules that are consistent and clear.

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

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

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

The amendments are also authorized by §155.001 of Chapter 155 of the Texas Occupations Code.

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

*§163.1. Definitions.*

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

(1) - (12) (No change.)

(13) Two-year training program--Two continuous years of postgraduate training in the United States or Canada, progressive in nature [and acceptable for specialty board certification in one specialty area] that is:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; or

(vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a Faculty Temporary Permit was issued; or

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty, approved by the board.

*§163.2. Full Texas Medical License.*

(a) (No change.)

(b) Graduates of medical schools outside the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school outside the United States or Canada must:

(1) be 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) be a graduate of:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

(5) have successfully completed a two-year training program of graduate medical training in the United States or Canada as defined under §163.1(13) of this title;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6 of this title;

(7) pass the Texas Medical Jurisprudence Examination;

(8) possess a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(9) have the ability to communicate in the English language; and

(10) have supplied all additional information that the board may require concerning the applicant's medical school.

(c) Fifth Pathway Program. To be eligible for licensure, an applicant who has completed a Fifth Pathway Program must:

(1) be at least 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) hold a certificate from:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

(5) have successfully completed a two-year training program of graduate medical education in the United States or Canada as defined under §163.1(13) of this title;

(6) submit evidence of passing an examination, that is acceptable to the board for licensure;

(7) pass the Texas Medical Jurisprudence Examination;

(8) submit a sworn affidavit that no proceedings, past or current, have been instituted against the applicant before any state medical board, provincial medical board, in any military jurisdiction or federal facility;

(9) have attained a passing score on the ECFMG examination;

(10) have the ability to communicate in the English language;

(11) have attained a satisfactory score on a qualifying examination and have completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program) in a United States medical school; and

(12) have supplied all additional information that the board may require, concerning the applicant's medical school, before approving the applicant.

(d) - (e) (No change.)

§163.11. *Active Practice of Medicine.*

(a) All applicants for licensure shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within either of the last two years preceding receipt of an Application for licensure.

(b) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(c) Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the executive director or board, be eligible for:

(1) an unrestricted license if the applicant demonstrates [or a restricted license subject to one or more of the following conditions or restrictions]:

(A) [(+) current certification by a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery obtained by passing within the two years prior to date of applying for licensure, a monitored:

(i) [(A)] specialty certification examination;

(ii) [(B)] maintenance of certification examination;

or

(iii) [(C)] continuous certification examination;

[(2) limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine;]

(B) [(3)] completion of remedial education, including but not limited to a mini-residency, fellowship or other structured program; or

(C) [(4)] such other remedial measures [or restrictive conditions or requirements] that, in the discretion of the board, are nec-

essary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

(2) a license subject to one of more of the following conditions:

(A) limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine; or

(B) such other restrictive or remedial conditions that, in the discretion of the executive director or board, are necessary to ensure protection of the public and establish minimal competency of the applicant to safely practice medicine.

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 October 1, 2012.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: November 11, 2012

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



## CHAPTER 171. POSTGRADUATE TRAINING PERMITS

### 22 TAC §171.3, §171.6

The Texas Medical Board (Board) proposes amendments to §171.3, concerning Physician-in-Training Permits, and §171.6, concerning Duties of Program Directors to Report.

The amendment to §171.3 amends the rule to exempt applicants for PIT rotator permits from having to submit medical records or otherwise have staff review impairment issues as part of the application process.

The amendment to §171.6 changes a single reference of "PIT holder" to "physician" since program director reporting requirements apply to all participants, not just PIT holders.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to better utilize staff resources and not place undue burdens on rotator PIT applicants who are in approved residency training programs for a limited time and to have consistent language within the rules.

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

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides author-

ity for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.105, Texas Occupations Code.

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

§171.3. *Physician-in-Training Permits.*

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

(c) Application for Physician-in-Training Permit.

(1) Application Procedures.

(A) Applications for a physician-in-training permit shall be submitted to the board no earlier than the 120th day prior to the date the applicant intends to begin postgraduate training in Texas to ensure the application information is not outdated. To assist in the expedited processing of the application, the application should be submitted as early as possible within the sixty-day window prior to the date the applicant intends to begin postgraduate training in Texas.

(B) The board may, in unusual circumstances, allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions shall be reviewed by the board's executive director on a case-by-case basis.

(C) For each document presented to the board, which is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) The board's executive director shall review each application for training permit and shall approve the issuance of physician-in-training permits for all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee or panel of the board for review of the application for a determination of eligibility.

(E) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by a committee or panel of the board within 20 days of written receipt of such notice from the executive director.

(F) If the committee or panel finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's or panel's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(G) All reports and investigative information received or gathered by the board on each applicant are confidential and are not

subject to disclosure under the Public Information Act, Government [Gov't] Code Chapter 552 and the Medical Practice Act, Texas Occupations [Tex. Occ.] Code §§155.007(g), 155.058, and 164.007(c). The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(H) All applicants for physician-in-training permits whose applications have been filed with the board in excess of one year will be considered expired.

(I) If the Executive Director determines that the applicant clearly meets all PIT requirements, the Executive Director or a person designated by the Executive Director, may issue a permit to the applicant, to be effective on the date of the reported first date of the training program without formal board approval, as authorized by §155.002(b) of the Act.

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

(K) If the Executive Director determines that the applicant is ineligible for a PIT for one or more reasons listed under subsection (b)(1)(A) and (C) - (E) of this section, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(2) Physician-in-Training Permit Application. An application for a physician-in-training permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §153.051 and as construed in board rules;

(B) certification by the postgraduate training program:

(i) for a Texas postgraduate training program, a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a Texas licensed physician, the Texas Licensed [physician] supervising physician of the postgraduate training program on a form provided by the board that certifies that:

(I) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(II) the applicant has met all educational and character requirements established by the program and has been accepted into the program; and

(III) the program has received a letter from the dean of the applicant's medical school that states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school.

(ii) if the applicant is completing rotations in Texas as part of the applicant's residency out-of-state training program or with the military:

(I) a certification must be completed by the director of medical education, the chair of graduate medical education,

the program director, or, if none of the previously named positions is held by a physician licensed in any state, the supervising physician, licensed in any state, of the postgraduate training program on a form provided by the board that certifies that:

(-a-) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(-b-) the applicant has met all educational and character requirements established by the program and has been accepted into the program;

(-c-) the program has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school; and

(II) a certification by the Texas Licensed physician supervising the Texas rotations of the postgraduate training program on a form provided by the board that certifies:

(-a-) the facility at which the rotations are being completed;[<sub>7</sub>]

(-b-) the dates the rotations will be completed in Texas;[<sub>7</sub>] and

(-c-) that the Texas on-site preceptor physician will supervise and be responsible for the applicant during the rotation in Texas;

(C) arrest records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested from the arresting authority by the applicant and said authority must submit copies directly to the board;

(D) medical records for inpatient treatment for alcohol/substance disorder, mental illness, and physical illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the hospitalization;

(ii) all records, submitted directly from the inpatient facility;

(iii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iv) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(E) medical records for outpatient treatment for alcohol/substance disorder, mental illness, or physical illness. Each applicant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the outpatient treatment;

(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iii) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(F) an oath on a form provided by the board attesting to the truthfulness of statements provided by the applicant;

(G) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(3) Physician-in-Training Application for Rotator PITs. If the applicant is enrolled in postgraduate training program that is outside of Texas, and requests a permit to complete a rotation in Texas that is less than 60 consecutive days as part of an approved postgraduate training, the applicant must submit all documents listed in paragraph (2) of this subsection except that the applicant shall not be required to submit medical records as listed in paragraph (2)(D) and (E) of this subsection.

(d) - (e) (No change.)

§171.6. *Duties of Program Directors to Report.*

(a) Failure of any postgraduate training program director to comply with the provisions of this chapter or the Medical Practice Act §160.002 and §160.003 may be grounds for disciplinary action as an administrative violation against the program director.

(b) The director of each approved postgraduate training program shall report in writing to the executive director of the board the following circumstances within thirty (30) days of the director's knowledge for all participants completing postgraduate training:

(1) if a physician did not begin the training program due to failure to graduate from medical school as scheduled or for any other reason(s);

(2) if a physician has been or will be absent from the program for more than 21 consecutive days (excluding vacation, military, or family leave not related to the participant's medical condition) and the reason(s) why;

(3) if a physician has been arrested after the permit holder begins training in the program;

(4) if a physician poses a continuing threat to the public welfare as defined under Texas Occupations Code §151.002(a)(2), as amended;

(5) if the program has taken final action that adversely affects the physician's status or privileges in a program for a period longer than 30 days;

(6) if the program has suspended the physician from the program;

(7) if the program has requested termination or terminated the physician from the program, requested or accepted withdrawal of the physician from the program, or requested or accepted resignation of the physician [~~permit holder~~] from the program and the action is final.

(c) A violation of §§164.051 - 164.053 or any other provision of the Medical Practice Act is grounds for disciplinary action by the Board.

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

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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



## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) proposes amendments to §172.5, concerning Visiting Physician Temporary Permits, and §172.12, concerning Out-of-State Telemedicine License.

The amendment to §172.5 allows additional grounds for eligibility for Visiting Physician Temporary Permits, including emergency disaster, forensic psychiatric evaluations for criminal matters, and specialized care, when good cause is shown.

The amendment to §172.12 clarifies that a physician may be denied an out-of-state telemedicine license based on §155.003(e) of the Act.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to expand the grounds for eligibility for Visiting Physician Temporary Permits, to provide greater access to care, to remove potential barriers when out-of-state physicians provide assistance in criminal matters, and to have rules consistent with the Medical Practice Act.

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

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

### SUBCHAPTER B. TEMPORARY LICENSES

#### 22 TAC §172.5

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

The amendment is also authorized by Chapter 155, Texas Occupations Code.

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

#### §172.5. Visiting Physician Temporary Permits.

##### (a) Visiting Physician Temporary Permit - General.

(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to practice under the supervision of a licensed Texas physician, excluding training in post-graduate training programs;

(A) for educational purposes; ~~or in order~~

(B) to practice charity care to underserved populations in Texas;[-]

(C) in cases of declared emergency disasters;

(D) for the provision of forensic psychiatric examinations related to criminal matters; or

(E) for the provision of specialized medical care for which the applying physician has demonstrated good cause for the issuance of the permit.

(2) In order to be determined eligible for a visiting physician temporary permit the applicant must:

(A) not have any medical license that is under restriction, disciplinary order, or probation in another state, territory, or Canadian province;

(B) be supervised by a physician with an unrestricted license in Texas;

(C) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(D) present written verification from the supervising physician as to the purpose for the requested permit.

(3) [(2)] Visiting physician temporary permits shall be valid for no more than ten working days and for a specified locale and purpose. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

##### (b) Visiting Physician Temporary Permit - KSTAR.

(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to participate in the Texas A&M KSTAR program. In order to be determined eligible for a visiting physician temporary permit, the applicant must:

(A) present written verification from the KSTAR program of acceptance into the program;

(B) be supervised by a physician with an unrestricted license in Texas;

(C) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(D) not have been convicted of a felony or have any medical license that is or has been under restriction, disciplinary order, or probation in another state, territory, or Canadian province based on a professional boundary violation, unless otherwise determined eligible by the Board.

(2) Visiting physician temporary permits for participation in the KSTAR program shall be valid for the length of the program. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

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

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## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §172.12

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

The amendment is also authorized by Chapter 155, Texas Occupations Code.

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

#### §172.12. *Out-of-State Telemedicine License.*

(a) (No change.)

(b) Denial of Out-of-State Telemedicine License. An application for an out-of-state telemedicine license to practice medicine across state lines may be denied based on failure to demonstrate the requisite qualifications for issuance of an out-of-state license, ~~any~~ grounds for denial of an application for a full license pursuant to §155.003(e) of the Act, failure to submit the required fee, and any grounds for disciplinary action of a licensee under the Medical Practice Act, §164.051 (relating to Grounds for Denial or Disciplinary Action).

(c) - (f) (No change.)

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

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## CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

### 22 TAC §180.4

The Texas Medical Board (Board) proposes an amendment to §180.4, concerning Operation of Program.

The amendment to §180.4 amends the procedures for the handling of referrals to the Board from the TXPHP for violation of agreements of TXPHP agreements with program participants.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing

this proposal will be to provide consistent outcomes for TXPHP participants that violate their agreements with the TXPHP, and ensure that participants are afforded due process before being determined in violation of their agreements.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

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

The amendment is also authorized by Chapter 167, Texas Occupations Code.

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

#### §180.4. *Operation of Program.*

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

(d) Reports to the Agency.

(1) If an individual who has been referred by the agency or a third party to the program and does not enter into an agreement for services or is found to have committed a substantive violation of an agreement, the governing board shall report that individual to the agency for possible disciplinary action.

(2) A positive drug screen that is not attributed to a prescription by a physician, shall be determined to be substantive violation of an agreement by the program participant.

(3) A committee of the Board shall review the report and may direct that an ISC be scheduled to review of the individual's interactions with the program. After consideration of any evidence presented at the ISC, the agency has the option of referring the individual back to the program. The referral of the [After receiving the report, the agency may refer the] individual back to the program shall be a public referral through the entry of an agreed order. The agency [or] may pursue other disciplinary action through the agency's disciplinary process in lieu of or in addition to referral back to the program.

(e) - (i) (No change.)

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

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## CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) proposes amendments to §190.8, concerning Violation Guidelines, and §190.14, concerning Disciplinary Sanction Guidelines.

The amendment to §190.8 provides the standard for physician delegation of the performance of nerve conduction studies by individuals who are not licensed as physicians or physical therapists.

The amendment to §190.14 amends the range and scope of sanctions for violations of the Medical Practice Act.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to have rules consistent with accepted national standards and to have established sanction guidelines to ensure consistency when the Board takes action against licensees.

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

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

### SUBCHAPTER B. VIOLATION GUIDELINES

#### 22 TAC §190.8

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

The amendments are also authorized by Chapter 164, Texas Occupations Code.

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

#### §190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare.

Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

- (A) failure to treat a patient according to the generally accepted standard of care;
- (B) negligence in performing medical services;
- (C) failure to use proper diligence in one's professional practice;
- (D) failure to safeguard against potential complications;
- (E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

(i) A proper relationship, at a minimum requires:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices such as patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing. An online or telephonic evaluation by questionnaire is inadequate;

(III) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(IV) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) A proper professional relationship is also considered to exist between a patient certified as having a terminal illness and who is enrolled in a hospice program, or another similar formal program which meets the requirements of subclauses (I) through (IV) of this clause, and the physician supporting the program. To have a terminal condition for the purposes of this rule, the patient must be certified as having a terminal illness under the requirements of 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Service) and 42 CFR 418.22.

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for:

(I) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(II) a physician to prescribe medications to a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(O) delegating the performance of nerve conduction studies to a person who is not licensed as a physician or physical therapist without:

(i) first selecting the appropriate nerve conduction to be performed;

(ii) ensuring that the person performing the study is adequately trained;

(iii) being onsite during the performance of the study; and

(iv) being immediately available to provide the person with assistance and direction.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity [facility] to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant, witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(T) failing to timely submit complete forms for purposes of registration as set out in §166.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(3) - (7) (No change.)

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

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Texas Medical Board

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## SUBCHAPTER C. SANCTION GUIDELINES

### 22 TAC §190.14

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

The amendments are also authorized by Chapter 164, Texas Occupations Code.

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

#### *§190.14. Disciplinary Sanction Guidelines.*

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined below provide a range from "Low Sanction" to "High Sanction" based upon any aggravating or mitigating factors that are found to apply in a particular case. [shall apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply]. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §190.15 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The [standard and] minimum sanctions outlined below are applicable to first time violators. In accordance with §164.001(g)(2) of the Act, the board shall consider revoking the person's license if the person is a repeat offender.

(3) The [standard and minimum] sanctions outlined below are based on the conclusion stated in §164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with §187.14(7) of this title (relating to Informal Resolutions of Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation." [-]

(4) The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7) Any panel action that falls outside the guideline range shall be reviewed and voted on individually by the Board at a regular meeting.

(8) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions outlined in this rule.

(9) The following standard sanctions shall apply to violations of the Act:

Figure: 22 TAC §190.14(9)

[(7) The following standard sanctions shall apply to violations of the Act:]

[(A) Failure to timely provide copies of medical or billing records upon written request or overcharging for medical records is an administrative violation.]

[(i) Violation of:]

[(i) Section 159.006 of the Act - information furnished by licensee; and]

[(ii) Section 164.051(a)(3) of the Act - violation of Board Rule, to wit: §165.2 of this title (relating to Medical Record Release and Charges).]

[(iii) Standard Sanction: administrative penalty of \$1,000 per violation.]

[(B) Failure to timely comply with a board subpoena or request for information is an administrative violation.]

[(i) Violation of §160.009 of the Act and board rule §179.4 of this title (relating to Request for Information and Records from Physicians).]

[(ii) Standard Sanction is an administrative penalty of \$2,000.]

[(C) Conviction or deferred adjudication for a felony may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense.]

[(i) Violation of §164.051(a)(2)(A) of the Act, §204.303(a)(2) of the Physician Assistant Act, and §205.351(a)(7) of the Acupuncture Act.]

[(ii) In accordance with §164.057(a)(1)(A) of the Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted of any felony.]

[(iii) In accordance with §164.057(b) of the Act, the board shall revoke the licensee's license on final conviction for a felony.]

[(D) Conviction or deferred adjudication for a misdemeanor involving moral turpitude may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the offense.]

[(i) Violation of §164.051(a)(2)(B) of the Act and §205.351(a)(7) of the Acupuncture Act.]

[(ii) Standard Sanction:]

[(i) If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.]

[(II) If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require:]

[(a-) Suspension of license, which may be probated after 90 days;]

[(b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication;]

[(c-) public reprimand; and]

[(d-) administrative penalty of \$2,000 per violation.]

[(E) Conviction of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation may be either an administrative violation or a patient care violation, depending on the facts underlying the offense:]

[(i) Violation of §53.021, Texas Occupations Code.]

[(ii) Standard Sanction:]

[(I) If the offense involves patient care, the standard sanction shall be revocation of the license:]

[(II) If the offense does not involve patient care and is an administrative violation only, the standard sanction shall require:]

[(a-) public reprimand; and]

[(b-) an administrative penalty of \$2,000 per violation.]

[(F) Arrest or Conviction of Certain Misdemeanors:]

[(i) In accordance with §164.057(a)(1)(B), (C), (D), and (E) of the Act, the board shall suspend a licensee's license on proof that the licensee has been initially convicted any of the following misdemeanors:]

[(I) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;]

[(II) a misdemeanor under §25.07, Penal Code, or]

[(III) a misdemeanor under §25.071, Penal Code.]

[(ii) In accordance with §164.057(b) of the Act, the board shall revoke the licensee's license on final conviction of any of the misdemeanors listed in clause (i) of this subparagraph.]

[(iii) In accordance with §164.057(c) of the Act, the board shall revoke the license of a physician convicted of or placed on deferred adjudication community supervision for an offense under:]

[(I) Section 22.011(a)(2), Penal Code (sexual assault of a child);]

[(II) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or]

[(III) Section 21.11, Penal Code (indecent with a child).]

[(iv) In accordance with §164.057(e) of the Act, the board may restrict or suspend the licensee's license of a person arrested for an offense under:]

[(I) Section 22.011(a)(2), Penal Code (sexual assault of a child);]

[(II) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or]

[(III) Section 21.11, Penal Code (indecent with a child); or]

[(IV) Section 21.02, Penal Code (continuous sexual abuse of a young child or children).]

[(G) Failure to obtain/document continuing medical education is an administrative violation.]

[(i) Violation of §164.051(a)(3) of the Act, or violation of board rule §166.2 of this title (relating to Continuing Medical Education).]

[(ii) Standard Sanction shall be an administrative penalty of:]

[(I) \$500 if lacking 5 hours or less;]

[(II) \$1,000 if lacking 6 to 10 hours; or]

[(III) \$2,000 if lacking more than 10 hours.]

[(H) Impairment of ability to practice may be either an aggravated administrative violation or a patient care violation, depending on the whether a violation of the standard of care has resulted from the impairment.]

[(i) Within the meaning of §164.051(a)(4) of the Act - inability to practice medicine with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, or a mental condition.]

[(ii) Standard Sanction: suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine.]

[(iii) Alternate Standard Sanction: probation of suspension for 10 years under terms and conditions, including, but not limited to:]

[(I) drug testing;]

[(II) restrictions on practice;]

[(III) alcoholics anonymous/narcotics anonymous attendance;]

[(IV) psychiatric/psychological evaluation and treatment; and]

[(V) proficiency testing.]

[(iv) Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) provides guidance on whether a licensee is eligible for and should be placed under a confidential rehabilitation order.]

[(I) Failure to maintain adequate medical records may be either an administrative violation or a patient care violation, depending on whether a patient was harmed because of the failure.]

[(i) Violation of:]

[(I) Section 164.051(a)(6) of the Act - professional failure to practice medicine consistent with the public health and welfare;]

[(II) Section 164.054 of the Act - additional requirements regarding drug records;]

[(III) Section 164.053(a)(2) of the Act - failure to keep complete and accurate records of purchases and disposals of controlled substances and dangerous drugs; and]

*[(IV)* Section 164.051(a)(3) of the Act - violation of board rules, including:]

*[(-a-)* board rule §165.1(a) of this title (relating to Medical Records) - failure to maintain adequate medical records; and]

*[(-b-)* board rule §170.3 of this title (relating to Authority of Physician to Prescribe for the Treatment of Pain) - prescribing guidelines for the treatment of pain:]

*[(ii)* Standard Sanction: probation for 2 years under terms and conditions, including, but not limited to:]

*[(I)* competency testing;]

*[(II)* directed CME;]

*[(III)* monitoring of practice; and]

*[(IV)* administrative penalty of \$2,000 per violation:]

*[(J)* Quality of Care is a patient care violation:]

*[(i)* Violations of:]

*[(I)* Section 164.051(a)(6) of the Act - failure to practice medicine in a professional manner consistent with the public health and welfare; and]

*[(II)* Section 164.051(a)(8) of the Act - repeated and meritorious medical malpractice claims:]

*[(ii)* Standard Sanction:]

*[(I)* The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be one or more of the following:]

*[(-a-)* limiting the practice of the person, or excluding one or more specified activities of medicine;]

*[(-b-)* proficiency testing;]

*[(-c-)* directed CME;]

*[(-d-)* monitoring of the practice;]

*[(-e-)* public reprimand; and]

*[(-f-)* administrative penalty of \$3,000 per violation:]

*[(II)* Standard sanction in a case involving patient harm or other aggravating factors shall be:]

*[(-a-)* suspension of license for 3 years;]

*[(-b-)* suspension may be probated after 90 days under terms and conditions similar to those described in subclause (I) of this clause, immediately preceding:]

*[(K)* Discipline by peers may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action:]

*[(i)* Within the meaning of §164.051(a)(7) of the Act:]

*[(ii)* Standard Sanction: See the applicable standard sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers:]

*[(iii)* Alternate Standard Sanction:]

*[(I)* public reprimand;]

*[(II)* comply with all restrictions, conditions and terms imposed by the disciplinary action by peers; and]

*[(III)* administrative penalty of \$1,000 per violation:]

*[(L)* Disciplined by another state or military may be either an administrative violation or a patient care violation, depending on the facts underlying the disciplinary action:]

*[(i)* Within the meaning of §164.051(a)(9) of the Act:]

*[(ii)* Standard Sanction: See the applicable standard sanction for the most similar violation of the Act. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the other state or military:]

*[(iii)* Alternate Standard Sanction:]

*[(I)* comply with all restrictions, conditions and terms imposed by the other state or military; and]

*[(II)* administrative penalty of \$1,000 per violation:]

*[(iv)* The standard sanction for a licensee whose license has been revoked by another state or who has voluntarily surrendered his license while an investigation or disciplinary action is pending shall be revocation of the license:]

*[(M)* Improper prescribing, dispensing, or administering of drugs is a patient care violation:]

*[(i)* Violation of:]

*[(I)* Section 164.053(a)(3) of the Act - prescribing or dispensing drugs to a drug abuser;]

*[(II)* Section 164.053(a)(5) of the Act - prescribing or administering drugs in a non therapeutic manner; and]

*[(III)* Section 164.053(a)(6) of the Act - prescribing or administering drugs in a manner inconsistent with the public health and welfare:]

*[(ii)* Standard Sanction: The standard sanction, which shall apply in the case of a single patient with no substantial patient harm and no other aggravating or mitigating circumstances, shall be:]

*[(I)* suspension of license for 2 years:]

*[(II)* suspension probated after 60 days under terms and conditions, including, but not limited to:]

*[(-a-)* restrictions on practice, including prescribing, administering controlled substances and dangerous drugs;]

*[(-b-)* proficiency testing;]

*[(-c-)* directed CME; and]

*[(-d-)* administrative penalty of \$2,000 per violation:]

*[(N)* Writing false or fictitious prescriptions is a patient care violation:]

*[(i)* Violation of §164.053(a)(4) of the Act:]

*[(ii)* Standard Sanction:]

*[(I)* suspension of license for 4 years;]

*[(II)* suspension probated after 90 days under terms and conditions, including, but not limited to:]

*[(-a-)* restrictions on practice including restrictions on prescribing, administering controlled substances and dangerous drugs;]

*[(-b-)* proficiency testing;]

~~[(c-)] directed CME; and~~  
~~[(d-)] administrative penalty of \$2,000 per violation.;~~

[(O) Fraudulent, improper billing practices is an aggravated administrative violation.;

~~[(i)] Violation of §164.053(a)(7) of the Act.;~~

~~[(ii)] Standard Sanction.;~~

~~[(t)] suspension of license for 3 years.;~~

~~[(H)] suspension probated after 90 days under terms and conditions, including, but not limited to:;~~

~~[(a-)] monitoring of practice, including billing practices.;~~

~~[(b-)] directed CME.;~~

~~[(c-)] restitution; and~~

~~[(d-)] administrative penalty of \$3,000 per violation.;~~

[(P) Failing to adequately supervise subordinates and improper delegation is a patient care violation.;

~~[(i)] Violation of.;~~

~~[(t)] Section 164.053(a)(8) of the Act and~~

~~[(H)] Section 164.053(a)(9) of the Act.;~~

~~[(ii)] Standard Sanction.;~~

~~[(t)] suspension of license for 3 years.;~~

~~[(H)] suspension probated after 60 days under terms and conditions, including, but not limited to:;~~

~~[(a-)] monitoring of practice.;~~

~~[(b-)] directed CME; and~~

~~[(c-)] administrative penalty of \$2,000 per violation.;~~

[(Q) Failure to comply with the terms and conditions of a Board order may be either an aggravated administrative violation or a patient care violation, depending on the facts underlying the failure.;

~~[(i)] Within the meaning of §164.103 of the Act - rescission of probation.;~~

~~[(ii)] Standard Sanction.;~~

~~[(t)] public reprimand.;~~

~~[(H)] extension of the Board order by 6 months for each violation; and~~

~~[(H)] administrative penalty of \$2,000 per violation.;~~

~~[(iii)] Unless the board finds that the facts warrant a less severe sanction, the license of a person who violates a Board order to abstain from the consumption of alcohol and/or drugs, as evidenced by a positive drug test or other proof, shall be revoked.;~~

[(R) Failure to report a health care liability claim is an administrative violation.;

~~[(i)] Violation of §160.052(b) of the Act and §176.2 of this title (relating to Reporting Responsibilities).;~~

~~[(ii)] Standard Sanction shall be \$500 for each violation.;~~

[(S) Failure to notify the board of change in practice or mailing address is an administrative violation.;

~~[(i)] Violation of §166.1(d) of this title (relating to Physician Registration).;~~

~~[(ii)] Standard Sanction shall be \$500.;~~

~~[(T) Failure to maintain drug logs as required by an agreed order is an administrative violation.;~~

~~[(i)] Violation of §190.8(2)(A) of this title (relating to Violation Guidelines).;~~

~~[(ii)] Standard sanction is \$2,000.;~~

~~[(U) Failure to display a "Notice Concerning Complaints" sign as required by §178.3 of this title (relating to Complaint Procedure Notification) is an administrative violation.;~~

~~[(i)] Violation of §178.3 of this title.;~~

~~[(ii)] Standard sanction shall be \$1,000.;~~

~~[(V) Use of misleading advertising with regard to board certification is an administrative violation.;~~

~~[(i)] Violation of §164.4 of this title (relating to Board Certification).;~~

~~[(ii)] Standard sanction shall be \$500.;~~

~~[(W) Reporting false or misleading information on an initial application for licensure or for licensure renewal is an administrative violation.;~~

~~[(i)] Violation of §164.052(a)(1) of the Act.;~~

~~[(ii)] Standard Sanction is \$1,000.;~~

~~[(X) Bad faith mediation by a licensee in relation to an out-of-network health benefit claim.;~~

~~[(i)] Violation of §1467.101 of the Texas Insurance Code.;~~

~~[(ii)] Standard Sanction is \$2,000.;~~

~~[(Y) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions stated in subparagraphs (A) - (X) of this paragraph.;~~

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 October 3, 2012.

TRD-201205206

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: November 11, 2012

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



## CHAPTER 197. EMERGENCY MEDICAL SERVICE

### 22 TAC §197.2, §197.3

The Texas Medical Board (Board) proposes amendments to §197.2, concerning Definitions; and §197.3, concerning Off-line Medical Director.

The amendment to §197.2 adds the definition for Emergency Medical Services provider to be consistent with rules by the Texas Department of State Health Services.

The amendment to §197.3 sets out additional requirements to be an off-line medical director including CME, requires off-line medical directors to register with the Board, requires off-line medical directors to have written protocols for those that they supervise, directs off-line medical directors to approve care only for times when employed as an off-license medical director, and sets limits on number of EMS providers a physician may serve as an off-line medical director. The amendment also provides process for waivers of requirements.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously proposes the rule review for Chapter 197.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to use terminology consistent with other state agencies and to hold off-line medical directors to certain standards and ensure that they adequately supervise those under their direction that are providing care to patients.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. The effect on small or micro businesses is undetermined but will increase costs for those that provide EMS services.

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

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

The amendments are also authorized by Chapter 156, Occupations Code, and Chapter 773, Health and Safety Code.

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

#### §197.2. Definitions.

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

(1) Advanced life support--Emergency prehospital care that involves invasive medical interventions including, but not limited to, the delivery or assisted delivery of medications, defibrillation, and advanced airway management. The provision of advanced life support shall be under the medical direction and/or supervision and control of a licensed physician.

(2) Basic life support--Emergency prehospital care that involves noninvasive medical interventions. The provision of basic life support may be under the medical direction and/or supervision and control of a licensed physician.

(3) Board--The Texas Medical Board.

(4) Delegated practice--Permission given by a physician licensed by the board, either in person or by treatment protocols or standing orders to a specific prehospital provider to provide medical care.

(5) Direct medical control--Immediate and concurrent clinical direction either on-scene or via electronic communication from a physician licensed by the board and designated by the EMS medical director. If an EMS system does not have an EMS Medical Director, then such designation should be by a physician advisor, or in his or her absence, the director of the EMS system.

(6) Emergency medical services personnel--Those individuals certified or licensed by the Texas Department of State Health Services (DSHS) to provide emergency medical care.

(7) Emergency medical services (EMS) provider--As defined under 25 TAC §157.2(30) (relating to Definitions), a provider that uses, operates or maintains EMS vehicles and EMS personnel to provide EMS.

(8) [(7)] Emergency medical services system--All components needed to provide a continuum of prehospital medical care including, but not limited to, a medical director, transport vehicles, trained personnel, access and dispatch, communications, and receiving medical facilities.

(9) [(8)] Intervenor physician--A physician licensed by the board, who, without having established a prior physician/patient relationship with the emergency patient, accepts responsibility for the prehospital care, and who shall provide proof of a current medical license when requested.

(10) [(9)] Medical director--A physician licensed by the board who is responsible for all aspects of the operation of an EMS system concerning provision of medical care. This physician may also be referred to as the off-line medical director.

(11) [(10)] Prehospital providers--All DSHS certified or licensed personnel providing medical care in an out-of-hospital environment.

(12) [(11)] Protocols--Written instructions providing prehospital personnel with a standardized approach to commonly encountered problems in the out-of-hospital setting, typically in regard to patient care. Protocols may include standing orders to be implemented prior to, or in lieu of, establishing communication with direct medical control.

(13) [(12)] Standing delegation orders--Instructions or orders provided by the EMS medical director to EMS personnel, directing them to perform certain medical care in the absence of any communication with direct medical control.

#### §197.3. Off-line Medical Director.

(a) An off-line medical director shall be:

(1) a physician licensed to practice in Texas and shall be registered as an EMS medical director with the Texas Department of State Health Services;

(2) familiar with the design and operation of EMS systems;

(3) experienced in prehospital emergency care and emergency management of ill and injured patients;

(4) actively involved in:

(A) the training and/or continuing education of EMS personnel, under his or her direct supervision, at their respective levels of certification;

(B) the medical audit, review, and critique of the performance of EMS personnel under his or her direct supervision;

(C) the administrative and legislative environments affecting regional and/or state prehospital EMS organizations;

- (5) knowledgeable about local multi-casualty plans;
- (6) familiar with dispatch and communications operations of prehospital emergency units; and
- (7) knowledgeable about laws and regulations affecting local, regional, and state EMS operations.

(b) The off-line medical director shall be required to:

- (1) approve the level of prehospital care which may be rendered locally by each of the EMS personnel employed by and/or volunteering with the EMS under the medical director's supervision, regardless of the level of state certification or licensure, before the certificant or licensee is permitted to provide such care to the public;
- (2) establish and monitor compliance with field performance guidelines for EMS personnel;
- (3) establish and monitor compliance with training guidelines which meet or exceed the minimum standards set forth in the Texas Department of State Health Services EMS certification regulations;
- (4) develop, implement, and revise protocols and/or standing delegation orders, if appropriate, governing prehospital care and medical aspects of patient triage, transport, transfer, dispatch, extrication, rescue, and radio-telephone-telemetry communication by the EMS;
- (5) direct an effective system audit and quality assurance program;
- (6) determine standards and objectives for all medically related aspects of operation of the EMS including the inspection, evaluation, and approval of the system's performance specifications;
- (7) function as the primary liaison between the EMS administration and the local medical community, ascertaining and being responsive to the needs of each;
- (8) develop a letter or agreement or contract between the medical director(s) and the EMS administration outlining the specific responsibilities and authority of each. The agreement should describe the process or procedure by which a medical director may withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Services Act, the Health and Safety Code, Chapter 773, the rules adopted in this chapter, and/or accepted medical standards;
- (9) take or recommend appropriate remedial or corrective measures for EMS personnel, in conjunction with local EMS administration, which may include, but are not limited to, counseling, retraining, testing, probation, and/or field preceptorship;
- (10) suspend a certified EMS individual from medical care duties for due cause pending review and evaluation;
- (11) establish the circumstances under which a patient might not be transported;
- (12) establish the circumstances under which a patient may be transported against his or her will in accordance with state law, including approval of appropriate procedures, forms, and a review process;
- (13) establish criteria for selection of a patient's destination;
- (14) develop and implement a comprehensive mechanism for management of patient care incidents, including patient complaints, allegations of substandard care, and deviations from established protocols and patient care standards; ~~and~~

(15) only approve care or activity that was provided at the time the director was employed as a director;

(16) notify the board at time of licensure registration under §166.1 of this title (relating to Physician Registration) of the physician's position as medical director and the names of all EMS providers for whom that physician holds the position of off-line medical director;

(17) complete the following educational requirements:

(A) within two years, either before or after initial notification to the board of holding the position as off-line medical director:

(i) 12 hours of formal continuing medical education (CME) as defined under §166.2 of this title (relating to Continuing Medical Education) in the area of EMS direction;

(ii) board certification in Emergency Medical Services by the American Board of Medical Specialties or a Certificate of Added Qualification in EMS by the American Osteopathic Association Bureau of Osteopathic Specialists; or

(iii) a DSHS approved EMS medical director course; and

(B) every two years after meeting the requirements of subparagraph (A) of this paragraph, one hour of formal CME in the area of EMS direction.

(c) A physician may not hold the position of off-line medical director:

(1) for more than 20 EMS providers unless the physician obtains a waiver under subsection (d) of this section; or

(2) for any EMS provider if the physician has been removed for cause by any governmental agency.

(d) The board may grant a waiver to allow a physician to serve as an off-line medical director for more than 20 EMS providers, if the physician provides evidence that:

(1) the Department of State Health Services has reviewed the waiver request and has determined that the waiver in the best interest of the public;

(2) the physician is in compliance with this chapter, by submitting documentation of protocols and standing orders upon request; and

(3) appropriate safeguards exist for patient care and adequate supervision of all EMS personnel under the physician's supervision.

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 October 1, 2012.

TRD-201205165  
 Mari Robinson, J.D.  
 Executive Director  
 Texas Medical Board

Earliest possible date of adoption: November 11, 2012

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

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## PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND

# OCCUPATIONAL THERAPY EXAMINERS

## CHAPTER 651. FEES

### 22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes amendments to §§651.1 - 651.3, concerning fees. The amendments would clarify the fee a facility owner must pay when restoring a facility registration that has been expired for more than one year and wants to restore occupational or physical therapy services. The duplicate renewal card may no longer be ordered, as it freely available on the board's website, therefore this administrative fee must also be removed.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be a clearer statement of fees for facility owners. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Jennifer Jones, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [jennifer@ptot.texas.gov](mailto:jennifer@ptot.texas.gov). Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Executive Council of Physical Therapy and Occupational Therapy Examiners Practice Act, Title 3, Subtitle H, Chapter 452, Texas Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Texas Occupations Code is affected by this proposal.

#### §651.1. Occupational Therapy Board Fees.

- (a) Application Regular License.
  - (1) Occupational Therapist--\$140.
  - (2) Occupational Therapy Assistant--\$100.
  - (3) Application to retake the exam, OT--\$25.
  - (4) Application to retake the exam, OTA--\$25.
- (b) Temporary License.
  - (1) Occupational Therapist--\$70.
  - (2) Occupational Therapy Assistant--\$55.
- (c) Provisional License.
  - (1) Occupational Therapist--\$80.
  - (2) Occupational Therapy Assistant--\$75.

- (d) Active to Inactive Status.
  - (1) Occupational Therapist--a fee to equal one-half the renewal fee.
  - (2) Occupational Therapy Assistant--a fee to equal one-half the renewal fee.
- (e) Inactive Status to Active Status.
  - (1) Occupational Therapist--a fee equal to the renewal fee.
  - (2) Occupational Therapy Assistant--a fee equal to the renewal fee.
- (f) Renewal.
  - (1) Active.
    - (A) Occupational Therapist--\$242.
    - (B) Occupational Therapy Assistant--\$180.
  - (2) Inactive.
    - (A) Occupational Therapist--a fee equal to one-half the renewal fee.
    - (B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee.
- (g) Retired Status.
  - (1) Application--\$25.
  - (2) Renewal--\$25.
- (h) Late Fees Renewal (all licensees).
  - (1) Late 90 days or less--the renewal fee plus late fee which is equal to one-half of the renewal fee.
  - (2) Late more than 90 days but less than one year--the renewal fee plus late fee which is equal to the renewal fee.
- (i) License Restoration Fee for all licensees--a fee equal to the renewal fee.
- (j) Registration Fees, All Facilities--\$215.
- (k) Renewal Fees [fees], All Facilities--\$215.
- (l) Late Fees--All Facilities.
  - (1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.
  - (2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.
- (m) Facility Restoration [(all facilities)]--Late one year or more--a restoration fee: [renewal fee(s) plus a restoration fee which is double the renewal fee.]
  - (1) Cancelled registration--a fee equal to the facility renewal fee.
  - (2) Expired registration--a fee that is double the facility renewal fee.

#### §651.2. Physical Therapy Board Fees.

- (a) Application/Permanent License.
  - (1) PT--\$190.
  - (2) PTA--\$125.
- (b) Application to Retake the Examination.
  - (1) PT--\$25.

- (2) PTA--\$25.
- (c) Temporary License.
  - (1) PT--\$80.
  - (2) PTA--\$60.
- (d) Provisional License.
  - (1) PT--\$80.
  - (2) PTA--\$75.
- (e) Active to Inactive License.
  - (1) PT--a fee equal to one-half of the renewal fee.
  - (2) PTA--a fee equal to one-half of the renewal fee.
- (f) License Renewal.
  - (1) Active license.
    - (A) PT--\$242.
    - (B) PTA--\$180.
  - (2) Inactive License. [~~(Inactive license renewal fees are effective September 1, 2001).~~]
    - (A) PT--a fee equal to one-half of the renewal fee.
    - (B) PTA--a fee equal to one half of the renewal fee.
- (g) Inactive to Active License (Reactivation).
  - (1) PT--a fee equal to the renewal fee.
  - (2) PTA--a fee equal to the renewal fee.
- (h) Retired Status.
  - (1) Application--\$25.
  - (2) Renewal--\$25.
- (i) Late Fees--Renewal (all licensees).
  - (1) Late 90 days or less--the renewal fee plus a late fee equal to one-half of the examination fee.
  - (2) Late more than 90 days, but less than one year--the renewal fee plus a fee equal to the examination fee.
- (j) License Restoration (all licensees, under the conditions set out in §341.6 of the Physical Therapy Board Rules)--a fee equal to the examination fee.
- (k) Facility Registration, All Facilities--\$215.
- (l) Facility Renewal, All Facilities--\$215.
- (m) Late Fees--All Facilities.
  - (1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.
  - (2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.
- (n) Facility Restoration--Late one year or more--a restoration fee: [(all facilities)--renewal fee(s) plus a restoration fee that is double the renewal fee.]
  - (1) Cancelled registration--a fee equal to the facility renewal fee.
  - (2) Expired registration--a fee that is double the facility renewal fee.

§651.3. *Administrative Services Fees.*

- (a) Verification/Transfer of Licensure--\$50.
- (b) Duplicate/Replacement License--\$30.
- ~~[(e) Duplicate Renewal Certificate/Wallet Card--\$30.]~~
- (c) ~~[(d)] Duplicate of Facility Registration Certificate--\$30.~~
- (d) ~~[(e)] Reinstatement of Suspended or Revoked License--\$50.~~
- (e) ~~[(f)] Insufficient Funds Check Fee--\$25.~~
- (f) ~~[(g)] ACH Return Fee--\$25.~~
- (g) ~~[(h)] Preliminary Criminal History Evaluation Letter--\$50.~~

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

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

TRD-201205138

John P. Maline

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 305-6900



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

#### SUBCHAPTER H. TAX RECORD REQUIREMENTS

##### 34 TAC §9.3044

The Comptroller of Public Accounts proposes an amendment to §9.3044, concerning appointment of agents for property taxes. This amendment is being proposed to update and clarify this section, to revise the forms applicable to this section, and to delete language that merely duplicates language set forth in the Tax Code.

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 improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received



no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed pursuant to Tax Code, §1.111(h).

This section implements Tax Code, §1.111(h).

*§9.3044. Appointment of Agents for Property Tax Matters [Taxes].*

(a) Except as otherwise provided by existing court order, law, or other comptroller rule [subsection (m) of this section], a property owner shall use comptroller form 50-162 to designate an agent for property tax matters pursuant to Tax Code, §1.111(a). Except as provided in subsection (b) of this section, forms required to be used by this section shall be used as adopted by the comptroller, without changes in form or substance including, but not limited to, content, font size, and pagination. For the purposes of this section, the term "property owner" includes a person who claims a legal interest in the property.

(b) All appraisal districts shall prepare and make available copies of comptroller form 50-162 for property owners [taxpayers] to use in designating agents for property tax matters. An appraisal district may pre-print the appraisal district's name and address in the spaces designated for such information on form 50-162; however, no other changes or modifications may be made. An appraisal district may, if approved in advance in writing by the comptroller, make non-substantive modifications to form 50-162 for purposes of facilitating electronic delivery.

{(e) The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. Unless otherwise authorized as provided by Tax Code, §1.111(b), a person who is required to register as a property tax consultant under Occupations Code, Chapter 1152, may not sign form 50-162 or form 50-241 on behalf of a property owner. The property owner shall indicate the date the owner appoints the agent on the designation form. If the property owner files forms designating more than one agent to act in the same capacity for the same item of property, the form bearing the later date of appointment revokes the form bearing the earlier date, as of the date the form bearing the later date is filed. If a conflict arises concerning the representation of a property owner based on the owner's designation of an agent on form 50-162 and the agent's filing of form 50-163 for account updates, the written authorization provided by form 50-162 shall prevail. Nothing in this section is intended to conflict with Tax Code, §1.111(b). An appraisal district shall permit an agent who has been properly authorized to act on behalf of the property owner to represent the owner as provided by the authorization.]

(c) [(d)] Designation of an agent to receive notices or other communications is not effective for any notice or other communication about a property that is mailed or sent by electronic means before the property owner's written notice is filed with the appraisal district in accordance with Tax Code, §1.111(f). A written statement filed pursuant to Tax Code, §1.111(j) is not effective for any notice or other communication about a property that is mailed or sent by electronic means before the written statement is filed with the protest in accordance with Tax Code, §1.111(j). No written designation or request for delivery of tax bills pursuant to Tax Code, §1.111(f) is required for a mortgage lender who is authorized by a deed of trust executed by the property owner to pay taxes on the property. [owner or agent files written notice that the designation applies to that property.]

{(e) While the appraisal office may act on the basis of information provided from a variety of sources, including persons who verbally represent that they act on behalf of property owners, an appraisal district or appraisal review board should require that the form required by this section be filed with the appraisal district before taking any action

that increases the property owner's tax liability on the basis of information provided by a person who claims to represent the property owner.]

(d) [(f)] For the purposes of the prohibition against designating more than one agent for a single item of property in Tax Code, §1.111(d), an item of property means the property included under a single appraisal district account number. Unless the appraisal district has separately listed an improvement or the property owner presents documentation to the appraisal district showing separate ownership of land and improvements, a property owner may not designate separate agents to represent land and improvements. A property owner may, however, designate a different agent for purposes of Tax Code, Chapter 41A, or any other matter as provided by law or other comptroller rule. [different agents to represent him in different capacities on a single item of property or on different aspects of a particular ease.]

(e) [(g)] If a property owner directs delivery of tax bills or notices to an agent after the date appraisal records are certified, the chief appraiser, as soon as practicable after the designation is filed, shall notify the affected taxing unit of the property owner's name, the account number of the property, and the name and address of the agent designated for notice.

(f) [(h)] A property owner is not required to file a written designation of agent for a person who:

(1) acts as a courier for the property owner;

(2) prepares documents in a clerical capacity for the property owner;

(3) is an employee of the owner or of a corporate parent, affiliate, or subsidiary of the owner and is authorized by the owner to represent him; or

(4) is an attorney licensed to practice law in the State of Texas and retained by a property owner to represent him before the appraisal district or appraisal review board. [; or]

{(5) is a mortgage lender who is authorized by a deed of trust executed by the property owner to pay taxes on the property, provided that the agency is only for the purpose of receiving tax bills from collection offices.]

(g) [(i)] A person who owns property in more than one county must file separate appointment forms in each county in which the property owner owns property regarding which the property owner appoints an agent. [may file a reproduction of the original signed appointment form with each appraisal district. If the chief appraiser has reason to question the authenticity of the document, the chief appraiser may require the property owner or the agent to provide the original for inspection.]

{(j) In this section, the term "agent" means a person authorized to perform one or more of the following activities on behalf of the property owner:]

{(1) receive confidential information available to the person designating the agent, subject to the provisions of subsection (k) of this section;]

{(2) negotiate or resolve any disputed tax matters;]

{(3) receive notices, tax statements, appraisal review board orders, and other communications from appraisal districts, appraisal review boards, and tax offices;]

{(4) file notices of protest;]

{(5) present protests before the appraisal review board; or]

[(6) other action required or permitted of a property owner before the appraisal district, appraisal review board, or tax office.]

[(k) An agent designated by a property owner or person who claims an interest in a property may not have access to renditions, agricultural use (1) - (d) applications, or confidential sales information filed with or provided to the appraisal office by a person who has a competing claim of an interest in the property and has not designated the agent as his representative.]

[(l) An agent designated to represent a property owner as required by this section, shall use form 50-163 to provide the appraisal district with information concerning changes, additions, or deletions in the items of properties for which the agent is designated to represent the owner.]

[(m) A property owner shall use form 50-241 to designate an agent for property tax matters related to the owner's single-family residence. All appraisal districts shall prepare and make available to the public copies of comptroller form 50-241.]

[(n) Forms [50-162, 50-241, and 50-163 are] adopted by reference. The Comptroller of Public Accounts adopts by reference Appointment of Agent for Property Tax Matters (Form 50-162) and, for purposes of use as required by court order existing as of the date of amendment of this section, Appointment of Agent for Single-Family Residential Property Tax Matters (Form 50-241). Copies of the forms may be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. [Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.]

[(i) Other Forms. The comptroller may also prescribe additional forms applicable to this section. Any such forms may be revised at the discretion of the comptroller. Copies of the forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

[(j) Designations signed and filed with an appraisal district prior to the effective date of amendment of this section, until revoked as provided by law, continue in effect to the extent that such designations are consistent with existing law or, as applicable, court order.

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

Filed with the Office of the Secretary of State on September 25, 2012.

TRD-201205092

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 11, 2012

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



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

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

## CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

### SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

**40 TAC §§9.153, 9.158, 9.166, 9.170, 9.174, 9.177, 9.178, 9.188, 9.189, 9.190**

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§9.153, 9.158, 9.166, 9.170, 9.174, 9.177, 9.178, 9.188, 9.189, and 9.190, concerning definitions; process for enrollment of applicants; renewal and revision of an IPC; reimbursement; certification principles: service delivery; certification principles: staff member and service provider requirements; certification principles: quality assurance; DADS' approval of residences; referral to DFPS; and MRA requirements for providing service coordination in the HCS Program, in Subchapter D, Home and Community-based Services (HCS) Program, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

#### BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement a rule of the Board of Nursing (BON) at Texas Administrative Code, Title 22, §217.11(3), and the BON's Position Statement 15.28. This BON rule and statement provide that the performance of a nursing assessment by a registered nurse (RN) lays the foundation for the provision of nursing to a person. Thus, the proposed amendments require that an individual in the HCS Program receive a nursing assessment before nursing tasks may be provided to the individual by a nurse or an unlicensed service provider unless one of two exceptions exists. The first exception is if nursing services are not on the proposed individual plan of care (IPC) and the individual or legally authorized representative (LAR) and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool." This exception is being included because not every individual served in the HCS program needs nursing tasks to be performed during the provision of HCS Program services. The DADS form is required to help ensure that the determinations made about the need for nursing tasks are consistent. The second exception to the requirement is if a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157. This exception was created because under state law a physician may delegate and supervise the performance of medical acts by an unlicensed service provider and, therefore, an assessment by a nurse is not necessary.

The proposed amendments also require that, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of an individual in the performance of the medical act, the program provider must communicate the concern to the delegating physician and take necessary steps to ensure the health and safety of the individual. The proposed amendments require that an RN document information from the nursing assessment to help ensure accuracy and consistency of records regarding the provision of nursing services. In addition, the proposed amendments

require an RN to provide a copy of the information documented from a nursing assessment to the service coordinator of an individual participating in the consumer directed services option so the service coordinator will be informed about nursing tasks needed by the individual. The proposed amendments also clarify that a nurse must delegate and supervise nursing tasks performed by an unlicensed service provider in accordance with state law and rules. The proposed amendments identify the state statute and BON rules that nurses must comply with in performing nursing services and list responsibilities under the scope of practice of an RN and licensed vocational nurse (LVN) already required by DADS; that is, that an RN or LVN may teach unlicensed service providers about specific health needs of an individual and that only an RN may develop the nursing service portion of the implementation plan and make and document decisions regarding the delegation of nursing tasks.

In addition, the proposed amendments implement new Subchapter D-1 of Chapter 161 of the Texas Human Resources Code, which allows an unlicensed person to provide administration of medication to an individual in the HCS Program without delegation or oversight of an RN if the medication meets certain requirements, the individual has been assessed by an RN to determine if the individual's health status allows for such administration, and the unlicensed person is trained by an RN or determined competent by an RN to perform the administration of medication.

Because an individual is free to decline an HCS Program service, the proposed amendments describe the consequences of an individual refusing a nursing assessment. The consequences of a refusal are that the program provider may not provide nursing services to the individual and may not provide foster/companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation unless an unlicensed service provider does not perform nursing tasks and the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service. Further, to help ensure that the individual or LAR is informed about the consequences of refusing an assessment, the proposed amendments require the program provider to give the individual or LAR and service coordinator written notification if the program provider determines that it cannot ensure the individual's health, safety, and welfare in the provision of a service and the reasons for the determination. The proposed amendments also describe the process by which an individual's service coordinator explains the consequences of the individual's refusal of a nursing assessment. Also, to ensure that DADS is aware of instances when the program provider has determined that it cannot ensure the health, safety, and welfare in the provision of a service when the individual or LAR has refused a nursing assessment, the proposed amendments require the program provider to notify DADS of such a determination.

The proposed amendments require the service coordinator to notify the service planning team when the individual's person directed plan (PDP) must be reviewed and updated instead of requiring the program provider to notify the service coordinator to prompt the PDP review. This change is proposed because the initiation of the PDP review is more appropriately placed on the service coordinator who is responsible for coordinating activity regarding the PDP.

The proposed amendments reflect DADS current practice, consistent with that in other DADS programs, that service claims in the HCS Program must be submitted within 12 months after the

last day of the month in which the service component was provided.

The proposed amendments provide examples to clarify when a conflict of interest between a staff member or service provider and an individual exists and when financial impropriety toward an individual has occurred.

The proposed amendments also permit an HCS four-person residence to meet certain requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code or requirements of the International Fire Code instead of just those of the NFPA. This option was created because many local fire safety jurisdictions inspecting four-person residences are using the International Fire Code, not the NFPA.

The proposed amendments require program providers to compare data provided by DADS with critical incident data collected by the program provider regarding the use of restraint and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery. This new requirement is in response to recommendations made by a workgroup established by HHSC in accordance with Senate Bill 325, 79th Legislature, Regular Session, 2005. The proposed amendments also clarify the roles of the program provider and the consumer/advocate advisory committee in reviewing information about the provider's program and identifying program process improvements.

The proposed amendments substitute respectful person-first language for outdated terminology in response to House Bill 1481, 82nd Legislature, Regular Session, 2011; update rule cross-references affected by the proposed amendments; and make terminology consistent.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.153 adds definitions for "critical incident," "ICF/IID," "ICF/IID Program," "ID/RC Assessment," "intellectual disability," "local authority," "state Medicaid claims administrator," and "unusual incident." The amendment in §9.153 also clarifies existing definitions for "critical incident data," "ICF/MR," "large ICF/IID," "LVN," "MRA," "MR/RC," "primary correspondent," "RN," "service coordination," "service coordinator," and "state supported living center."

The proposed amendment to §9.158 instructs the service coordinator conducting an applicant's enrollment into the HCS Program to ensure that the applicant's IPC contains an adequate number of RN nursing units to provide a nursing assessment unless: (1) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool," or (2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157. The amendment also provides direction for the service coordinator if the applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment. The service coordinator must inform the applicant or LAR that refusal will result in the applicant not receiving nursing services and, if the applicant needs foster/companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation, will result in the applicant not receiving that service unless the unlicensed service provider does not perform nursing tasks

and the program provider determines that it can ensure the applicant's health, safety, and welfare.

The proposed amendment to §9.166 requires the service coordinator to notify the service planning team that the individual's person directed plan must be reviewed and updated. In addition, the program provider must ensure that the meeting between the service planning team and program provider occurs at least 30 but no more than 60 calendar days before the individual plan of care expires.

The proposed amendment to §9.170 requires a program provider to submit a service claim that meets the *HCS Billing Guidelines* for a service other than an adaptive aid, a minor home modification, or dental treatment to the state Medicaid claims administrator no later than 12 months after the last day of the month in which the service was provided. A service claim for an adaptive aid, minor home modification, or dental treatment must be submitted no later than 12 months after the last day of the month in which the individual received the adaptive aid or in which the dental treatment or the minor home modification was completed.

The proposed amendment to §9.174, which relates to the provision of nursing services, requires an RN to perform a nursing assessment of an individual unless: (1) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool," or (2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157. The proposed amendment also requires that an RN document information from the nursing assessment. In addition, the amendment requires the RN to provide a copy of the documented information to the service coordinator of an individual participating in the consumer directed services option. The proposed amendment clarifies that a nurse must delegate and supervise nursing tasks performed by an unlicensed service provider in accordance with state law and rules. Also, the proposed amendment identifies the state statute and BON rules that nurses must comply with in performing nursing services and lists responsibilities under the scope of practice of an RN and LVN already required by DADS. In addition, the proposed amendment describes when an unlicensed person may provide administration of medication to an individual in the HCS Program without delegation or oversight of an RN. The proposed amendments also require that, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health and safety of the individual in the performance of the medical act, the program provider must communicate the concern to the delegating physician and take necessary steps to ensure the health and safety of the individual. The proposed amendments describe the consequences of an individual refusing a nursing assessment. Specifically, the program provider may not provide nursing services to the individual and may not provide foster/companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation to the individual unless an unlicensed service provider does not perform nursing tasks and the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service. Further, the proposed amendment requires the program provider to provide written notification to the individual or LAR, the service coordinator, and DADS of such a determination.

The proposed amendment to §9.177 provides an example of a conflict of interest between a staff member or service provider and an individual and clarifies types of financial impropriety toward an individual.

The proposed amendment to §9.178 allows a four-person residence to be certified by a fire safety authority under certain portions of the NFPA 101 Life Safety Code or certain portions of the International Fire Code. The proposed amendment also requires program providers to compare data provided by DADS with critical incident data collected by the program provider regarding the use of restraint and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery. The proposed amendment also clarifies the roles of the program provider and the consumer/advocate advisory committee in reviewing information about the provider's program and identifying program process improvements.

The proposed amendments to §9.188 and §9.189 correct rule cross-references affected by the proposed amendments.

The proposed amendment to §9.190 requires a service coordinator to inform the individual or LAR of the consequences and risks of refusing a nursing assessment including that the refusal will result in the individual not receiving (1) nursing services, or (2) foster companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service. The proposed amendment also requires the service coordinator to notify the program provider if the individual continues to refuse an assessment after the discussion.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, there are foreseeable implications relating to costs or revenues of state government. There are no foreseeable implications relating to costs or revenues of local governments.

The effect on state government for the first five years the proposed amendments are in effect is an estimated additional cost of \$733,756 in FY 2013; \$732,137 in FY 2014; \$732,137 in FY 2015; \$732,137 in FY 2016, and \$732,137 in FY 2017.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because, although program providers will be required to perform a nursing assessment, they are allowed to submit service claims and be paid for that activity. In addition, although program providers will be required to compare aggregate data provided by DADS with critical incident data concerning use of restraint for individuals who receive supervised living and residential support services, this activity does not cause businesses to incur a cost.

#### PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that DADS rules will be consistent with BON requirements and in compliance with state law. In addition, the rules help ensure quality improvement in program provider

operations regarding the use of restraint. Further, the rules will allow HCS four-person residences to meet requirements of the International Fire Code and, therefore, be consistent with practices in many local fire safety jurisdictions. Finally, DADS rules will be consistent with current practice regarding time frames for submission of service claims.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Becky Hubik at (512) 438-2339 in DADS CPI Waiver and State Plan Services. Written comments on the proposal may be submitted to *Texas Register Liaison, Legal Services-11R30, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R30" in the subject line.*

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §9.153. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with the applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(2) Applicant--A Texas resident seeking services in the HCS Program.

(3) Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by an individual:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(4) Business day--A day when a program provider's administrative offices are open.

(5) CARE--DADS [DADS] Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(6) CDS--Consumer directed services. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(7) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title, that provides financial management services and, at the request of an individual or LAR, support consultation to the individual participating in CDS.

(8) CDS service provider--An employee or contractor of a CDS employer.

(9) CRCG (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us).

(10) Critical incident--An event listed in the HCS Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/WAIVER.html>.

(11) [(10)] Critical incident data--Information a program provider enters in CARE as defined in the CARE User Guide [found at <http://www2.mhmr.state.tx.us/655/cis/training/WAIVER.html>].

(12) [(11)] DADS--The Department of Aging and Disability Services.

(13) [(12)] DARS--The Department of Assistive and Rehabilitative Services.

(14) [(13)] DFPS--The Department of Family and Protective Services.

(15) [(14)] Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(16) [(15)] Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of

ordinary prudence would determine that the LAR should be informed, such as:

- (A) an individual needing emergency medical care;
- (B) an individual being removed from his residence by law enforcement;
- (C) an individual leaving his residence without notifying a staff member or service provider and not being located; and
- (D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(17) [(46)] Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(18) [(47)] Financial management services--A service, as defined in §41.103 of this title, that is provided to an individual who chooses to participate in CDS.

(19) [(48)] Four-person residence--A residence:

- (A) that a program provider leases or owns;
- (B) in which at least one person but no more than four persons receive:
  - (i) residential support;
  - (ii) supervised living;
  - (iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or
  - (iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than those described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(20) [(49)] HCS Program--The Home and Community-based Services Program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(21) [(20)] HHSC--The Texas Health and Human Services Commission.

(22) [(21)] ICAP--Inventory for Client and Agency Planning.

(23) ICF/IID--A facility in which ICF/IID Program services are provided.

(24) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(25) [(22)] ICF/MR--ICF/IID [Intermediate care facility for persons with mental retardation or related conditions].

(26) ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(27) [(23)] Implementation Plan--A written document developed by the program provider for an individual that, for each HCS Program service on the individual's IPC not provided through the CDS option, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of HCS Program units of service needed to complete each objective;

(E) the frequency and duration of HCS Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(28) [(24)] Individual--A person enrolled in the HCS Program.

(29) [(25)] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(30) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period; referred to in some sections as mental retardation.

(31) [(26)] IPC (individual plan of care)--A written plan that:

(A) states:

(i) the type and amount of each HCS Program service to be provided to the individual during an IPC year; and

(ii) the services and supports to be provided to the individual through non-HCS Program resources, including natural supports, medical services, and educational services; and

(B) is authorized by DADS.

(32) [(27)] IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(33) [(28)] IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(34) [(29)] Large ICF/IID [ICF/MR]-A non-state operated ICF/IID [ICF/MR] with a Medicaid certified capacity of 14 or more.

(35) [(30)] LAR (legally authorized representative)--A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(36) [(31)] LOC (level of care)--A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC [MR/RC] Assessment.

(37) Local authority--An entity to which the Health and Human Services Commission's authority and responsibility, as de-

scribed in Texas Health and Safety Code, §531.002(11), has been delegated.

(38) [(32)] LON (level of need)--An assignment given by DADS to an individual upon which reimbursement for foster/companion care, supervised living, residential support, and day habilitation is based.

(39) [(33)] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(40) [(34)] MRA [(mental retardation authority)]--Local authority [In accordance with Texas Health and Safety Code, §533.035(a), an entity designated as a local mental retardation authority by the executive commissioner of HHSC to which the executive commissioner delegates HHSC's authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in one or more local service areas].

(41) [(35)] MR/RC [(Mental Retardation/Related Condition)] Assessment--An ID/RC Assessment [A form used by DADS for LOC determination and LON assignment].

(42) [(36)] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(43) [(37)] PDP (person-directed plan)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HCS Person-Directed Plan form and discovery tool found at [www.dads.state.tx.us](http://www.dads.state.tx.us), that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(44) [(38)] Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(45) [(39)] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(46) [(40)] Permanency Planning Review Screen--A screen in CARE, completed by a local authority [an MRA], that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(47) [(41)] Primary correspondent--A person who may request ~~in accordance with the *Mental Retardation Interest List Manual*~~; that a local authority [an MRA] place an applicant's name on the HCS Program interest list.

(48) [(42)] Program provider--An entity that provides HCS Program services under a waiver program provider agreement with DADS as defined in Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers).

(49) [(43)] Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(50) [(44)] Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(51) [(45)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(52) [(46)] Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter or §9.168(h) of this subchapter (relating to CDS) to add a new HCS Program service or change the amount of an existing service.

(53) [(47)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(54) [(48)] Service back-up plan--A plan, as defined in §41.103 of this title, that ensures continuity of critical program services if service delivery is interrupted.

(55) [(49)] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for ~~[with] Individuals with an Intellectual Disability [for Mental Retardation]~~).

(56) [(50)] Service coordinator--An employee of a local authority [an MRA] who provides service coordination to an individual.

(57) [(51)] Service planning team--A planning team consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant or individual or LAR on behalf of the applicant or individual (for example, a program provider representative, family member, friend, or teacher).

(58) [(52)] Service provider--A person, who may be a staff member, who directly provides an HCS Program service to an individual.

(59) [(53)] SSI--Supplemental Security Income.

(60) [(54)] Staff member--An employee or contractor of an HCS Program provider.

(61) State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(62) [(55)] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability [~~mental retardation~~] a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(63) [(56)] Support consultation--A service, as defined in §41.103 of this title, that is provided by a support advisor employed by, or contracted through, a CDSA or retained as a contractor by an employer in the CDS option.

(64) [(57)] TANF--Temporary Assistance for Needy Families.

(65) [(58)] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(66) Unusual incident--An event, other than a critical incident, that presents a potential risk to an individual's health, safety, or welfare including:

(A) the individual's arrest by law enforcement;

(B) the individual's location being unknown; and

(C) the individual's exhibiting unexpected erratic behavior.

§9.158. *Process for Enrollment of Applicants.*

(a) DADS notifies a local authority [~~an MRA~~], in writing, of an HCS Program vacancy in the local authority's [~~MRA's~~] local service area and directs the local authority [~~MRA~~] to offer the program vacancy to an applicant:

(1) whose registration date, assigned in accordance with §9.157(a)(1) of this subchapter (relating to Maintenance of HCS Program Interest list), is earliest on the statewide interest list for the HCS Program as maintained by DADS;

(2) whose registration date, assigned in accordance with §9.157(a)(1) of this subchapter is earliest on the local service area interest list for the HCS Program as maintained by the local authority [~~MRA~~], in accordance with §9.157 of this subchapter;

(3) for whom DADS has proposed to terminate or has terminated TxHmL Program services because the applicant no longer

meets the eligibility criteria described in §9.556(a)(5) and (8) of this chapter (relating to Eligibility Criteria); or

(4) who is a member of a target group identified in the approved HCS waiver application.

(b) Except as provided in subsection (c) of this section, the local authority [~~MRA~~] must make the offer of program vacancy in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The local authority [~~MRA~~] must make the offer of program vacancy to an applicant described in subsection (a)(4) of this section who is currently receiving services in a state supported living center or a state mental health facility as defined by §2.253 of this title (relating to Definitions) in accordance with DADS procedures.

(d) The local authority [~~MRA~~] must include in a written offer that is made in accordance with subsection (a)(1), (2), or (3) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of the program vacancy within 30 calendar days after the local authority's [~~MRA's~~] written offer, the local authority [~~MRA~~] withdraws the offer of the program vacancy, and:

(i) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, the local authority [~~MRA~~] removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter and places the applicant's name on the HCS Program interest list with a new registration date that is the date of the local authority's [~~MRA's~~] notification; or

(ii) for an applicant other than one described in clause (i) of this subparagraph, the local authority [~~MRA~~] removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter; and

(B) if the applicant is currently receiving services from the local authority [~~MRA~~] that are funded by general revenue and the applicant or LAR declines the offer of the program vacancy, the local authority [~~MRA~~] terminates those services that are similar to services provided under the HCS Program; and

(2) information relating to the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(e) If an applicant or LAR responds to an offer of program vacancy, the local authority [~~MRA~~] must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID [~~ICF/MR~~] Program (both state supported living centers and community-based facilities), waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports. The local authority [~~MRA~~] must use the Explanation of Services and Supports document, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(2) give the applicant or LAR the Verification of Freedom of Choice Form, Waiver Program which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us), to document the applicant's choice regarding the HCS Program and ICF/IID [~~ICF/MR~~] Program.



(f) The local authority [MRA] must withdraw an offer of a program vacancy made to an applicant or LAR and remove the applicant's name from the HCS Program interest list if:

(1) within 30 calendar days after the local authority's [MRA's] offer made to the applicant or LAR in accordance with subsection (a)(1), (2), or (3) of this section, the applicant or LAR does not respond to the offer of the program vacancy;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form from the local authority [MRA] in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of HCS Program services over the ICF/IID [ICF/MR] Program using the Verification of Freedom of Choice, Waiver Program form; or

(3) within 30 calendar days after the applicant or LAR has received the contact information regarding all program providers in the local authority's [MRA's] local service area in accordance with subsection (1)(1) of this section, the applicant or LAR does not document the choice of a program provider using the Documentation of Provider Choice form.

(g) If the local authority [MRA] withdraws an offer of a program vacancy made to an applicant and removes the applicant's name from the HCS Program interest list, the local authority [MRA] must notify the applicant or LAR of such actions, in writing, by certified United States mail and:

(1) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, include a statement that the applicant's name will be placed on the HCS Program interest list with a new registration date that is the date of the local authority's [MRA's] notification; or

(2) for an applicant other than one described in paragraph (1) of this subsection, include a statement that the applicant or the applicant's primary correspondent may request, orally or in writing, to have the applicant's name placed on the HCS Program interest list with a new registration date that is the date the applicant or LAR makes the request.

(h) If the applicant is currently receiving services from the local authority [MRA] that are funded by general revenue and the applicant declines the offer of the program vacancy, the local authority [MRA] must terminate those services that are similar to services provided under the HCS Program.

(i) If the local authority [MRA] terminates an applicant's services in accordance with subsection (h) of this section, the local authority [MRA] must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) If the local authority [MRA] notifies an applicant under 22 years of age or the applicant's LAR in accordance with subsection (g)(1) of this section, the local authority [MRA] must coordinate with DADS to ensure the applicant's name is placed on the HCS Program interest list with a new registration date that is the date of the local authority's [MRA's] notification.

(k) If the applicant or LAR, on the applicant's behalf, chooses to enroll in the HCS Program the local authority [MRA] must compile and maintain information necessary to process the request for enrollment in the HCS Program.

(1) If the applicant's financial eligibility for the HCS Program must be established, the local authority [MRA] must initiate,

monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The local authority [MRA] must complete an ID/RC [MR/RC] Assessment if an LOC determination is necessary in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The local authority [MRA] must:

(i) perform or endorse a determination that the applicant has an intellectual disability [~~mental retardation~~] in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability [~~Mental Retardation~~] Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The local authority [MRA] must administer the ICAP and recommend an LON assignment to DADS in accordance with §9.163 and §9.164 of this subchapter (relating to DADS' Review of LON).

(C) The local authority [MRA] must electronically transmit the completed ID/RC [MR/RC] Assessment to DADS for approval in accordance with §9.161(a) and §9.163(a) of this subchapter and, if applicable, submit supporting documentation as required by §9.164(c) of this subchapter.;

(3) The local authority [MRA] must assign a service coordinator who, together with the applicant and LAR, must develop a PDP.

(4) The local authority [MRA] must develop a proposed initial IPC with the applicant or LAR in accordance with §9.159(c) of this subchapter (relating to IPC).

(1) The service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding available program providers in the local authority's [MRA's] local service area (that is [i.e.], program providers operating below their service capacity as identified in CARE);

(2) arrange for meetings and visits with potential program providers as requested by the applicant or LAR;

(3) review the proposed initial IPC with potential program providers as requested by the applicant or LAR;

(4) ensure that the applicant's or LAR's choice of a program provider is documented on the Documentation of Provider Choice Form and signed by the applicant or LAR;

(5) negotiate and finalize the proposed initial IPC and the date services will begin with the selected program provider, consulting with DADS if necessary to reach agreement with the selected program provider on the content of the proposed initial IPC and the date services will begin;

(6) ensure that the initial proposed IPC includes a sufficient number of RN nursing units to perform an initial nursing assessment, unless:

(A) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical

act under Texas Occupations Code, Chapter 157, as documented by the physician;

(7) if an applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment as required by paragraph (6) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services; and

(ii) if the applicant needs foster/companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation, will result in the individual not receiving that service unless:

(I) the unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service as described in §9.174(c) of this subchapter (relating to Certification Principles: Service Delivery); and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment in the applicant's record;

(8) [(6)] ensure that the applicant [individual] or LAR signs and dates the proposed initial IPC;

(9) [(7)] ensure that the selected program provider signs and dates the proposed IPC, demonstrating agreement that the service components will be provided to the applicant [individual];

(10) [(8)] sign and date the proposed initial IPC, which indicates that the service coordinator agrees that the requirements described in §9.159(c) of this subchapter have been met; and

(11) [(9)] inform the applicant or LAR, orally and in writing, of the following reasons HCS Program services may be terminated:

(A) the individual no longer meets the eligibility criteria described in §9.155 of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services); or

(B) the individual or LAR requests termination of HCS Program services.

(m) The local authority [MRA] must:

(1) conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning); and

(2) discuss CDS with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS).

(n) After the proposed initial IPC is finalized and signed in accordance with subsection (l)[(5) - (8)] of this section, the local authority [MRA] must:

(1) electronically transmit the proposed initial IPC to DADS and:

(A) keep the original proposed initial IPC in the individual's record; and

(B) ensure the electronically transmitted proposed initial IPC contains information identical to that on the original proposed initial IPC;

(2) if the IPC includes a service component that has a service limit described in §9.192(b) of this subchapter (relating to Service Limits) and the service limit is exceeded:

(A) submit to DADS a completed Request for an Exception to Service Limit form as required by §9.193(c) of this subchapter (relating to Exception to Service Limits); and

(B) keep a copy of the completed form in the applicant's [individual's] record; and

(3) submit other required enrollment information to DADS.

(o) DADS notifies the applicant or LAR, the selected program provider, the CDSA, if applicable, and the local authority [MRA] of its approval or denial of the applicant's enrollment. When the enrollment is approved, DADS authorizes the applicant's enrollment in the HCS Program through the automated enrollment and billing system and issues an enrollment letter that includes the effective date of the applicant's enrollment in the HCS Program.

(p) Prior to the applicant's [individual's] service begin date, the local authority [MRA] must provide to the selected program provider and CDSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC [MR/RC] Assessment, the proposed initial IPC, and the applicant's PDP.

(q) The selected program provider must not initiate services until notified of DADS [DADS'] approval of the applicant's enrollment.

(r) The selected program provider must develop an implementation plan for HCS Program services that is based on the individual's PDP and authorized IPC.

(s) The local authority [MRA] must retain in the applicant's record:

(1) the Verification of Freedom of Choice, Waiver Program form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of a program provider, if applicable;

(3) the Deadline Notification form; and

(4) any other correspondence related to the offer of a program vacancy.

(t) Copies of the following forms and letters referenced in this section are available by contacting the Department of Aging and Disability Services, Provider Services Division, P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030:

(1) Verification of Freedom of Choice, Waiver Program;

(2) Documentation of Provider Choice form; and

(3) Deadline Notification form.

§9.166. *Renewal and Revision of an IPC.*

(a) Renewal of the IPC. At least annually and before the expiration of an individual's IPC, the individual's IPC must be renewed in accordance with this subsection and with DADS [DADS'] instructions.

(1) At least 60 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator [a program provider] must notify the service planning team [eordinator] that the individual's PDP [IPC] must be reviewed and updated [renewed].

(2) Upon notification in accordance with paragraph (1) of this subsection, the service planning team must review and update the individual's PDP. The [and update it, if necessary. If the PDP is updated, the] service coordinator must send a copy of the updated PDP to the program provider within 10 calendar days after the PDP is updated.

(3) The program provider must ensure that a meeting between the service planning team and the program provider occurs at [At] least 30 but no more than 60 calendar days before the expiration of the individual's IPC to[; the service planning team and the program provider must] review the PDP and develop the proposed renewal IPC in accordance with §9.159(c) of this subchapter (relating to IPC), including completion of the CDS portion of the proposed renewal IPC, if applicable, and the non-HCS Program services.

(4) The program provider must, before the effective date of the proposed renewal IPC, develop an implementation plan for HCS Program services that is based on the individual's PDP and proposed renewal IPC.

(5) Within seven calendar days after development of the proposed renewal IPC as required by paragraph (3) of this subsection, the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(6) Within seven calendar days after the program provider electronically transmits the proposed renewal IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(7) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and authorized renewal IPC.

(b) Revisions to the IPC. The service coordinator or the program provider may determine whether an individual's IPC needs to be revised to add a new HCS Program service or change the amount of an existing service.

(1) The service coordinator must notify the program provider if the service coordinator determines that the IPC needs to be revised.

(2) The program provider must notify the service coordinator if the program provider determines that the IPC needs to be revised.

(3) Within 14 calendar days after the notification required by paragraph (1) or (2) of this subsection:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate, and if the PDP is not revised, the service coordinator must document the reasons for the proposed IPC revision;

(C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(4) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(5) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(c) Revision of IPC before delivery of services. Except as provided by subsection (d) of this section, if an individual's service planning team and program provider determine that the IPC must be revised to add a new HCS Program service or change the amount of an existing

service, the program provider must revise the IPC in accordance with subsection (b) of this section before the delivery of a new or increased service.

(d) Emergency provision of services and revision of the IPC.

(1) If an emergency necessitates the provision of an HCS Program service to ensure the individual's health and safety and the service is not on the IPC or exceeds the amount on the IPC, the program provider may provide the service before revising the IPC. The program provider must, within one business day after providing the service:

(A) document:

(i) the circumstances that necessitated providing the new HCS Program service or the increase in the amount of the existing HCS Program service; and

(ii) the type and amount of the service provided;

(B) notify the service coordinator of the emergency provision of the service and that the IPC must be revised; and

(C) upon request, provide a copy of the documentation required by subparagraph (A) of this paragraph to the service coordinator.

(2) Within seven calendar days after providing the service:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate;

(C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(3) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(4) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(e) Submitting a proposed renewal and revised IPC to DADS. A proposed renewal or revised IPC must be submitted to DADS for authorization in accordance with this subsection.

(1) The program provider must:

(A) sign and date the proposed renewal or revised IPC demonstrating agreement that the service components will be provided to the individual; and

(B) ensure that a proposed renewal or revised IPC is signed and dated by the individual or LAR.

(2) The program provider must:

(A) electronically transmit a proposed renewal or revised IPC to DADS;

(B) keep the original proposed renewal or revised IPC in the individual's record and, within three calendar days after electronic transmission, ensure the service coordinator receives a paper copy of the signed proposed renewal or revised IPC;

(C) ensure the electronically transmitted proposed renewal or revised IPC contains information identical to that on the original proposed renewal or revised IPC; and

(D) if the IPC includes a service component that has a service limit described in §9.192(b) of this subchapter (relating to Service Limits) and the service limit is exceeded:

(i) submit to DADS a completed Request for an Exception to Service Limit as required by §9.193(c) of this subchapter (relating to Exception to Service Limits); and

(ii) keep a copy of the completed form in the individual's record.

(3) The service coordinator must review the electronically transmitted proposed renewal or revised IPC and:

(A) enter the service coordinator's name and date in CARE;

(B) enter in CARE whether the service coordinator agrees or disagrees that the requirements described in §9.159(c) of this subchapter (relating to IPC) have been met; and

(C) if the service coordinator disagrees that the requirements described in §9.159(c) of this subchapter have been met, notify the individual or LAR, the program provider, and DADS of the service coordinator's disagreement in accordance with DADS instructions.

§9.170. *Reimbursement.*

(a) Program provider reimbursement.

(1) DADS pays the program provider for service components as follows:

(A) Supported home living, specialized therapies, nursing, respite, and supported employment are paid for in accordance with the reimbursement rate for the specific service component.

(B) Foster/companion care, residential support, supervised living, and day habilitation are paid for in accordance with the individual's LON and the reimbursement rate for the specific service component.

(C) Adaptive aids, minor home modifications, and dental treatment are paid for based on the actual cost of the item and, if requested, a requisition fee in accordance with the *HCS Program Billing Guidelines*, which are available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(2) The program provider must accept DADS [~~DADS~~] payment for a service component as payment in full for the service component.

(3) If the program provider disagrees with the enrollment date of an individual as determined by DADS, the program provider must notify DADS in writing of its disagreement, including the reasons for the disagreement, within 180 calendar days after the end of the month in which the program provider receives the enrollment letter. DADS reviews the information submitted by the program provider and notifies the program provider of its determination regarding the individual's enrollment date.

(4) To be paid for the provision of a service component other than an adaptive aid, a minor home modification, or dental treatment, a program provider must submit a service claim for the service component that meets the requirements in the *HCS Program Billing Guidelines* to the state Medicaid claims administrator no later than 12 months after the last day of the month in which the service component was provided.

(5) To be paid for the provision of an adaptive aid, a minor home modification, or dental treatment, a program provider must submit a service claim for the service component that meets the requirements in the *HCS Program Billing Guidelines* to the state Medicaid claims administrator no later than 12 months after the last day of the month in which:

(A) the individual received the adaptive aid or dental treatment; or

(B) the minor home modification was completed.

~~[(4) The program provider must prepare and submit claims for service components in accordance with this subchapter, the HCS Program Provider Agreement and the *HCS Program Billing Guidelines*, which are found at [www.dads.state.tx.us](http://www.dads.state.tx.us).]~~

~~[(5) The program provider must:]~~

~~[(A) submit a claim, electronically, to DADS for day habilitation, foster/companion care, supported home living, residential support, supervised living, respite, supported employment, specialized therapies, and nursing; and]~~

~~[(B) obtain an authorization for payment from DADS, in accordance with the *HCS Program Billing Guidelines* and paragraph (8) of this subsection, and submit a claim, electronically, to DADS for adaptive aids, minor home modifications, and dental treatment.]~~

~~[(6) For a service component listed in paragraph (5)(A) of this subsection, the program provider must:]~~

~~[(A) submit a claim to DADS by the latest of the following dates:]~~

~~[(i) 95 calendar days after the end of the month in which the service component was provided;]~~

~~[(ii) 45 calendar days after the date of the enrollment approval letter issued by DADS; or]~~

~~[(iii) 95 calendar days after the end of the month in which the program provider receives a dated response denying payment for the service component from a source other than the HCS Program to a correctly submitted request to that source for payment for the service component; and]~~

~~[(B) if DADS rejects a submitted claim, submit a corrected claim by one of the following dates, whichever is later:]~~

~~[(i) the 180th calendar day after the end of the month in which the service component or subcomponent was provided; or]~~

~~[(ii) the 45th calendar day after the date of the notification that the claim has been rejected.]~~

~~[(6) [(7)] If an individual's HCS Program services are suspended or terminated:~~

~~(A) the program provider may submit a claim for day habilitation, supported home living, respite, supported employment, specialized therapies, and nursing for the day of the individual's suspension or termination; and~~

~~(B) the program provider must not submit a claim for foster/companion care, residential support, or supervised living for the day of the individual's suspension or termination.~~

~~[(8) For a service component listed in paragraph (5)(B) of this subsection, the program provider must:]~~

~~[(A) submit a request for authorization for payment to DADS within 95 calendar days after the end of the month in which:]~~

~~[(i) the individual received the adaptive aid or dental treatment; or]~~

~~[(ii) the minor home modification was completed;]~~

~~[(B) if DADS rejects a request for authorization for payment, submit a corrected request for authorization for payment by one of the following dates, whichever is later:]~~

~~[(i) the 180th calendar day after the end of the month in which:]~~

~~[(I) the individual received the adaptive aid or dental treatment; or]~~

~~[(II) the minor home modification was completed; or]~~

~~[(iii) the 45th calendar day after the date of the notification that the authorization for payment has been rejected;]~~

~~[(C) after obtaining authorization for payment from DADS, submit a claim within 45 calendar days after authorization for payment is given by DADS; and]~~

~~[(D) if DADS rejects a submitted claim, submit a corrected claim by one of the following dates, whichever is later:]~~

~~[(i) the 180th calendar day after the end of the month in which:]~~

~~[(I) the individual received the adaptive aid or dental treatment; or]~~

~~[(II) the minor home modification was completed; or]~~

~~[(iii) the 45th calendar day after the date of the notification that the claim has been rejected.]~~

~~(7) [(9)] If the program provider submits a claim for an adaptive aid or dental treatment, the program provider must submit documentation that sources of payment other than the HCS Program for which the individual may be eligible, including Medicare, Medicaid (such as Texas Health Steps and Home Health), DARS, the public school system, and private insurance, denied the submitted claim. Such documentation includes evidence that a proper, complete, and timely request for payment was made to the other payment source and that payment was not made.~~

~~(8) [(40)] If the program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 [\$1000] or more, the program provider must submit an individualized assessment conducted by a professional qualified to assess whether the aid or modification is necessary and appropriate to address the individual's specific needs.~~

~~(9) [(44)] DADS does not pay the program provider for a service component or recoups any payments made to the program provider for a service component if:~~

~~(A) the individual receiving the service component is, at the time the service component was provided, ineligible for the HCS program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID [ICF/MR];~~

~~(B) the service component is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;~~

~~(C) the service component is not included on the signed, dated, and authorized IPC of the individual in effect at the time the~~

service component was provided, except as permitted by §9.166(d) of this subchapter (relating to Renewal and Revision of an IPC);

(D) the service component provided does not meet the service definition or is not provided in accordance with the *HCS Program Billing Guidelines*;

(E) the program provider provides the supervised living or residential support service component in a residence in which four individuals or other person receiving similar services live without DADS [~~DADS~~] approval as required in §9.188 of this subchapter (relating to DADS [~~DADS~~] Approval of Residences);

(F) the service component is not documented in accordance with the *HCS Program Billing Guidelines*;

(G) the claim for the service component is not prepared and submitted in accordance with the *HCS Program Billing Guidelines*;

(H) an individualized assessment as required by paragraph (8) [(40)] of this subsection is not submitted by the program provider;

(I) DADS determines that the service component would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service component;

(J) the service component is provided during a period of time for which there is not a signed and dated ID/RC [~~MR/RC~~] Assessment for the individual;

(K) the service component is provided during a period of time for which the individual did not have an LOC determination;

(L) the service component is provided by a service provider who does not meet the qualifications to provide the service component as delineated in the *HCS Program Billing Guidelines*;

(M) the service component is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c)(1) [~~§9.159(e)~~] of this subchapter (relating to IPC);

(N) the service component is not provided in accordance with the individual's PDP or implementation plan;

(O) the service component of foster/companion care, residential support, or supervised living is provided on the day of the individual's suspension or termination of HCS Program services;

(P) the service component is provided before the individual's enrollment date into the HCS Program; or

(Q) the service component was paid at an incorrect LON because the ID/RC [~~MR/RC~~] Assessment electronically transmitted to DADS does not contain information identical to information on the signed and dated ID/RC [~~MR/RC~~] Assessment.

(10) [(42)] The program provider must keep any records necessary to disclose the extent of the service components provided by the program provider and, on request, provide DADS any such records and any information regarding claims filed by the program provider.

(11) [(43)] The program provider must refund to DADS any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(12) [(44)] DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *HCS Program Billing Guidelines*. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth

in the *HCS Program Billing Guidelines*. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(13) [(45)] A corrective action plan required by DADS in accordance with paragraph (12)(B) [(44)(B)] of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(14) [(46)] Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(15) [(47)] If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (12)(B) [(44)(B)] of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §9.186 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(16) [(48)] If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (13) [(45)] of this subsection, DADS may impose a vendor hold on payments due to the program provider under the program provider agreement until the program provider takes the corrective action.

(17) [(49)] If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (16) [(48)] of this subsection, DADS may terminate the program provider agreement.

(b) CDSA reimbursement. For an individual participating in CDS, DADS pays the CDSA for the following service components in accordance with the reimbursement rate established by HHSC:

(1) financial management services;

(2) support consultation, if requested by the individual or LAR;

(3) supported home living, if the individual or LAR chooses it to be provided through CDS; and

(4) respite, if the individual or LAR chooses it to be provided through CDS.

§9.174. *Certification Principles: Service Delivery.*

(a) The program provider must:

(1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in CARE;

(2) serve an eligible applicant without regard to age, sex, race, or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services;

(4) ensure that each applicant or individual, or LAR on behalf of the applicant or individual, has chosen where the individual or applicant is to reside from available options consistent with the individual's needs;

(5) encourage involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request from and encourage the parent or LAR of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(7) inform the parent or LAR that if the information described in paragraph (6) of this subsection is not provided or is not accurate and the service coordinator and DADS are unable to locate the parent or LAR as described in §9.190(e)(35) [§9.190(e)(34)] of this subchapter (relating to Local Authority [MRA] Requirements for Providing Service Coordination in the HCS Program) and §9.189 of

this subchapter (relating to Referral to DFPS), DADS refers the case to DFPS;

(8) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

(B) take the following actions to assist a local authority [an MRA] in conducting permanency planning:

(i) cooperate with the local authority [MRA] responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority [MRA] or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's local authority [MRA], activities, supports, and services that can be provided by the family, LAR, program provider, or the local authority [MRA] to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that the IPC for each individual is renewed, revised, and authorized by DADS in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC) and §9.160 of this subchapter (relating to DADS' Review of a Proposed IPC);

(13) ensure that HCS Program services identified in the individual's implementation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's

goals for the individual, and the individual's needs rather than which services are available;

(14) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

(17) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

(A) accurate recordings of individual production or performance;

(B) valid and current time studies or monitoring as appropriate; and

(C) prevailing wage rates;

(18) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) for an individual receiving foster/companion care, residential support, or supervised living;

(A) ensure that the individual lives in a home that is a typical residence within the community;

(B) ensure that the residence, neighborhood, and community meet the needs and choices of the individual and provide an environment that ensures the health, safety, comfort, and welfare of the individual;

(C) unless contraindications are documented with justification by the service planning team, assist the individual to live near family and friends and needed or desired community resources consistent with the individual's choice, if possible; and

(D) ensure that the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

(25) together with an individual's service coordinator, ensure the coordination and compatibility of HCS Program services with non-HCS Program services;

(26) ensure that an individual has a current implementation plan;

(27) ensure that the following specialized therapy services are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us):

- (A) audiology services;
- (B) speech/language pathology services;
- (C) occupational therapy services;
- (D) physical therapy services;
- (E) dietary services;
- (F) social work services; and
- (G) behavioral support;

(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any specialized therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities that promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appen-

dix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), including:

- (A) emergency dental treatment;
- (B) preventive dental treatment;
- (C) therapeutic dental treatment; and
- (D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), including:

- (A) purchase and repair of wheelchair ramps;
- (B) modifications to bathroom facilities;
- (C) modifications to kitchen facilities; and
- (D) specialized accessibility and safety adaptations or additions, including repair and maintenance;

(31) ensure that nursing is provided in accordance with the individual's PDP;<sup>2</sup> IPC;<sup>2</sup> implementation plan;<sup>2</sup> Texas Occupations Code, Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and [with] Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and consists of performing health care activities [procedures] and monitoring the individual's health conditions, including:

- (A) administering medication;
- (B) monitoring the individual's use of medications;
- (C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;
- (D) assisting the individual to secure emergency medical services;
- (E) making referrals for appropriate medical services;
- (F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by a licensed nurse; and

(G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those [and monitoring of] tasks [assigned to other service providers by an RN] in accordance with state law and rules;

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual;



(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through CDS, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:

(-a-) an oral medication;

(-b-) a topical medication; or

(-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:

(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(32) ensure that supported home living is available to an individual living in his or her own home or the home of his or her natural or adoptive family members, or to an individual receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of specialized therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(34) ensure that HCS foster/companion care is provided:

(A) by a foster/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(35) ensure that foster/companion care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of specialized therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(36) ensure that supervised living is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter (relating to DADS [~~DADS~~] Approval of Residences) or a three-person residence;

(B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

(C) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(37) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

- (A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);
- (B) assistance with meal planning and preparation;
- (C) securing and providing transportation;
- (D) assistance with housekeeping;
- (E) assistance with ambulation and mobility;
- (F) reinforcement of specialized therapy activities;
- (G) assistance with medications and the performance of tasks delegated by an RN;
- (H) supervision of individuals' safety and security;
- (I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and
- (J) habilitation, exclusive of day habilitation;

(38) ensure that residential support is provided:

- (A) in a four-person residence that is approved in accordance with §9.188 of this subchapter or a three-person residence;
- (B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;
- (C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and
- (D) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(39) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

- (A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);
- (B) assistance with meal planning and preparation;
- (C) securing and providing transportation;
- (D) assistance with housekeeping;
- (E) assistance with ambulation and mobility;
- (F) reinforcement of specialized therapy activities;
- (G) assistance with medications and the performance of tasks delegated by an RN;
- (H) supervision of individuals' safety and security;
- (I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and
- (J) habilitation, exclusive of day habilitation;

(40) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

- (A) the individual's medical condition;

(B) a behavior displayed by the individual that poses a danger to the individual or to others; or

(C) the individual's need for assistance with activities of daily living during normal sleeping hours;

(41) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

(42) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and includes:

- (A) training in self-help and independent living skills;
- (B) provision of room and board when respite is provided in a setting other than the individual's normal residence;
- (C) support for individuals who are eligible for respite and who are in need of emergency or planned short-term care;
- (D) assistance with ongoing provision of needed waiver services, excluding supported home living; and
- (E) assistance with securing and providing transportation;

(43) provide respite in the residence of an individual or in other locations, including residences in which foster/companion care, supervised living, or residential support is provided or in a respite facility, that meet HCS Program requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual.

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.

(B) If respite is provided in the residence of another individual, the program provider must ensure that:

- (i) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which foster/companion care is provided;
- (ii) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which only supervised living is provided; and
- (iii) no more than four individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the program provider must:

- (i) ensure that the facility is not a residence;
  - (ii) ensure that no more than six individuals receive services in the facility at any one time; and
  - (iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time.
- (D) The program provider must not provide respite in an institution;

(44) ensure that supported employment (employment in an integrated work setting--generally a setting where no more than one employee or 3% of the work force members have disabilities) is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) that is not the individual's residence and includes:

(A) ongoing individualized support services needed to sustain paid work by the individual, including supervision and training;

(B) compensation by the employer to the individual in accordance with the Fair Labor Standards Act; and

(C) provision of services not available or funded through the state education agency or a state rehabilitation agency;

(45) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(46) maintain a system of delivering HCS Program services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(47) ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(48) maintain current information in CARE about the individual and the individual's LAR, including:

(A) the individual's full name, address, location code, and phone number; and

(B) the LAR's full name, address, and phone number;

(49) maintain a single record related to HCS Program services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP;

(C) the implementation plan;

(D) a behavior support plan, if one has been developed;

(E) documentation that describes the individual's progress or lack of progress on the implementation plan;

(F) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(G) the ID/RC [MR/RC] Assessment;

(H) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(I) results and recommendations from individualized assessments;

(J) documentation concerning any use of restraint as described in §9.179(c)(2) and (3) of this subchapter (relating to Certification Principles: Restraint);

(K) documentation related to the individual's suspension from HCS Program services; and

(L) for an individual under 22 years of age, a copy of the permanency plan;

(50) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (49) of this subsection; and

(B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

(51) provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC [MR/RC] Assessment; [~~and~~]

(52) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or an individual or LAR has requested termination of all HCS Program services; and[-]

(53) if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.

(b) A program provider may suspend HCS Program services because an individual is temporarily admitted to a setting described in §9.155(d) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(1) If a program provider suspends HCS Program services, the program provider must:

(A) notify DADS of the suspension by entering data in CARE in accordance with DADS instructions; and

(B) notify the service coordinator of the suspension within one business day after services are suspended.

(2) A program provider may not suspend HCS Program services for more than 270 calendar days without approval from DADS as described in §9.190(e)(20)(C) of this subchapter.

(c) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(d) If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide foster/companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(e) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (c) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(C) of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

*§9.177. Certification Principles: Staff Member and Service Provider Requirements.*

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, the program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) provides the service at or below the direct services portion of the applicable HCS Program rate; and

(C) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter.

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) The requirement in paragraph (1)(B) of this subsection does not prohibit the program provider and the person or entity from agreeing to payment for the service in an amount that is more than the direct services portion of the applicable HCS Program rate.

(c) The program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(d) The program provider must implement and maintain a plan for initial and periodic training of staff members and service providers that ensures staff members and service providers:

(1) are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and

(2) are knowledgeable of:

(A) acts that constitute abuse, neglect, or exploitation of an individual, as defined in Chapter 711, Subchapter A, of this title (relating to Introduction);

(B) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts, to DFPS in accordance with §9.178(j) of this subchapter (relating to Certification Principles: Quality Assurance); and

(C) methods to prevent the occurrence of abuse, neglect, and exploitation.

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including: ~~individuals;~~

(A) unauthorized disclosure of information related to an individual's finances; and

(B) the purchase of goods that an individual cannot use with the individual's funds;

(3) abuse, neglect, or exploitation of an individual; ~~and~~

(4) damage to or prevention of an individual's access to the ~~threats of harm or danger toward an~~ individual's possessions; ~~and[-]~~

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(g) The program provider must employ or contract with a person who has a minimum of three years work experience in planning and providing direct services to people with an intellectual disability ~~mental retardation~~ or another ~~other~~ developmental disability ~~disabilities~~ as verified by written professional references to oversee the provision of direct services to individuals.

(h) In evaluating the qualifications of a service provider for positions requiring the equivalent of a high school education, the program provider must ensure that the service provider involved is at least 18 years of age and either possesses a certificate recognized by a state as the equivalent of a high school diploma or successfully completes a proficiency evaluation of experience and competence to perform the job tasks. The evaluation of experience and competency must include:

(1) a written competency-based assessment of the applicant's ability to document service delivery and observations of the individuals to be served; and

(2) at least three personal references from persons not related by blood that indicate the applicant's ability to provide a safe, healthy environment for the individuals being served.

(i) The program provider must ensure that each service provider of specialized therapies is currently qualified by being licensed by the State of Texas or certified in the specific area for which services are delivered or be providing services in accordance with state law. The program provider must ensure that a service provider of behavioral support services:

(1) is licensed as a psychologist in accordance with Chapter 501 of the Texas Occupations Code;

(2) is licensed as a psychological associate in accordance with Chapter 501 of the Texas Occupations Code;

(3) has been issued a provisional license to practice psychology in accordance with Chapter 501 of the Texas Occupations Code;

(4) is certified by DADS as described in §5.161 of this title (relating to TDMHMR-Certified Psychologist); or

(5) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.

(j) The program provider must ensure that a service provider of day habilitation or supported employment is currently qualified by having a high school diploma or its equivalent as described in subsection (h) of this section, that transportation is provided in accordance with applicable state laws, and that tasks delegated to a service provider by an RN are performed in accordance with state law.

(k) The program provider must ensure that dental treatment is provided by a dentist currently qualified by being licensed in the State of Texas by the Texas State Board of Dental Examiners in accordance with Texas Occupations Code, Chapter 256.

(l) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

(m) The program provider must ensure that a service provider of supported home living, foster/companion care, supervised living, residential support, and respite services is currently qualified by having a high school diploma or its equivalent as described in subsection (h) of this section, that transportation is provided in accordance with applicable state laws, and that tasks delegated to a service provider by an RN are performed in accordance with state law.

(n) The program provider must ensure that a service provider:

(1) is employable in accordance with Texas Health and Safety Code, §250.006; and

(2) is not listed as "unemployable" in the Employee Misconduct Registry or the Nurse Aide Registry maintained by DADS by searching or ensuring a search of such registries is conducted, before hire and annually thereafter, in accordance with Texas Health and Safety Code, §250.003.

(o) The program provider must:

(1) ensure that at least one of the following service components is provided using only employees, not contractors, of the program provider:

- (A) supported home living;
- (B) day habilitation;
- (C) supported employment;
- (D) respite;
- (E) supervised living; or
- (F) residential support; and

(2) notify DADS in accordance with DADS [~~DADS~~] instructions:

(A) which service component listed in paragraph (1) of this subsection is provided using only employees of the program provider; and

(B) before changing the service component provided using only employees of the program provider.

§9.178. *Certification Principles: Quality Assurance.*

(a) In the provision of HCS Program services to an individual, the program provider must promote the active and maximum cooperation with generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons.

(b) The program provider must ensure personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or ~~[mental retardation and]~~ other disability [~~disabilities~~].

(c) Before providing services to an individual in a residence in which foster/companion care, supervised living, or residential support is provided, and annually thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate, and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives;

(2) ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection;

(3) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided to ensure that the residence meets the needs of the individual; and

(4) ensure completion of any action identified in the on-site inspection for a residence in which foster/companion care will be provided to ensure that the residence meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained in each residence in which foster/companion care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location, and the individuals living in the residence;

(3) the individuals and service providers follow the plans during drills and actual emergencies; and

(4) documentation of drills and responses to actual emergencies are maintained in each residence.

(e) The program provider must ensure that a four-person residence:

(1) meets one of the following requirements [is in continuous compliance with applicable provisions concerning Residential Board and Care Occupancies - Small Facilities of the edition of the NFPA 101 Life Safety Code, published by the National Fire Protection Association and most recently adopted by the Texas State Fire Marshal's Office as certified by the fire safety authority having jurisdiction for the location of the residence (for example, the local fire marshal or building official)] at the time the residence is reviewed [approved] by DADS in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) and at least annually thereafter.;

(A) is certified by a local fire safety authority having jurisdiction for the location of the residence (or by HHSC if the local fire safety authority has refused to inspect for certification) to be in compliance with the relevant portions of Chapter 32 or Chapter 33 of the NFPA (National Fire Protection Association) 101 Life Safety Code

applicable to small facilities and most recently adopted by the Texas State Fire Marshal's Office; or

(B) is certified by a fire safety authority having jurisdiction for the location of the residence to be in compliance with portions of the International Fire Code applicable to an "Institutional Group I-1 occupancy" housing more than 16 persons and most recently adopted by the governmental entity having jurisdiction for the location of the residence;

(2) contains documentation of the residence's most recent inspection by the fire safety authority;

(3) is approved by DADS in accordance with §9.188 of this subchapter [~~relating to DADS' Approval of Residences~~]; and

(4) is in continuous compliance with all applicable local building codes and ordinances and applicable state and federal laws, rules [health and safety laws, ordinances], and regulations.

(f) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that ~~meets [will meet]~~ at least quarterly. The committee, ~~[will assist the program provider to perform the following activities]~~ at least annually:

(1) reviews information provided by the program provider regarding satisfaction of individuals and LARs with the program provider's services as described in subsection (p)(1) of this section [evaluating and addressing the satisfaction of individuals or LARs with the program provider's services];

(2) reviews information provided by the program provider regarding [soliciting, addressing, and reviewing] complaints [from individuals or LARs] about the operations of the program provider as described in subsection (p)(2) of this section;

(3) reviews information provided by the program provider regarding incidents of confirmed [reviewing all allegations of] abuse, neglect, and exploitation and unusual incidents as described in subsection (p)(3) of this section [alleged to have been committed by a service provider against individuals and the program provider's practices for preventing the occurrence or reoccurrence of abuse, neglect, and exploitation];

(4) reviews information provided by the program provider regarding termination of HCS Program services as described in subsection (p)(4) of this section [reviewing the reasons for terminating HCS Program services to individuals and identifying any related need for improvement to the program provider's service delivery];

(5) based on the information reviewed as required by this subsection, makes recommendations to the program provider for improvements to the processes and operations of the program provider [participating in a continuous quality improvement review of the program provider's operations and offering recommendations for improvement of program operations for action by the program provider as necessary]; and

(6) reviews information provided by the program provider regarding the data about restraints described in subsection (p)(5) of this section [reviewing critical incident data to assess trends that will assist in the development of procedures to decrease the frequency of the use of restraint].

(g) The program provider must make available all records, reports, and other information related to the delivery of HCS Program services as requested by DADS, other authorized agencies, or the Centers for Medicare and Medicaid Services and deliver such items, as requested, to a specified location.

(h) The program provider must conduct, at least annually, a satisfaction survey of individuals and LARs and take action regarding any areas of dissatisfaction.

(i) The program provider must publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families, and LARs;

(2) staff members, service providers, and CDS service providers;

(3) the general public; and

(4) the local authority [MRA].

(j) The program provider must ensure that:

(1) the individual and LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(2) all staff members and service providers:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(3) all staff members and service providers report suspected abuse, neglect, or exploitation as instructed.

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, the program provider must take necessary actions to secure the safety of the alleged victim, including:

(1) obtaining immediate and ongoing medical or psychological services for the alleged victim as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the alleged victim or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim, the alleged victim's LAR, and the service coordinator of the allegation report and the actions that have been or will be taken.

(l) Staff members and service providers must cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(m) In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the Waiver Program Provider Agreement; and

(3) the name of the legal entity named on the Waiver Program Provider Agreement.

(n) The program provider must:

(1) promptly, but not later than five calendar days after the program provider's receipt of a DFPS investigation report:

(A) notify the alleged victim or LAR and the service coordinator of:

(i) the investigation finding; and

(ii) the corrective action taken by the program provider in response to the DFPS investigation; and

(B) notify the alleged victim or LAR of:

(i) the process to appeal the investigation finding as described in Chapter 711, Subchapter M, of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Advocacy, Incorporated); and

(ii) the process for requesting a copy of the investigative report from the program provider;

(2) report to DADS in accordance with DADS [DADS'] instructions the program provider's response to the DFPS investigation that involves a staff member or service provider within 14 calendar days after the program provider's receipt of the investigation report; and

(3) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(o) If abuse, neglect, or exploitation is confirmed by the DFPS investigation, the program provider must take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against or termination of the employment of a staff member confirmed by the DFPS investigation to have committed abuse, neglect, and exploitation.

(p) At least annually, the program provider must: ~~[review incidents of confirmed abuse, neglect, or exploitation, complaints, and unusual incidents to identify program operations modifications that will prevent the reoccurrence of such incidents and improve service delivery.]~~

(1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

(2) review records of complaints, as described in subsection (i) of this section about the operations of the program provider and identify program process improvements to reduce the filing of complaints;

(3) review incidents of confirmed abuse, neglect, or exploitation; complaints; and unusual incidents; and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery;

(4) review the reasons for terminating HCS Program services to individuals and identify any related need for program process improvements;

(5) evaluate its use of restraint and, at a minimum, compare aggregate data provided by DADS at [www.dads.state.tx.us](http://www.dads.state.tx.us) with critical incident data concerning use of restraint and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery;

(6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (f) of this section;

(7) implement any program process improvements identified by the program provider in accordance with this subsection; and

(8) review recommendations made by the consumer/advocate advisory committee as described in subsection (f)(5) of this section and implement the recommendations approved by the program provider.

(q) The program provider must ensure that all personal information concerning an individual, such as lists of names, addresses, and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider must apply a consistent method in assessing charges against the individual's personal funds that ensures that charges for items or services, including room and board, are reasonable and comparable to the costs of similar items and services generally available in the community.

(s) The program provider must ensure that the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed.

(t) The program provider must not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.

(u) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(v) If the program provider determines that an individual's behavior may require the implementation of behavior management techniques involving intrusive interventions or restriction of the individual's rights, the program provider must comply with this subsection.

(1) The program provider must:

(A) obtain an assessment of the individual's needs and current level and severity of the behavior;

(B) ensure that a service provider of behavioral support services:

(i) develops, with input from the individual, LAR, program provider, and actively involved persons, a behavior support plan that includes the use of techniques appropriate to the level and severity of the behavior; and

(ii) considers the effects of the techniques on the individual's physical and psychological well-being in developing the plan.

(2) The behavior support plan must:

(A) describe how the behavioral data concerning the behavior is collected and monitored;

(B) allow for the decrease in the use of the techniques based on the behavioral data; and

(C) allow for revision of the plan when desired behavior is not displayed or the techniques are not effective.

(3) Before implementation of the behavior support plan, the program provider must:

(A) obtain written consent from the individual or LAR to implement the plan;

(B) provide written notification to the individual or LAR of the right to discontinue implementation of the plan at any time; and

(C) notify the individual's service coordinator of the plan.

(4) The program provider must, at least annually:

(A) review the effectiveness of the techniques and determine whether the behavior support plan needs to be continued; and

(B) notify the service coordinator if the plan needs to be continued.

(w) The program provider must report the death of an individual to DADS and the service coordinator by the end of the next business day following the death or the program provider's learning of the death and, if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(x) A program provider must not discharge or otherwise retaliate against:

(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual; or

(2) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual.

(y) A program provider must enter critical incident data in CARE no later than 30 calendar days after the last day of the month being reported.

§9.188. *DADS [DADS'] Approval of Residences.*

(a) A program provider must request and obtain DADS [DADS'] approval of a four-person residence.

(b) To receive approval of a four-person residence, the program provider must submit the following documentation to DADS:

(1) the address of the residence at which the program provider intends to provide residential support;

(2) written certification from the program provider that the program provider is providing or intends to provide residential support for one or more individuals who will live in the residence;

(3) written certification by the fire safety authority having jurisdiction for the location for the residence (for example, the local fire marshal or building official) that, based upon inspection of the residence, the residence complies with the provisions of §9.178(e)(1) of this subchapter (relating to Certification Principles: Quality Assurance); and

(4) written certification from the program provider that the residence to be approved is not the residence of any person other than a person described in §9.153(19)(A) - (E) [§9.153(18)(B)] of this subchapter (relating to Definitions).

(c) Pending DADS [DADS'] receipt of documentation of the certification inspection required by subsection (b)(3) of this section, DADS may grant temporary approval of a four-person residence if the program provider submits the documentation required by subsection (b)(1), (2), and (4) of this section and the following dated documentation to DADS:

(1) a copy of the Contractor's Material and Test Certificate for Above Ground Piping (Form 85A) and the Contractor's Material and Test Certification for Underground Piping (Form 85B) as issued by the Texas State Fire Marshal's Office certifying the automatic fire sprinkler system complies with minimum installation requirements signed by an installer licensed by the State of Texas or documentation evidencing a "prompt" evacuation capability, as defined in the NFPA 101 Life Safety Code;

(2) a copy of the Fire Alarm Installation Certificate (Form FML009) certifying the fire alarm system complies with minimum installation requirements and applicable provisions of the NFPA 101 Life Safety Code signed by an installer licensed by the State of Texas;

(3) a copy of the written correspondence from the fire safety authority having jurisdiction for the location of the residence that an inspection of the residence by that authority will be conducted within 30 calendar days after the effective date of DADS [DADS'] approval of the residence as established in accordance with subsection (e) of this section; and

(4) written certification from the program provider that all other NFPA 101 Life Safety Code requirements applicable to the residence have been met.

(d) Temporary approval granted in accordance with subsection (c) of this section:

(1) is effective as of the date of the latest date of the documentation specified in subsection (c)(1) - (4) of this section; and

(2) expires 45 calendar days after the effective date of the temporary approval or on the date DADS approves the four-person residence based on the program provider's submission of the written certification required in subsection (b)(3) of this section, whichever is earlier.

(e) DADS notifies the program provider of its approval or disapproval of the four-person residence within 14 calendar days of its receipt of the documentation specified in subsection (b) or (c) of this section.



(f) Services in a four-person residence may not be initiated until the program provider has met the provision of subsection [subsections] (b) or (c) of this section.

*§9.189. Referral to DFPS.*

If, within one year after the date DADS receives the notification described in §9.190(e)(35) or (36) [§9.190(e)(34) or (35)] of this subchapter (relating to Local Authority [MRA] Requirements for Providing Service Coordination in the HCS Program), DADS is unable to locate the parent or LAR, DADS refers the case to:

(1) the Child Protective Services Division of DFPS if the individual is under 18 years of age; or

(2) the Adult Protective Services Division of DFPS if the individual is 18-22 years of age.

*§9.190. Local Authority [MRA] Requirements for Providing Service Coordination in the HCS Program.*

(a) In addition to the requirements described in Chapter 2, Subchapter L, of this title (relating to Service Coordination for Individuals with an Intellectual Disability [Mental Retardation]), a local authority [an MRA] must, in the provision of service coordination in the HCS Program, ensure compliance with the requirements in this subchapter.

(b) The local authority [MRA] must employ service coordinators who:

(1) meet the minimum qualifications and local authority [MRA] staff training requirements specified in Chapter 2, Subchapter L of this title; and

(2) have received training about the HCS Program, including the requirements of this subchapter and the HCS Program service components as specified in §9.154 of this subchapter (relating to Description of the Home and Community-based Services (HCS) Program).

(c) A local authority [An MRA] must have a process for receiving and resolving complaints from a program provider related to the local authority's [MRA's] provision of service coordination or the local authority's [MRA's] process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the local authority [MRA] must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The local authority [MRA] may refer an unresolved concern to DADS Consumer Rights and Services.

(e) A service coordinator must:

(1) assist an individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) provide an applicant or individual, LAR, or family member with a written [a] copy of the rights of the individual as described in §9.173(b) of this subchapter (relating to Certification Principles: Rights of Individuals) and the booklet titled *Your Rights In a Home and Community-Based Services Program* (which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).) and an oral explanation of such rights:

- (A) upon enrollment in the HCS program;
- (B) upon revision of the booklet;
- (C) upon request; and

(D) upon change in an individual's legal status (that is when the individual turns 18 years of age, is appointed a guardian, or loses a guardian);

(3) document the provision of the rights described in §9.173(b) of this subchapter and the booklet and oral explanation required by paragraph (2) of this subsection and ensure that the documentation is signed by:

- (A) the individual or LAR; and
- (B) the service coordinator;

(4) ensure that, at the time an applicant is enrolled, the applicant or LAR is informed orally and in writing of the following processes for filing complaints:

(A) processes for filing complaints with the local authority [MRA] about the provision of service coordination; and

(B) processes for filing complaints about the provision of HCS Program services including:

(i) the telephone number of the local authority [MRA] to file a complaint;

(ii) the toll-free telephone number of DADS to file a complaint; and

(iii) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP;

(C) a copy of the ID/RC [MR/RC] Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate person-directed planning;

(7) develop for an individual a full range of services and resources using generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons to meet the needs of the individual as those needs are identified;

(8) ensure that the PDP for an applicant or individual is developed, reviewed, and updated in accordance with:

(A) §9.158(k)(3) of this subchapter (relating to Process for Enrollment of Applicants);

(B) §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(C) §2.556 of this title (relating to MRA's Responsibilities);

(9) participate in the development, renewal, and revision of an individual's IPC in accordance with §9.158 of this subchapter and §9.166 of this subchapter;

(10) ensure that the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §9.166 of this subchapter and ensure that the service planning team completes other responsibilities and activities as described in this subchapter;

(11) notify the service planning team of the information conveyed to the service coordinator pursuant to §9.178(v)(3)(C) and (4)(B) of this subchapter (relating to Certification Principle: Quality Assurance);

(12) if a change to an individual's PDP is needed, other than as required by §9.166 of this subchapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons; and

(B) revise the PDP as necessary;

(13) provide an individual's program provider a copy of the individual's current PDP;

(14) monitor the delivery of HCS Program and non-HCS Program services to an individual;

(15) document whether an individual progresses toward desired outcomes identified on the individual's PDP;

(16) together with the program provider, ensure the coordination and compatibility of HCS Program services with non-HCS Program services;

(17) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(18) for an individual who has not had a guardian appointed, make a referral of guardianship to a court, if appropriate;

(19) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(20) if informed by the program provider that an individual's HCS Program services have been suspended:

(A) request [ensure that] the program provider enter [enters] necessary information in CARE to inform DADS of the suspension;

(B) review the individual's status and document in the individual's record the reasons for continuing the suspension, at least every 90 calendar days after the effective date of the suspension; and

(C) to continue suspension of the services for more than 270 calendar days, submit to DADS written documentation of each review made in accordance with subparagraph (B) of this paragraph and a request for approval by DADS to continue the suspension;

(21) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.174(e) of this title (relating to Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) foster companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation, if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(22) [(21)] notify the program provider if the service coordinator becomes aware that an individual has been admitted to a setting described in §9.155(d) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services);

(23) [(22)] if the service coordinator determines that HCS Program services provided to an individual should be terminated, including for a reason described in §9.158(1)(11) [§9.158(1)(9)] of this subchapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated;

(ii) the attempts by the service coordinator to resolve the situation; and

(B) send a written request to terminate the individual's HCS Program services to DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written request and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) [(23)] if an individual requests termination of all HCS Program services, the service coordinator must, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services; and

(iii) possible service resources upon termination; and

(B) submit documentation to DADS that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) [(24)] manage the process to transfer an individual's HCS Program services from one program provider to another or one CDSA to another in accordance with DADS instructions, including:

(A) informing the individual or LAR who requests a transfer to another program provider or CDSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose to receive HCS Program services from any available program provider (that is [i.e.], a program provider whose enrollment has not reached its service capacity in CARE) or CDSA; and

(C) if the individual or LAR has not selected another program provider or CDSA, provide the individual or LAR a list of available HCS Program providers and CDSAs and contact information in the geographic locations preferred by the individual or LAR;

(26) [(25)] be objective in assisting an individual or LAR in selecting a program provider or CDSA;

(27) [(26)] at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(28) [(27)] unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(29) [(28)] unless contraindications are documented with justification by the service planning team, ensure that an adult individual under retirement age is participating in a day activity of the individual's choice that promotes achievement of PDP outcomes for at least six hours per day, five days per week;

(30) [(29)] unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(31) [(30)] unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(32) [(31)] unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(33) [(32)] assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(34) [(33)] for an individual receiving foster/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(35) [(34)] if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR in accordance with §9.174(a)(8)(D) of this subchapter (relating to Certification Principles: Service Delivery) or the local authority [MRA] notifies the service coordinator that the local authority [MRA] is unable to locate the parent or LAR in accordance with §9.167(b)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(A) - (B) [(36)(A) - (B)] of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(36) [(35)] if the service coordinator determines that a parent's or LAR's contact information described in paragraph (37)(A) [(36)(A)] of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the

contact information described in paragraph (37)(B) [(36)(B)] of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(37) [(36)] request from and encourage the parent or LAR of an individual under the age of 22 years requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(38) [(37)] within three business days after initiating supervised living or residential support to an individual under 22 years of age:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us) for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the three- or four-person residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the residence is located, if the individual is less than three years of age (see <http://www.dars.state.tx.us/ecis/searchprogram.asp> to search for an ECI program by zip code or by county) [(see [www.dars.state.tx.us](http://www.dars.state.tx.us) or call 1-800-250-2246 for a listing of ECI programs by county)]; and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

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

TRD-201205148

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest date of adoption: November 11, 2012

For further information, please call: (512) 438-4466

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## PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

### CHAPTER 367. CONTINUING EDUCATION

#### 40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §§367.1 - 367.3, concerning Continuing Education. The amendments would add more specific information about the continuing education proof required for audits and add another category for obtaining continuing education.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be clearer instructions regarding the documentation requirements for audit purposes and an additional category of continuing education available for licensees' continuing education. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov). Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454, Texas Occupations Code is affected by this proposal.

#### *§367.1. Continuing Education.*

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy and meet the definition of Type 1 or Type 2 as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements.

- (i) the individual's full name;
- (ii) the individual's gender;
- (iii) the individual's ethnicity;
- (iv) the individual's birth date;
- (v) the individual's social security number;
- (vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information; and

(39) [(38)] for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is 18-22 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record.

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.

(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license, and provide this information as requested.

(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(d) Types of Continuing Education.

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2.

(A) Type 2 courses teach occupational therapy assessment, ~~treatment and~~ intervention or prevention and wellness with patients or clients.

(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, pharmacology, quality improvement, administration, reimbursement and other occupational therapy related subjects.

(e) Specific continuing educational activities may be counted only one time in the licensee's career unless content has been updated or revised.

(f) Effective January 1, 2003, Type 1 and Type 2 educational activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the board. The board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

(g) Licensees are responsible for choosing Type 1 or Type 2 CE according to the definitions in this section.

### §367.2. Categories of Continuing Education.

(a) All continuing education must comply with Type 1 or Type 2 as outlined in §367.1 of this title (relating to Continuing Education). Continuing education undertaken by a licensee for renewal shall be acceptable if it falls in one or more of the following categories.

(1) Formal academic courses related to occupational therapy. Completion of course work at or through an accredited college or university shall be counted as follows: three CE hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a three-credit course counts for 9 ~~contact~~ ~~[credit]~~ hours of continuing education. All college course work must comply with Type 1 and Type 2 as outlined in §367.1 of this title, no maximum. Documentation of this type of CE credit shall include a transcript from the accredited college or university.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, and conferences in occupational therapy with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation of this type of CE credit shall include a certificate of completion or letter of verification.

(3) Development of publication, media materials or research/grant activities per two year renewal period: Documentation of this type of CE credit shall include a copy of the actual publication or media material(s), or title page and receipt of grant proposal.

(A) Published scholarly work in a peer-review journal, 15 hours maximum.

(B) Principle investigator or co-principle investigator in grant or research proposals accepted for consideration. 10 hours maximum.

(C) Published book, 10 hours maximum.

(D) Second or other author, 7 hours maximum.

(E) Book chapter, 5 hours maximum.

(F) Other publications such as newsletter and trade magazines, 2 hours maximum.

(4) Home study courses, educational teleconferences, Internet-based courses, and videotape instruction, no maximum.

(A) Courses must fit the criteria for continuing education for Type 1 or Type 2.

(B) These courses must have specified learning objectives or a post-test and give a certificate of completion.

(C) Educational teleconferences or Internet courses must reflect a pre-determined number of credit hours.

(5) Professional presentations by licensee: Documentation of this type of CE credit shall include a letter of verification of presentation and number of hours for the presentation or copy of organization's brochure or conference guide noting the presentation, presenter(s), type of presentation (ie: 2 hour poster, 3 hour workshop).

(A) Professional presentation, e.g. in-services, workshops, institutes: any presentations counted only one time. Hour for hour credit. 10 hour maximum.

(B) Community/Service organization presentation: any presentation counted once. Hour for hour credit. 10 hours maximum.

(6) Fieldwork Supervision: 10 hours maximum, Type 2:

(A) A licensee may earn 2 contact hours for each Level 1 students supervised:

(i) 40 hours of Level 1 equals 1 hour of CE; or

(ii) 80 hours of Level 1 equals 2 Hours of CE.

(B) A licensee may earn 8 contact hours for each Level 2 student supervised:

(i) 8 weeks equals 6 hours of CE; or

(ii) 12 weeks equals 8 hours of CE.

(C) Licensee may earn a maximum of 10 contact hours for student supervision per renewal period.

(D) Fieldwork supervision hours may be evenly divided between licensees, not to exceed two fieldwork educators per student.

(E) Fieldwork education supervision must be completed before the licensee's renewal date.

(F) Documentation of this type of CE credit shall include verification provided by the school to the fieldwork educator(s) with the name of the student, school, and dates of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(G) Courses specific to fieldwork education are counted as Type 1.

(7) Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, NBCOT, or TBOTE for the purpose of tangible outcomes such as official documents, pub-

lications, and official reports. Documentation of this type of CE credit shall include a copy of the actual publication or official document/report which reflects the licensee's name. This type of CE is counted at Type 1. Maximum of 10 contact hours.

(8) ~~(7)~~ Any deviation from the ~~above~~ continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

(b) Unacceptable Continuing Education Activities include but are not limited to:

(1) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(2) Business meetings.

(3) Exhibit hall attendance.

(4) Reading journals.

(5) Courses such as, but not limited to: grant writing, massage therapy, general management and business, social work, defensive driving, water safety, team building, GRE, GMAT, MCAT preparation, cooking for health, weight management, ~~women's health and~~ stress management, reading techniques, geriatric anthology, general foreign languages, communicable diseases, patient abuse, disposal of hazardous waste, patient privacy, CPR, HIPAA, FERPA, blood borne pathogens, or similar courses, do not count toward continuing education.

~~[(6) Facility-based annual required courses such as, but not limited to patient abuse, disposal of hazardous waste, patient privacy, HIPAA and FERPA, blood borne pathogens, and other annual facility required repetitive courses do not count toward continuing education.]~~

(6) ~~(7)~~ Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program. ~~[Bottom of Form.]~~

#### §367.3. Continuing Education Audit.

(a) The board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the 30 hours required and has signed to that fact on the renewal form.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification. Audit documentation ~~[Documentation]~~ submitted must be identified by the licensee to specify whether they are Type 1 or Type 2.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes, or a total of four years.

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, and certificates of completion.

(e) Documentation must identify the licensee by name and license number, and must include the date and title of the course, the signature of the authorized signer, and the number of CEUs or contact hours awarded for the course.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

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

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

TRD-201205134

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 305-6900



## CHAPTER 376. REGISTRATION OF FACILITIES

### 40 TAC §376.4

The Texas Board of Occupational Therapy Examiners proposes amendments to §376.4, concerning Requirements for Registered Facilities. The amendments would add the requirement that the facility owner or designee notify the board in writing within 30 days when occupational therapy services are no longer being provided.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be less onerous restoration fees and clearer instructions regarding restoration and renewal of facility registrations. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov). Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454, Texas Occupations Code is affected by this proposal.

#### §376.4. Requirements for Registered Facilities.

(a) Each facility must have a designated OT or OTR-in-charge. A registered facility is required to report the name and license number of the new OT or OTR-in-charge no later than 30 days after the change occurs.

(b) A registered facility must display the registration certificate in a prominent location in the facility where it is available for in-

spection by the public. A registration certificate issued by the board is the property of the board and must be surrendered on demand by the board.

(c) A registered Occupational Therapy Facility is subject to inspection to verify compliance with the Act and this chapter by authorized personnel of the board at any reasonable time.

(d) An individual or entities that register a facility under this Rule must notify the board within 30 days of any change to the physical/street address or mailing address.

(e) The owner must cancel a facility registration if occupational therapy services will no longer be provided at that facility. To cancel registration the owner must notify the board in writing within 30 days of the termination of occupational therapy services at this facility. If the owner decides to resume the provision of occupational services at a future date, the facility registration may be restored with the previous expiration date by meeting the requirements in §376.8 of this title (relating to Restoration of Registration).

(f) If the owner does not notify the board in writing that there is a termination of occupational therapy services and the facility's registration is expired more than one year, there will be a penalty should the owner want to resume occupational therapy services at the facility at a future date.

(g) Within thirty days of a change in facility ownership, the former owner must notify the Board in writing of the change. The new owner must register the facility under new ownership as required by §376.10 of this title (relating to Change in Occupational Therapy Facility Ownership).

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

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

TRD-201205135

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 305-6900



#### 40 TAC §376.6

The Texas Board of Occupational Therapy Examiners proposes amendments to §376.6, concerning Renewal of Registration Application. The amendments would address late renewal and how fees are assessed.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be less onerous restoration fees and clearer instructions regarding restoration and renewal of facility registrations. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to

individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov). Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454, Texas Occupations Code is affected by this proposal.

#### §376.6. *Renewal of Registration Application.*

(a) An individual or entity registered as a facility under this Rule must renew its registration annually. Licensee may not provide occupational therapy services in a facility if the registration is not current. The Board will maintain a secure resource for verification of registration status and expiration date on its website.

(b) Requirements to renew a facility are:

(1) a renewal signed by the owner, managing partner or officer, or a person authorized by the owner to complete the form and the OT or OTR-in-charge;

(2) a list of all occupational therapy practitioners working at the facility;

(3) the renewal fee as set by the Executive Council, and any late fees, which may be due; and

(4) an Occupational Therapist-in-Charge form with the signature of the occupational therapist, if the Therapist-in-Charge has changed.

(c) The annual renewal date of an facility registration is the last day of the month in which the registration was originally issued, or as synchronized with the first facility registered by an owner. The owner of OT facilities may request that the renewal date of the OT facilities be synchronized with the PT facilities in the same locations.

(d) The board will notify the facility at least 30 days before the registration expiration date. An individual or entity offering occupational therapy bears the responsibility for ensuring that the registration is renewed. Failure to receive a renewal notice from the board does not exempt the requirement to pay the renewal fee in a timely manner.

(e) Occupational therapy services may not be provided at a facility without a current facility registration. The current registration expiration date as displayed on the board's website is considered evidence of the current registration.

(f) Late Renewal. A facility renewing after the expiration date, must submit all the items listed in subsection (b) of this section plus the late fee which is determined as:

(1) One day late to 90 days late--a late fee equal to half the renewal fee, plus the renewal fee.

(2) More than 90 days to less than one year late--a late fee equal to the renewal fee, plus the renewal fee.

(3) A facility late more than one year must follow the requirements set out in §376.8 of this title (relating to Restoration of Registration).

(4) An owner may not register a new facility in lieu of renewal of an previously registered facility at the same location.

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

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

TRD-201205136

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 305-6900



#### 40 TAC §376.8

The Texas Board of Occupational Therapy Examiners proposes amendments to §376.8, concerning Restoration of Registration. The amendments would move information about late fees to §376.6, concerning Renewal of Registration, would set up two restoration fees based on notification of facility closure, and establish clearer information.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be less onerous restoration fees and clearer instructions regarding restoration and renewal of facility registrations. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov). Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454, Texas Occupations Code is affected by this proposal.

#### §376.8. *Restoration of Registration.*

(a) When an individual or entity fails to renew the registration of a facility within the renewal month, and the facility's registration is expired more than one year, the facility may restore the registration by completing the [renewal] requirements including paying fees as set by the Executive Council. The restoration requirements include:

- (1) a restoration application;
- (2) a restoration fee; and

(3) a Therapist-in-Charge form signed by the Therapist-in-Charge.

~~[(1) If the facility registration has been expired for 90 days or less, the registration may be renewed by paying the required renewal fee and a restoration fee that is one-half of the renewal fee.]~~

~~[(2) If the facility registration has been expired for more than 90 days but less than one year, the registration may be renewed by paying all unpaid renewal fees and a restoration fee that is equal to the renewal fee.]~~

~~[(3) If the facility registration has been expired for one year or more, the registration may be renewed by paying all unpaid renewal fees and a restoration fee which is double the renewal fee.]~~

(b) The fee is determined by whether the owner of the facility notified the board in writing before its expiration that occupational therapy services would no longer be provided. Those that follow that requirement set out in §376.6 of this title (relating to Renewal of Registration Application) will pay one fee and those that do not notify the board will pay another.

~~[(b) The owner may cancel a facility registration if occupational therapy services will no longer be provided at that facility. To cancel registration the owner must notify the board in writing. If the owner decides to resume the provision of occupational services at a future date, the facility registration may be restored with the previous expiration date by meeting the requirements in §376.6 of this title (relating to Renewal of Registration Application).]~~

(c) An owner of a [A] facility may not register the facility [be registered] as a new facility in lieu of renewal or restoration of a previously registered facility in the same location.

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

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

TRD-201205137

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 305-6900



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

##### SUBCHAPTER A. GENERAL

#### 43 TAC §9.4

The Texas Department of Transportation (department) proposes amendments to §9.4, concerning Civil Rights - Title VI Compliance.

#### EXPLANATION OF PROPOSED AMENDMENTS



Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, et. seq., and related statutes provide that no person in the United States, on the grounds of race, color, national origin, sex, age, or disability, shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance. Under 23 C.F.R. Part 200, the department, as a recipient and distributor of federal funds, must take certain steps to ensure that discrimination addressed by Title VI does not occur.

Amendments to §9.4 clarify the department's Title VI responsibilities under 23 C.F.R. §200.9(b)(6), which requires annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels, and 23 C.F.R. §200.9(b)(7), which requires Title VI reviews of recipients of Federal-aid highway funds, including cities, counties, consultant contractors, suppliers, universities, colleges, and planning agencies. Some of the department's special emphasis programs include planning, project development, right-of way, construction, and research.

#### FISCAL NOTE

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

Ron Wilson, Director, Office of Civil Rights, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Wilson 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 amendments will be clarification of the department's federal law responsibilities. 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 amendments to §9.4 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 "§9.4." The deadline for receipt of comments is 5:00 p.m. on November 12, 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 amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed 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

None.

#### §9.4. Civil Rights - Title VI Compliance.

The department will conduct annual Title VI reviews of its special emphasis program areas (planning, project development, right-of-way, construction and research) and Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other subrecipients of Federal-aid highway funds to determine the effectiveness of program area activities at all levels in accordance with Title 42, United States Code, Section 2000d, et seq., and with Title 23, Code of Federal Regulations, Part 200. [monitor the operations of recipients and subrecipients of federal funds from the department to ensure compliance with department policy implementing Title VI of the Civil Rights Act of 1964 and its amendments. The department will also monitor the operations of all public and private entities with federally assisted contracts with the department to ensure that each entity has implemented equal employment opportunity requirements.]

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

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

TRD-201205128

Jeff Graham

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 11, 2012

For further information, please call: (512) 463-8683



# WITHDRAWN RULES

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

###### 4 TAC §§19.500 - 19.508

The Texas Department of Agriculture withdraws the emergency new §§19.500 - 19.508 which appeared in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3257).

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

TRD-201205123

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: September 26, 2012

For further information, please call: (512) 463-4075



# 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 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 201. GENERAL ADMINISTRATION

##### 1 TAC §201.7

The Department of Information Resources (department or DIR) adopts new §201.7, concerning Negotiated Rulemaking and Alternative Dispute Resolution, with changes to the proposed text as published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4115). The new rule encourages the use of both negotiated rulemaking and alternative dispute resolution. New §201.7 is necessary and results from a recommendation in the most recent review of the department by the Texas Sunset Commission.

The rule applies to DIR only. Although the rule does not directly apply to institutions of higher education, the adopted rule was provided to the Information Technology Council for Higher Education for review and input.

The department received no public comment during the 30-day comment period; however, DIR staff recommended a correction to §201.7(b)(1)(B) which incorrectly referenced "commission" instead of "department". The entire rule will be republished.

The new rule is adopted pursuant to §2054.052(a), Government Code, which authorizes the department to, respectively, adopt rules for the administrative matters and to implement its responsibilities under Chapter 2054, Government Code.

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

§201.7. *Negotiated Rulemaking and Alternative Dispute Resolution.*

(a) Policy. It is the department's policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures in appropriate situations.

(b) Negotiated Rulemaking. When the department finds that a rule to be proposed is likely to be complex, controversial, or affect disparate groups, the department may propose to engage in negotiated rulemaking in accordance with Government Code, Chapter 2008.

(1) When negotiated rulemaking is considered, the department's General Counsel, or designee, shall be the department's negotiated rulemaking convener.

(A) The convener shall assist in identifying persons who are likely to be affected by a proposed rule, including those who oppose issuance of a rule. The convener shall discuss with those persons or their representatives as provided in Government Code §2008.052(c).

(B) The convener shall then recommend to the department whether negotiated rulemaking is a feasible method to develop

the proposed rule and shall report to the agency on the relevant considerations, including those listed in Government Code §2008.052(d).

(2) Upon the convener's recommendation to proceed, the department may initiate negotiated rulemaking according to the provisions of Government Code, Chapter 2008 and Government Code §2054.121(c).

(c) Alternative Dispute Resolution. The department encourages the fair and expeditious resolution of disputes through alternative dispute resolution (ADR) procedures.

(1) ADR procedures include any procedure or combination of procedures described by Civil Practice and Remedies Code, Chapter 154. ADR procedures are intended to supplement and not limit other dispute resolution procedures available for use by the department.

(2) Any ADR procedure used to resolve disputes with the department shall conform with Government Code, Chapter 2009, and, to the extent possible, the model guidelines for the use of ADR issued by the State Office of Administrative Hearings (SOAH).

(3) Upon receipt of notice of a dispute, the department's Executive Director, in consultation with the department's General Counsel, shall determine whether use of an ADR procedure is an appropriate method for resolving the dispute.

(4) If an ADR procedure is determined to be appropriate, the department's Executive Director shall recommend to the claimant the use of ADR to resolve the dispute. The department's General Counsel will collaborate with the claimant to select an appropriate procedure for dispute resolution and implement the agreed upon procedure consistent with SOAH's model guidelines.

(5) ADR for Breach of Contract Claims. Resolution of breach of certain contract claims brought by a contractor against the department shall conform to the requirements of Government Code, Chapter 2260. The department adopts by reference the Office of the Attorney General's rules regarding the negotiation and mediation of certain contract disputes (1 Texas Administrative Code Part 3, Chapter 68).

(6) The requirements of Government Code, Chapter 2260, and the Office of the Attorney General's model rules are required prerequisites to a contractor filing suit in accordance with Civil Practices and Remedies Code, Chapter 107.

(d) The department's General Counsel, or designee, shall coordinate the implementation of the policy set out in subsection (a) of this section in accordance with state law and provide necessary training. The department's General Counsel, or designee, is designated as the coordinator to implement the department's policy under this rule, provide necessary training, and collect data concerning the effectiveness of the implemented procedures.

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

Filed with the Office of the Secretary of State on September 25, 2012.

TRD-201205100

Martin Zelinsky

General Counsel

Department of Information Resources

Effective date: October 15, 2012

Proposal publication date: June 8, 2012

For further information, please call: (512) 475-4700



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

#### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 15. HEARING AID SERVICES

##### 1 TAC §354.1231

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §354.1231, concerning benefits and limitations for Medicaid hearing aid services, without changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5688) and will not be republished.

##### Background and Justification

The amendment is adopted in response to the 2012-13 General Appropriations Act (Article II, H.B. 1, 82nd Legislature, Regular Session, 2011) (the Act), which included a Medicaid funding reduction. Rider 61(b)(26) of the Act instructed HHSC to consider adjusting the amount, scope, and duration of Medicaid services as one way to achieve the reduction.

The Texas Medicaid Program currently provides a maximum of two hearing aids for adults and children with hearing loss in both ears or one hearing aid for adults and children who have hearing loss in only one ear, based on defined medical criteria. After considering the amount, duration, and scope of different Medicaid services, HHSC is limiting coverage for hearing aids for adults to one hearing aid if there is hearing loss in both ears. Adults with hearing loss in one ear will no longer qualify for Medicaid coverage of a hearing aid. The hearing aid policy for children will remain the same.

The amendment to §354.1231 implements this change in policy regarding hearing aid services to comply with the cost savings required by the Act.

##### Comments

The 30-day comment period ended September 2, 2012. During this period, HHSC received comments regarding the amendment from the Texas Speech-Language-Hearing Association; the Center of Excellence in Communication Sciences and Disorders Department of Otolaryngology-Head and Neck Surgery

at the University of Texas Health Science Center, San Antonio; Audie Murphy VA Geriatric Research, Education, and Clinical Center and Audiology Service; and an individual hearing aid dispenser. A summary of comments and HHSC's responses follow.

**Comment:** One commenter voiced a concern that, if this change is implemented, clients will purchase hearing devices via the Internet, off the rack at a Walgreen's or Wal-Mart Pharmacy, or from other non-professional sources, where they will get no professional instruction in the care and wearing of the instrumentation.

**Response:** HHSC performed additional research that indicates a lack of conclusive evidence-based research or findings to support the use of two hearing aids instead of one. Likewise, HHSC could not find evidence-based support for a minimum-required hearing threshold for everyday living activities that would justify the need for adults to receive two hearing aids. No change was made to the rule in response to this comment.

**Comment:** One commenter asked that, before implementation of these changes, Texas Medicaid meet with Texas Department of Assistive and Rehabilitative Services (DARS) vocational rehabilitation staff to review similar services covered by both systems. The commenter also asked that this meeting include a discussion about a proposed tiered approach to audiology services since the long term goal of the current service is for healthier adults to be able to go to work to improve their station in life.

**Response:** HHSC responds that DARS currently provides hearing aid assistance to adults who meet the eligibility criteria for assistance, if the request for assistance is directly related to employment related needs. No change was made to the rule in response to the comment.

**Comment:** One commenter recommended that HHSC review and revise the hearing aid benefit criteria (relating to measurements of hearing thresholds and hearing sensitivity loss) to current standards.

**Response:** HHSC relied on current standards when reviewing and revising the hearing aid benefit criteria regarding measurements of hearing threshold and hearing sensitivity loss.

##### Statutory Authority

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

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

Filed with the Office of the Secretary of State on September 27, 2012.

TRD-201205125

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: October 17, 2012

Proposal publication date: August 3, 2012

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

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CHAPTER 355. REIMBURSEMENT RATES  
SUBCHAPTER J. PURCHASED HEALTH  
SERVICES

DIVISION 34. WOMEN'S HEALTH PROGRAM

1 TAC §355.8641

The Texas Health and Human Services Commission (HHSC) adopts new §355.8641, concerning Reimbursement Methodology for the Women's Health Program, without changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5695) and will not be republished.

Background and Justification

The Department of State Health Services (DSHS) is developing the Texas Women's Health Program to provide low-income women with family planning exams, related health screening, and contraception. Reimbursement for services provided under the Program will be paid using methodologies set out in Title 1, Chapter 355 of the Texas Administrative Code. HHSC, under its authority and responsibility to administer and implement rates, is adopting this new rule to describe the reimbursement methodology for services provided under the Program.

Comments

The 30-day comment period ended September 2, 2012. During this period, HHSC did not receive any comments regarding the new rule.

Legal Authority

The new rule is adopted 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 §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

Filed with the Office of the Secretary of State on September 27, 2012.

TRD-201205126

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: November 1, 2012

Proposal publication date: August 3, 2012

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

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**TITLE 25. HEALTH SERVICES**

**PART 1. DEPARTMENT OF STATE  
HEALTH SERVICES**

CHAPTER 1. MISCELLANEOUS PROVISIONS  
SUBCHAPTER Z. VACCINE PREVENTABLE  
DISEASE POLICY

**25 TAC §§1.701 - 1.704**

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§1.701 - 1.704, concerning a Vaccine Preventable Disease Policy for health care facilities regulated and operated by the department, without changes to the proposed text as published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2862), and the sections will not be republished.

BACKGROUND AND PURPOSE

This new subchapter will implement Senate Bill (SB) 7, Article 8, 82nd Legislature, First Called Session, 2011, which added new Health and Safety Code, Chapter 224 (regarding Policy on Vaccine Preventable Diseases). By their terms, these provisions require state hospitals and certain health care facilities licensed by the department to develop, implement, and enforce a Vaccine Preventable Disease Policy applicable to their employees and other individuals who are routinely and directly exposed to patients.

These new rules apply to seven regulatory programs administered by the department, as well as to hospitals the state maintains or operates. Programs of the department affected by the new law have unique rule sets and are codified in seven different chapters. Therefore, the most efficient way to implement SB 7 is to amend 25 Texas Administrative Code Chapter 1, the broad-scope rule set of the department which applies across programs and to state hospital operations as well, rather than amend seven individual rule sets. The new requirements are identical for the programs and state hospitals affected. Specifically, the programs affected are: Hospitals, Health and Safety Code, Chapter 241; Ambulatory Surgical Centers, Health and Safety Code, Chapter 243; Birthing Centers, Health and Safety Code, Chapter 244; Abortion Facilities, Health and Safety Code, Chapter 245; Special Care Facilities, Health and Safety Code, Chapter 248; End Stage Renal Disease Facilities, Health and Safety Code, Chapter 251; and Freestanding Emergency Medical Care Facilities, Health and Safety Code, Chapter 254; as well as state hospitals.

SECTION-BY-SECTION SUMMARY

New §§1.701 - 1.704 require that each health care facility develop, implement, and enforce a policy to protect patients from the vaccine preventable diseases that are included in the most current recommendations of the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention (CDC).

The policy must require covered individuals to receive vaccines based on the level of risk the individuals present to patients by their routine and direct exposure to patients; include procedures for covered individuals to claim an exemption from the required vaccines for medical conditions the CDC identifies as contraindications or precautions; include procedures exempt individuals must follow to protect facility patients from exposure to disease; require the health care facility to maintain written or electronic records of covered individuals' compliance with or exemption from the policy; and include disciplinary actions the health care

facility is authorized to take against covered individuals who fail to comply with the policy.

The new rules also include provisions for covered individuals to claim an exemption from the required vaccine policy based on reasons of conscience, including a religious belief; for prohibiting exempt individuals from having contact with facility patients during a public disaster; and for taking enforcement action, including assessing administrative penalties against facilities that violate these rules.

#### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Texas Hospital Association, Texas Pediatric Society, Texas Medical Association, Laredo Medical Center, and Harlingen Medical Center. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §§1.701 - 1.704, one commenter works in a small rural hospital and stated that the task of enforcing such a policy would be next to impossible. Certain hospital personnel may perform up to three or four jobs, and it is unknown how one individual can enforce a policy to cover all of the compliance issues that would be involved with this provision.

Response: The commission appreciates the comment; however, implementation of a policy on Vaccine Preventable Diseases is mandatory by new Health and Safety Code, Chapter 224. No change was made as a result of this comment.

Comment: Three commenters wrote in support of the rules related to the adoption of the policy, and stated that they are pleased to see that the rules track the wording in the new law.

Response: The commission appreciates the comment. No change was made as a result of the comments.

Comment: Concerning §1.701, Definitions, one commenter requested that levels of risk be defined.

Response: The commission disagrees with the commenter as levels of risk must be defined by each facility based on its own unique operations. These rules apply across all types of health facilities, involving extraordinarily diverse patient populations, and a broad spectrum of health care providers. Assessments of risk at any one of these facilities must be based on a multitude of factors, many of which are highly variable and context specific. Therefore, each facility is required to analyze, develop, and implement itself, an individualized, vaccine policy and procedure that will address the level of risk at that particular facility. No change was made as a result of this comment.

Comment: Concerning §§1.701 - 1.704, one commenter stated that including physicians in SB 7 is going to actually water-down the impact of this important legislation because this commenter was of the opinion that physicians are reluctant to comply with requirements of this kind.

Response: The commission appreciates the comment; however, implementation of a Policy on Vaccine Preventable Diseases, which includes physicians, is mandatory by statute effective June 1, 2012. No change was made as a result of the comment.

#### LEGAL CERTIFICATION

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

#### STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §§241.026, 243.010, 244.010, 245.010, 248.026, 251.014, and 254.151; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 October 1, 2012.

TRD-201205158

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: October 21, 2012

Proposal publication date: April 20, 2012

For further information, please call: (512) 776-6972



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

#### 31 TAC §§65.318, 65.320, 65.321

The Texas Parks and Wildlife Department (the department) in a duly noticed meeting on August 30, 2012, adopted amendments to §§65.318, 65.320, and 65.321, concerning the Migratory Game Bird Proclamation. Section 65.318 is adopted with changes to the proposed text as published in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3673). Section 65.320 and §65.321 are adopted without change and will not be republished.

The proposed text published in the May 18, 2012, issue of the *Texas Register* included amendments to §65.315 and §65.319, which address early-season species of migratory game birds (dove, rails, gallinules, snipe, and teal). Those sections were adopted in the July 20, 2012, issue of the *Texas Register* (37 TexReg 5485).

The change to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, implements a six-bird bag limit for scaup.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

The amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, retains the season structure and bag limits from last year (with the exception of the increased bag limit for scaup) and adjusts the season dates to account for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years). This year's Service frameworks allowed an increased bag limit for scaup. Therefore, to maximize hunting opportunity, the amendment includes the increased bag limit for scaup.

The amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates to reflect calendar shift.

The amendment to §65.321, concerning Special Management Provisions, adjusts the dates for the conservation season on light geese to account for calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service.

The amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, will function by establishing the season dates for the hunting of late-season species of migratory game birds.

The amendment to §65.320, concerning Extended Falconry Season--Late Season Species, will function by establishing the season dates for the hunting of late-season species of migratory game birds by means of falconry.

The amendment to §65.321, concerning Special Management Provisions, will function by establishing season dates for the conservation season on light geese.

#### Ducks, Coots, and Mergansers

The department received 18 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for ducks, coots, and mergansers. All 18 commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated that the duck season should start one week later and end one week later. The department disagrees with the comment and responds that the season as adopted runs to the end of the federal frameworks and cannot run later. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the opening day of duck season should not be concurrent with the opening day of deer season. The department disagrees with the comments and responds that under federal frameworks, the department is authorized to provide 74 days of duck hunting opportunity

between September 24, 2012 and January 27, 2013. Hunter surveys and public comment indicate a preference for 1) a split season, to allow duck populations to congregate without being subjected to hunting pressure, 2) hunting opportunity over the Thanksgiving and Christmas holiday seasons, and 3) a winter segment that runs to the final day of the framework. The rule as adopted represents the department's best effort to satisfy these criteria. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season for dusky ducks should be concurrent with the season for other species, even if it means curtailing the season for other species. The department disagrees with the comments and responds that it is the policy of the commission and the department to adopt the most liberal seasons and bag limits possible under the federal frameworks in order to maximize hunting opportunity. A curtailed season would conflict with this policy. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the north and south zone splits should be staggered rather than concurrent. The department disagrees with the comments and responds that it is commission policy to attempt to create opportunity during peak waterfowl migrations and time periods when most of the public is most able to take advantage of it. For duck seasons, the department believes it is important to provide opportunity during the holiday season and for as many weekends as possible. Under the federal frameworks, Texas is allowed 74 days of opportunity between September 24, 2012 and January 27, 2013. The purpose of a split is to allow an opportunity for ducks to congregate and recover from hunting pressure. Conventional thinking is that splits ideally should be at least two weeks in duration. Concurrent splits are therefore necessary because staggered splits would take hunting opportunity away in at least one zone during peak migration in December. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should open earlier in the South Zone. The department disagrees with the comment and responds that an earlier opening date would necessitate a reduction in hunting days in the winter segment, which department surveys indicate is preferred by a majority of duck hunters in the South Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the "season within a season" for dusky ducks creates potential for violations due to incorrect duck identification. The department agrees with the comment, but the federal frameworks requires a shorter mottled duck season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season dates in the North Zone should be November 10 to December 2 and December 15 to February 3. The department disagrees with the comment and responds that under the federal frameworks, there can be no duck hunting in Texas after January 27. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for "dusky ducks" should be two weeks long. The department disagrees with the comment and responds that it is the policy of the commission and the department to adopt the most liberal seasons and bag limits possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should run to the end of the framework. The department agrees

with the comment and responds that the season as adopted runs to the end of the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be more October hunting. The department disagrees with the comment and responds that the federal frameworks provide 74 days of duck hunting opportunity. All duck hunting opportunity other than the special September teal season counts against the 74-day total. Survey and public comment data indicate overwhelming hunter preference for duck hunting opportunity to take place as late in the framework as possible. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should run one week longer. The department disagrees with the comment and responds the season as adopted runs to the end of the federal framework and cannot run longer. No changes were made as a result of the comment.

The department received 93 comments in support of the proposed amendment.

#### Geese

The department received 20 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for geese. Of the 20 commenters, 17 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Ten commenters opposed adoption and stated that the season for white-fronted geese should run until January 27. The department disagrees with the comments and responds that the federal frameworks allow 72 days of hunting for white-fronted geese (in the Eastern Zone). The department has chosen to implement concurrent goose seasons for all species with the intent of facilitating easier compliance for hunters. The early autumn is also the peak of the white-fronted goose migration, which is the optimum hunting opportunity for that species. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the season for white-fronted geese should run concurrently with the duck season. The department disagrees with the comment and responds that the white-fronted goose season is limited to 72 days under the federal frameworks, while the duck season is 74 days; therefore, making goose season concurrent with duck season would result in reduced hunting opportunity due to the loss of a weekend of goose hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season for white-fronted geese should run longer. The department disagrees with the comment and responds that the closing dates as adopted were chosen to optimize the impact of the light goose conservation order. In order to take advantage of the conservation order, the state is required by federal frameworks to close all other seasons for migratory birds. Therefore, allowing any season to remain open beyond January 27 in the Eastern Zone would effectively defeat the purpose of the conservation order, which is to harvest large numbers of snow geese in order to protect Canadian breeding grounds from the effects of overpopulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for dark geese should be closed during the split in the duck season to allow the take of light geese under the conservation order.

The department disagrees with the comment and responds that by federal law (50 C.F.R., Part 20, Subpart E), all seasons for migratory birds must be closed in order to implement the conservation order. Thus, in order to provide hunting opportunity for light geese during the split in the duck season, all other hunting opportunity for migratory game birds would have to be stopped, which is not the preference of the majority of hunters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for dark geese should be closed during the split in the duck season so that the season for white-fronted geese could run until the end of duck season. The department disagrees with the comment and responds that the season structure as adopted takes advantage of the migratory chronology of white-fronted geese, which tend to arrive in Texas in huntible numbers in early November. The department also notes that the white-fronted goose season is limited to 72 days under the federal frameworks, while the duck season is 74 days; therefore, making goose season concurrent with ducks season would result in reduced hunting opportunity due to the loss of a weekend of goose hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no bag limit on light geese. The department disagrees with the comment and responds that the state rules cannot authorize a daily bag limit in excess of the maximum allowable bag limit under the federal frameworks. No changes were made as a result of the comment.

The department received 77 comments in support of the proposed amendment.

#### Sandhill Cranes

The department received 11 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for sandhill cranes. Out of the 11 comments, nine articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Five commenters opposed adoption and stated that the season should open earlier in Zone C. The department disagrees with the comment and responds that the season structure is designed to ensure that migrating whooping cranes are not readily available. Therefore, the opening day must be delayed in order to protect endangered whooping cranes as they migrate to their wintering grounds. The federal Endangered Species Act requires states to limit any human activity considered hazardous to endangered species, including recreational hunting of similar-appearing migratory game birds. Whooping cranes, which have characteristics similar to sandhill cranes, are typically still in migration to the Aransas National Wildlife Refuge through the beginning of December. Also, the maximum season length in Zone C is 37 days. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season in Zone C should be longer. The department disagrees with the comments and responds that the season as adopted is the maximum length allowed under the federal frameworks (37 days). No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season in Zone C should be shorter. The department disagrees with the comment and responds that it is the commission policy to adopt the most liberal provisions possible under the federal framework



in order to provide maximum hunter opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in Zone A should be longer. The department disagrees with the comment and responds that the season as adopted is the maximum length allowed under the federal frameworks (93 days). No changes were made as a result of the comment.

One commenter opposed adoption and stated that the closed area should be opened to hunting. The department disagrees with the comment and responds that under the federal frameworks, crane hunting is authorized only in specific areas. The Service authorizes crane hunting in three zones that encompass approximately the western two-thirds of the state. Much of east Texas is excluded, and the department cannot allow crane hunting in that area without the prior approval of the Service. No changes were made as a result of the comment.

The department received 72 comments in support of the proposed amendment.

#### Special Youth Waterfowl Season

The department received eight comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for the special youth waterfowl season. Of the eight comments, three articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be no special seasons for anyone. The department disagrees with the comment and responds that youth seasons are intended to increase youth interest in hunting and to offer adults the opportunity to mentor youth. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed youth season occurred too early to be useful or entertaining. The department, although sympathetic, disagrees with the comment and responds that the youth-only dates are placed prior to the beginning of the regular season because placing youth-only dates during the split between segments would defeat the purpose of the split, which is to allow ducks to rest, and placing youth-only dates at the end of the season would result in less than desirable hunting conditions for youth, because duck populations at that time of the season are diminished due to hunting and natural mortality and the remaining ducks are extremely wary. Therefore, the department has determined that the week-end prior to the opening of duck season is the ideal time to locate the youth-only days. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth season should be one week long. The department disagrees with the comment and responds that the Service authorizes one weekend for youth-only waterfowl hunting and that additional days of youth hunting opportunity would result in less opportunity for the rest of Texas waterfowl hunters. No changes were made as a result of the comment.

The department received 66 comments in support of the proposed amendment.

#### Falconry

The department received two comments opposing adoption of the portion of proposed §65.320, which establishes season dates and bag limits for the take of early species of migratory

game birds by means of falconry. One commenter articulated a specific reason or rationale for opposing adoption. The commenter opposed adoption and stated that the duck season should be lengthened. The department disagrees with the comment and responds that the duck season as adopted takes advantage of the entirety of days authorized for duck hunting in Texas under the federal frameworks. No changes were made as a result of the comment.

The department received 25 comments supporting adoption of the rule as proposed.

#### Light Goose Conservation Season

The department received 13 comments opposing adoption of proposed §65.321, which establishes season dates and bag limits for the take of light geese under the federal conservation order. Of the 13 comments, 11 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Four commenters opposed adoption and stated that the conservation season should start earlier. The department disagrees with the comment and responds that hunter preference for other species of waterfowl precludes the opening of the conservation season any earlier, since under the federal frameworks all other seasons would have to be closed in order to implement the conservation season. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the conservation season should be open during the duck split. The department disagrees with the comment and responds that the federal frameworks provide that the conservation season cannot be opened unless all other migratory bird hunting seasons are closed. To open the conservation season during a split in the goose season, the department would have to close seasons for ducks and sandhill crane, which would reduce overall hunter opportunity and conflict with commission policy to provide the maximum hunter opportunity possible under federal frameworks issued by the Service. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the conservation season should be eliminated. The department disagrees with the comment and responds that Texas must do its part in the interstate and international effort to curtail light goose populations in order to prevent habitat degradation on their Arctic breeding grounds. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be no bag limit for light geese during the regular season. The department disagrees with the comment and responds that the state cannot exceed the maximum bag limits established by the federal frameworks. No changes were made as a result of the comment.

The department received 72 comments supporting adoption of the proposed rule.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

*§65.318. Open Seasons and Bag and Possession Limits--Late Season.*

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; six scaup (lesser scaup and greater scaup in the aggregate); two redheads; two pintail; one canvas-back; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established in subparagraphs (A)(ii), (B)(ii), and (C)(ii) of this paragraph. For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks": October 27 - 28, 2012 and November 2, 2012 - January 27, 2013.

(ii) "dusky ducks": November 5, 2012 - January 27, 2013.

(B) North Zone:

(i) all species other than "dusky ducks": November 3 - 25, 2012 and December 8, 2012 - January 27, 2013.

(ii) "dusky ducks": November 8 - 25, 2012 and December 8, 2012 - January 27, 2013.

(C) South Zone:

(i) all species other than "dusky ducks": November 3 - 25, 2012 and December 8, 2012 - January 27, 2013.

(ii) "dusky ducks": November 8 - 25, 2012 and December 8, 2012 - January 27, 2013.

(2) Geese.

(A) Western Zone.

(i) Light geese: November 3, 2012 - February 3, 2013. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 3, 2012 - February 3, 2013. The daily bag limit for dark geese is five, to include not more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 3, 2012 - January 27, 2013. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: November 3, 2012 - January 13, 2013. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 3, 2012 - January 27, 2013. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 3, 2012 - February 3, 2013. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 23, 2012 - February 3, 2013. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 22, 2012 - January 27, 2013. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraphs (1) and (2) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 20 - 21, 2012;

(B) North Zone: October 27 - 28, 2012; and

(C) South Zone: October 27 - 28, 2012.

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

Filed with the Office of the Secretary of State on September 27, 2012.

TRD-201205124

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 5. FINANCE

The Texas Department of Transportation (department) adopts the repeal of §§5.70 - 5.74 and new §§5.101 - 5.111, concerning the Transportation Development Credit Program. The repeal of §§5.70 - 5.74 and new §§5.101 - 5.111 are adopted without changes to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5242) and will not be republished.

#### EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

The department is currently modifying the process for allocating, awarding, and administering transportation development credits. To achieve this goal the department has determined that changes to the existing rules are necessary. To streamline this process the department is repealing the existing sections relating to the Transportation Development Credit Program and simultaneously proposing new sections, which will be located in new Subchapter H.

Rider 45 to the appropriations to the department for fiscal years 2012-2013 (page VII-37, General Appropriations Act, 2011) stipulates that the department "shall make it a priority to utilize trans-

portation development credits as the required match in a manner that would maximize the utilization of federal funds on eligible projects. The state funds then no longer needed to be used as the required federal match should then be available to be targeted to priority projects in an effort to streamline their delivery."

On June 30, 2011, the Texas Transportation Commission (commission) created the Transportation Development Credit Rulemaking Advisory Committee (committee) to be comprised of seven members, including representatives from the three metropolitan planning organizations (MPOs) with the largest local balances of credits, the Public Transportation Advisory Committee, an MPO located in a non-transportation management area, a metropolitan transit provider and a city that partners with the state on transportation projects. The committee met four times with department staff to render advice, review draft proposals, and make specific recommendations. In addition to the committee, the department solicited comments on the draft rules from the Public Transportation Advisory Committee and other transit industry stakeholders.

Many of the new sections incorporate concepts included in the current rules; however, the department has made numerous substantive changes to address the requirements of Rider 45 and the recommendations of the committee. The new rule organizational structure subdivides the rules into smaller sections and reorganizes them so that the new rules are easier to read. The revision also permits easier location of and access to specific provisions and makes them more understandable.

New §5.101, Purpose, indicates that the purpose of the subchapter is to set out the policies and procedures for implementation of the program and references the federal law that enables the use of transportation development credits.

New §5.102, Program Goals, sets out the overarching goals for the program, based on the requirements of Rider 45 and the recommendations of the committee. Each MPO and the commission must consider these goals when awarding credits to eligible projects under new §§5.106, 5.108, or 5.109, as appropriate.

New §5.103, Definitions, incorporates most of the definitions from current §5.71 without substantive change. The defined term "Executive director" has been removed because it is unnecessary. The definition for "Metropolitan planning organization" and the acronym "MPO" have been added since the new rules place certain responsibilities on these entities.

New §5.104, Availability of Credits, requires the department to provide information on the availability of transportation development credits as part of the development and update of the Unified Transportation Program (UTP). The UTP is a ten-year statewide plan for transportation project development. Including this information in the UTP will provide interested parties with access to the number of credits that have been previously awarded or may be available for award to eligible projects in the future.

New §5.105, Regional Allocation, provides that the commission will allocate 75 percent of the state's locally earned credits to the MPO in whose planning area they were earned. The purpose of this change is to allow more local control over the award of transportation development credits.

New §5.106, Award by Metropolitan Planning Organizations, sets out the basic framework that will govern the award of credits by each MPO receiving an allocation under new §5.105. This section does not prescribe the type of process that must be used for evaluating applications and awarding credits; how-

ever, each MPO will ultimately be responsible for developing guidelines pertaining to the award and management of its credit allocation. The MPO must consider how the award of credits will expand the availability of funding for transportation projects, based on the goals specified in new §5.102. This section also requires the MPO to incorporate information regarding the award of credits into its Transportation Improvement Program, as appropriate, and submit an annual report to the department documenting the management of its credit allocations. Finally, this section specifies that a public transit agency located within the planning area of an MPO must first seek the award of credits from the MPO, unless the credits will apply to a program that is administered by the department on a statewide basis. The department and the committee agree that it is more appropriate for metropolitan transit agencies to seek credits for eligible projects from the regional allocation. The exception applies to statewide programs funded through the department, in which case it is more appropriate for the commission to award any associated credits.

New §5.107, Award by Commission, provides that the commission will award the transportation development credits that are not locally earned and the state's locally earned credits that are not otherwise allocated to MPOs under new §5.105. This section authorizes the commission to award the credits using a competitive process or in its sole discretion. In addition, this section creates a specific allocation for public transit projects, which is equal to the lesser of 15 million credits or fifty percent of the total number of credits available for award by the commission on the first day of the fiscal year. The purpose of this particular allocation is to demonstrate the department's continued commitment to using transportation development credits in support of public transit projects.

New §5.108, Competitive Process, incorporates many of the general concepts contained in current §5.72. This section provides that the department may periodically publish a notice soliciting proposals for award of transportation development credits, and describes the content of the proposal. The commission will award credits after considering the potential of the project to expand the availability of funding for transportation projects, based on the goals specified in new §5.102.

New §5.109, Discretionary Award, continues the practice authorizing the commission to make an award solely in its discretion as described in current §5.73. In making an award, the commission will consider the potential of the project to expand the availability of funding for transportation projects, based on the goals identified in new §5.102, and, if the project is located within the planning boundaries of an MPO, the expressed opinion, if any, of the MPO.

New §5.110, Administration, modifies the language in current §5.74 and clarifies that the agreement must be executed before credits may be used. This section also provides that if an entity does not sign a project agreement within two years after the date of the award of the credits, the credits may be awarded to another eligible entity. The purpose of this new requirement is to aid in the efficient and effective use of transportation development credits.

New §5.111, Transfer of Credits, authorizes an MPO to transfer credits to another MPO or the commission and requires that such a transfer must be documented in the annual report described in new §5.106. This provision will provide flexibility in the use of transportation development credits throughout the state.

COMMENTS

Comments in support of the proposed repeals and new sections were received from Hill Country Transit District.

SUBCHAPTER F. TRANSPORTATION DEVELOPMENT CREDIT PROGRAM

43 TAC §§5.70 - 5.74

STATUTORY AUTHORITY

The repeals are adopted 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

23 U.S.C. §120.

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

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Jeff Graham

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



SUBCHAPTER H. TRANSPORTATION DEVELOPMENT CREDIT PROGRAM

43 TAC §§5.101 - 5.111

STATUTORY AUTHORITY

The new sections are adopted 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

23 U.S.C. §120.

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

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CHAPTER 7. RAIL FACILITIES

SUBCHAPTER F. RAILROAD GRADE CROSSINGS

43 TAC §§7.101 - 7.106

The Texas Department of Transportation (department) adopts new §§7.101 - 7.106, concerning Railroad Grade Crossings. New §§7.101 - 7.106 are adopted without changes to the proposed text as published in the July 13, 2012, issue of the Texas Register (37 TexReg 5246) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

In 1998 the rules relating to railroad grade crossings were moved to 43 TAC Chapter 25, Traffic Operations, because at that time the responsibility for railroad crossings was assigned to the Traffic Operations Division of the department. The department's Rail Division, which was established in December 2009, currently has responsibility for the oversight of railroad crossings. The purpose of these changes is to move rules pertaining to the department's oversight of railroad crossings from 43 TAC Chapter 25, Traffic Operations, to 43 TAC Chapter 7, Rail Facilities, to revise the statutory citations contained in the rules, and to update the language of the new rules to make them easier to read and understand. The changes repeal 43 TAC §§25.70 - 25.76 and simultaneously add new sections which will be in Chapter 7, new Subchapter F, Railroad Grade Crossings. Current §25.70, Purpose, provides no information in addition to the subchapter heading and has not been revised as a part of new Subchapter F, Chapter 7, because it is unnecessary.

New §7.101, Definitions, essentially contains the definitions that are in current §25.71 that are necessary for new Chapter 7, Subchapter F, Railroad Grade Crossings. A few of the definitions in §25.71 have been integrated into the substantive provisions of the subchapter. Several of the definitions that were in §25.71 are used only in one of the new sections and, therefore, have been moved to the section in which they are used. A new definition of "active warning device" has been added to new §7.101. This definition is based on the definitions of "active warning device" contained in Transportation Code, §471.004 and "warning signal" contained in Transportation Code, §471.005 and combines the definitions of "active warning device," "warning device," and "warning signal" that were contained in current §25.71. The subject matters of both Transportation Code, §471.004 and §471.005 are covered in Chapter 7, new Subchapter F. Those sections use different terms to describe the same type of warning device. New §7.101 contains the elements used in the definition of "warning signal" from Transportation Code, §471.005 for the definition of the new term "active warning device."

New §7.102, Warning Sign Visibility at Railroad Grade Crossings, is substantively the same as current §25.73. The statutory reference has been updated. The definition of "local jurisdiction" contained in current §25.71(9) has been integrated into the wording of new §7.102(e)(2) and that definition has been deleted as unnecessary. The new section clarifies that the Texas Manual on Uniform Traffic Control Devices provides the standard currently used by the department and railroads for the installation and use of the retroreflective material on the crossbuck sign assemblies rather than the information provided by Appendix A to current §25.73. Appendix A and references to it have been deleted in new §7.102.

New §7.103, Dismantling Active Warning Devices at Railroad Grade Crossings, is substantively the same as current §25.72. The section has been reorganized and the statutory reference

contained in the section has been updated. The definitions of "active rail line" contained in current §25.71(1) and "salvage value" contained in current §25.71(19) have been moved to new §7.103 as substantive provisions and those definitions have been deleted as unnecessary. New §7.103 clarifies that an appeal of the denial of a permit to remove an active warning device must be sent to the director of the department's rail division.

New §7.104, Maintenance of Railroad Underpasses, is substantively the same as current §25.74. The definition of "railroad underpass" has been moved to this section because it is not used elsewhere. The definition of "railroad overpass" in current §25.71 is not used in the new rules and has been deleted.

New §7.105, Spur Tracks Crossing Existing Highways, is substantively the same as current §25.75. Under both provisions, if the department allows a spur track grade crossing on a roadway, the person requesting the crossing is required to pay all costs of crossing pavement, highway adjustment, and crossing warning protection. New §7.105(c) clarifies that crossing warning protection includes active warning devices that the department considers to be appropriate for the crossing.

New §7.106, Crossing and Maintenance of Highway-Railroad Grade Crossings, is substantively the same as current §25.76. Subsection (c) clarifies that full-depth concrete panels rather than full depth timber pavement is the current standard for crossings.

#### COMMENTS

No comments on the proposed new sections were received.

#### STATUTORY AUTHORITY

The new sections 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, §471.004, which requires the department to adopt rules governing the installation and maintenance of reflecting material at grade crossings, and Transportation Code, §471.005, which authorizes the department to adopt rules related to the dismantling of warning signals at a grade crossing on an active rail line and to define "active rail line."

#### CROSS REFERENCE TO STATUTE

Transportation Code, §471.004 and §471.005.

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

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

TRD-201205131

Jeff Graham

General Counsel

Texas Department of Transportation

Effective date: October 18, 2012

Proposal publication date: July 13, 2012

For further information, please call: (512) 463-8683



## CHAPTER 25. TRAFFIC OPERATIONS

## SUBCHAPTER E. RAILROAD CROSSINGS

### 43 TAC §§25.70 - 25.76

The Texas Department of Transportation (department) adopts the repeal of §§25.70 - 25.76, concerning Railroad Crossings. The repeal of §§25.70 - 25.76 are adopted without changes to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5255) and will not be republished.

#### EXPLANATION OF ADOPTED REPEALS

In 1998 the rules relating to railroad grade crossings were moved to 43 TAC Chapter 25, Traffic Operations, because at that time the responsibility for railroad crossings was assigned to the Traffic Operations Division of the department. The department's Rail Division, which was established in December 2009, currently has responsibility for the oversight of railroad crossings. The purpose of these changes is to move rules pertaining to the department's oversight of railroad crossings from 43 TAC Chapter 25, Traffic Operations, to 43 TAC Chapter 7, Rail Facilities, to revise the statutory citations contained in the rules, and to update the language of the new rules to make them easier to read and understand. The changes repeal 43 TAC §§25.70 - 25.76 and simultaneously add new sections which will be in Chapter 7, new Subchapter F, Railroad Grade Crossings.

#### COMMENTS

No comments on the proposed repeals were received.

#### STATUTORY AUTHORITY

The repeals 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, §471.004, which requires the department to adopt rules governing the installation and maintenance of reflecting material at grade crossings, and Transportation Code, §471.005, which authorizes the department to adopt rules related to the dismantling of warning signals at a grade crossing on an active rail line and to define "active rail line."

#### CROSS REFERENCE TO STATUTE

Transportation Code, §471.004 and §471.005.

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

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Jeff Graham

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



## CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

## SUBCHAPTER E. VICTORIA COUNTY NAVIGATION DISTRICT PERMITS

### 43 TAC §§28.40 - 28.47

The Texas Department of Transportation (department) adopts new §§28.40 - 28.47, concerning the permitting of oversize and overweight vehicles and loads on certain state highways located in Victoria County. New §§28.40 - 28.47 are adopted without changes to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5256) and will not be republished.

#### EXPLANATION OF ADOPTED NEW SECTIONS

Under Transportation Code, Chapter 623, Subchapter L, the Texas Transportation Commission (commission) has the authority to authorize the Victoria County Navigation District (district) to issue permits for oversize and overweight vehicles on certain roads within the district. The district contacted the department and expressed the desire to obtain the authority needed to issue permits as allowed under current state law. The proposed new sections are necessary to authorize the district to issue permits and to implement and carry out the provisions of Transportation Code, Chapter 623, Subchapter L. These rules add new Subchapter E, which was developed to be consistent with similar optional permitting programs previously established by the commission.

New §28.40 sets out the purpose of Subchapter E, which is to allow the district the authority to issue permits for the movement on roads designated by Transportation Code, §623.232 of oversize or overweight vehicles weighing up to 140,000 pounds.

New §28.41 sets out the applicable definitions used in the subchapter.

New §28.42 provides the powers and duties of the district and the department for the implementation and oversight of the district permit program. Subsection (a) authorizes the issuance of permits and collection of fees and provides the maximum dimensions and gross weight that may be allowed under a permit. Subsection (b) authorizes the department to require a surety bond to pay for the costs of the maintenance of the roadways that are used by the permitted vehicles if the amount of the fees deposited in the state highway fund is not sufficient to cover those costs. The district can prevent recovery on the bond by paying the amount not covered by the fees. The section also covers the verification of permits, the provision of training necessary for the district to issue permits, and the accounting and auditing requirements. Subsection (g) provides the department's authority to ensure that the district complies with applicable law, including the rules in new Subchapter E. Subsection (h) sets out the fee requirements. Subsection (i) requires the district to enter into a contract with the department for the maintenance of roads on which the permitted vehicles will travel. Finally, subsection (j) sets out the district's reporting requirements. The provisions of the section were developed to be in compliance with Transportation Code, Chapter 623, Subchapter L, and to be consistent with similar optional permitting programs previously established.

New §28.43 establishes the eligibility requirements that must be satisfied for the issuance of a permit by the district. The section prohibits the district from issuing a permit to a person or for a vehicle if administrative penalties imposed under Transportation Code, §623.271 have not been paid. This prohibition is required under Transportation Code, §623.271.

New §28.44 sets out the requirements related to the form and content of the application for a permit and of the permit. The requirements are necessary to comply with Transportation Code, §623.235 and are as consistent as possible with similar optional permitting programs previously established by the department.

New §28.45 provides the permit weight limits for axles that the district must follow as part of the permit program. Requirements and specifications include minimum axle group spacing and maximum permit weight for single and multiple axles.

New §28.46 sets forth movement requirements and restrictions that the district and a permittee must follow as part of the permit program. A permittee is required to carry the issued permit when moving the permitted vehicle and is prohibited under this section from moving an oversize or overweight load if a permit becomes void. A permit is void on issuance if the applicant for the permit gives false or incorrect information and becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit. The section provides limitations on the movement of a permitted vehicle because of weather conditions, road work, or time of day. Finally, the section sets out the requirements for types of scales that may be used to weigh permitted vehicles and provides speed restrictions.

New §28.47 provides the records maintenance requirements that the district must follow as part of the permit program.

#### COMMENTS

No comments on the proposed new sections were received.

#### STATUTORY AUTHORITY

The new sections are adopted 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, §623.232, which allows the commission to authorize the district to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.239, which provides the commission with the authority to establish rules necessary to implement a permit program for the district.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter L.

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

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

TRD-201205133

Jeff Graham

General Counsel

Texas Department of Transportation

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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.

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## Proposed Rule Reviews

Texas Medical Board

### Title 22, Part 9

The Texas Medical Board proposes to review Chapter 197, Emergency Medical Service, §§197.1 - 197.6, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*; the Texas Medical Board contemporaneously proposes amendments to §197.2 and §197.3.

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

to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

TRD-201205168

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Filed: October 2, 2012



# TABLES & GRAPHICS

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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.

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Figure: 22 TAC §190.14(9)

Violation Description	Statutory/Rule Citation	Low Sanction	High Sanction
Abusive Behavior	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(K)	Remedial Plan: Anger management and communications CME, JP exam, medical ethics	Agreed Order with IME or Public Referral to PHP; CME in medical ethics, anger management, communications with colleagues, JP exam. For multiple orders or egregious actions--interfering with patient care: public reprimand, suspension with terms and conditions
Aiding in unlicensed practice	§164.052(a)(17) (directly or indirectly aids or abets unlicensed practice)	Remedial Plan: Directed CME in supervision or delegation if applicable; 8 hours CME in medical ethics, 8 hours CME in risk management; must pass JP within 1 year; \$2,000 penalty	Public reprimand plus all sanctions in low category
Bad faith mediation by a licensee in relation to an out-of-network health benefit claim	§1467.101 and §1467.102 of the Texas Insurance Code (bad faith in out-of-network claim dispute resolution)--"except for good cause shown, the regulatory agency shall impose an administrative penalty"	Good cause shown: Remedial Plan: 8 hours of medical ethics; otherwise, admin penalty is statutorily required	Public reprimand; \$5,000 admin penalty, "except for good cause shown" per §1467.102; plus all sanctions in low category
Boundary Violation (close friendship, intimacy or financial involvement with patient)	§164.052(a)(5) (unprofessional conduct likely to injure public) Rule §190.8(2)(E) and (F)	Single incident: Boundaries course, CME in ethics, JP exam	Several incidents: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; chaperone; CME in ethics; may not treat patient of the affected gender
Breach of Confidentiality	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(N) (specifies violation)	Remedial Plan: 8 hours risk management CME to include HIPAA, \$500 administration fee	Public reprimand, CME in risk management and in HIPAA requirements; \$3,000 per occurrence; JP exam
Cease and desist order--issuance of: See "Unlicensed practice of medicine"	§164.002 (Board's general authority to dispose of "any complaint or matter" unless precluded by another statute) §165.052 (power to issue cease and desist orders against unlicensed persons)		

Cease and desist order (existing), violation of	§165.052(b) (violation of (c) and (d) is grounds for imposing admin penalty)	Administrative penalty \$2,000 - \$5,000 per offense	Referral to Attorney General for civil penalty and costs or criminal prosecution. §165.101 (civil) and §165.152 (criminal)
Change in practice or mailing address, failure to notify the board of	Rule §166.1(d) (notify Board within 30 days of change of mailing or practice address or professional name on file)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
CME - Failure to obtain or document CME	§164.051(a)(3) (forbids breaking or attempting to break a Board rule) Rule §166.2 (48 credits each 24 months + other requirements and accreditation of CME req'ts)	Remedial Plan: All missing hours of CME and 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of CME in ethics/risk management plus complete all missing hours; \$1,000 admin penalty; JP exam
Crime: Abortion - performing a criminal abortion. Health and Safety Code §170.002 and Chapter 171 (§170.002 prohibits third-trimester abortions, with exceptions; Chapter 171 requires physicians to make available certain materials to abortion patients and restricts how informed consent is obtained; the criminal offense (§171.018) is an unspecified class of misdemeanor punishable only by a \$10,000 fine)	§164.052(a)(16) (prohibits performing, procuring, aiding, or abetting in procuring a criminal abortion); §164.055 (requires "appropriate disciplinary action" against a physician who violates Health and Safety Code §170.002 or Chapter 171)	Public Reprimand; must pass JP within 1 year; \$5,000 admin penalty	Suspension, probated with terms, or revocation
Crime: Arrest for offense under Penal Code §§21.02; 21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.0595 (Temporary suspension or restriction of license for certain arrests)	Restriction of license, chaperone; may not treat pediatric patients	Suspension of license, no probation
Crime: Deferred adjudication community supervision for offense under Penal Code §§21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.057(c) (mandates revocation upon proof of deferred adjudication community supervision)		Revocation is statutorily required

Crime: Felony conviction	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.057(a)(1)(A) of the Medical Practice Act (requires suspension on initial conviction for a felony)	Initial conviction: Statutorily required suspension with or without notice per Rule §190.8(6)(A)(iv) and §164.057(a)(1)(A)	Revocation is statutorily required on final conviction - §164.057(b)
Crime: Felony deferred adjudication	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(A) of the Medical Practice Act (authorizes sanctions for initial convictions and deferred adjudications for felonies)	Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME	Revocation is statutorily required on final conviction - §164.057(b)
Crime: Misdemeanor conviction or deferred adjudication of crime involving moral turpitude	§205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(B) of the Medical Practice Act (authorizes sanctions for either conviction or deferred adjudication; Rule §190.8(6)(B)(v) defines moral turpitude)	If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require: (-a-) Suspension of license, which may be probated after 90 days; (-b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication; (-c-) public reprimand; and (-d-) administrative penalty of \$2,000 per violation.	If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.
Crime: Misdemeanor conviction <b>not</b> involving moral turpitude that is connected with the physician's practice of medicine	§164.053(a)(1) and (b) (authorizes sanctions without conviction) Rule §190.8(6)(B)(v) defines moral turpitude	Anger management or other appropriate course; JP exam; admin penalty; CME in communication with appropriate group (patients, colleagues)	Suspension with terms and conditions <b>OR</b> Revocation for repeat or egregious offenses or when patient care is affected or threatened

Crime: Misdemeanor deferred adjudication or conviction not involving moral turpitude that is <b>not</b> connected with physician's practice of medicine and not an offense under Chapter 22 or 25 of the Penal Code	§164.052(a)(5), as defined by Rule §190.8(2)(R)(iv), (vi), (vii), (ix), (x), (xi), and (xii) (authorizes sanctions based upon unprofessional conduct that would include commission of violations of federal and state law, whether or not there is a complaint, indictment, or conviction)	Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME	Suspension with terms and conditions <b>OR</b> Revocation for repeat or egregious offenses
Crime: Misdemeanor initial conviction under Penal Code Chapter 22 (assaultive offenses - <b>see also: arrest or deferred adjudication for assaultive offenses against children</b> ) of crime punishable by more than a fine; <b>OR</b> Penal Code §25.07 (violation of court order re: family violence); <b>OR</b> §25.071 (violation of court order re: crime of bias or prejudice); <b>OR</b> one requiring registration as a sex offender under Code of Crim. Proc. Chapter 62	§164.057(a)(1)(B),(C), (D), and (E) (when misdemeanor conviction requires suspension)	Suspension is statutorily required per §164.057(a)(1)(B)	Revocation is statutorily required on final conviction - §164.057(b)
Death certificate, failure to sign electronically	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine"); Health and Safety Code Chapter 193 (requires electronic filing of death certificates)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: CME - 8 hours of risk management, 4 - 8 hours medical ethics; \$2,000 admin penalty; JP exam
Delegation of professional medical responsibility or acts to person if the physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts	§164.053(a)(9) (describes the violation as unprofessional conduct, allows sanctions)	Remedial Plan: 12 hours CME in supervision and delegation, 8 hours in risk management, 8 hours in medical ethics; JP exam	No delegation or supervision authority; administrative penalty of \$2,000 per violation

Discipline by peers, may be either an administrative violation or SOC	§164.051(a)(7) (describes offense: includes being subjected to disciplinary action taken by peers in a local, regional, state, or national professional medical ass'n or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other action IF the board finds the action was based on unprofessional conduct or professional incompetence that was likely to harm the public and "was appropriate and reasonably supported by evidence submitted to the board." Expert panel report provides such evidence)	See the applicable sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible.	Public reprimand; comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible; and administrative penalty of \$3,000 per violation, plus directed CME and, if SOC case, a chart monitor. If not SOC: IME; anger management; CME in communications
Disciplined by another state or military may be either an administrative violation or a patient care violation	§164.051(a)(9) (describes the violation, requires that acts for which discipline imposed be the same or similar to acts in §164.052) Issue is only whether there was an order--no relitigation of prior facts, e.g., no new expert panel required	If no standard of care concerns, Remedial Plan with appropriate CME and \$500 administration fee; OR reciprocal Agreed Order as appropriate.	If out-of-state order is revocation, revocation is statutorily required.
Drug logs - Failure to maintain	§164.053(a)(2) (describes offense and refers to Chapter 481 Health and Safety Code and 21 USC §801 et seq.)	Remedial Plan: 8 hours of ethics/risk management and \$500 administration fee	Agreed Order: Public reprimand; 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
Employing a revoked/cancelled/ or suspended physician	§164.052(a)(14) (describes offense: "directly or indirectly employs . . ."); §164.052(a)(15) (forbids associating in the practice of medicine with such a person)	Agreed Order: Public reprimand; \$3,000 admin penalty; take and pass JP exam	Agreed Order: Public reprimand; \$5,000 admin penalty; JP exam; no delegation authority
Failing to adequately supervise subordinates and improper delegation	§164.053(a)(8); §164.053(a)(9) - These sections describe the respective violations and define them as unprofessional conduct	Remedial Plan: 12 hours CME in supervision and delegation; consider ordering Rsp to furnish ED copies of delegation orders of develop and furnish delegation orders to ED; \$500 admin fee	Low category sanctions plus: monitoring of practice; no delegation or supervision authority; administrative penalty of \$2,000 per violation; JP exam

Fails to keep proper medical records	§164.051(a)(3) (authorizes sanctioning rule violations); §164.051(a)(6) (authorizes sanctioning failure to practice acceptably consistent with public welfare); Rule §165.1 describes contents of an adequate medical record	Remedial Plan: CME in appropriate area; \$500 administration fee	Agreed Order: 8 or more hours of medical record-keeping, require in-person attendance if practical; chart monitor 8 - 12 cycles; \$2,000 admin penalty; JP exam; PACE course in medical record-keeping if prior order for inadequate record-keeping
Failure to Communicate with patient or other providers	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Remedial Plan--8 hours risk management CME to include patient communications, \$500 administration fee	Multiple instances: Public reprimand, risk management and communications CME, fine, counseling, IME
Failure to display a "Notice Concerning Complaints" sign	Rule §178.3(a)(1) (requires display of sign)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$1,000 admin penalty; JP exam
Failure to report dangerous behavior to governmental body	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Admin penalty; CME in medical ethics; JP exam	Multiple or egregious: Low category sanctions plus public reprimand and \$5,000 admin penalty
Failure to Pay SI / CS	Gov't Code, Family Code Chapter 232 (authorizes suspending licenses of any kind granted by the state to persons who do not pay support payments)	Suspension until such time as the licensee is no longer in default is required - statutorily required	Suspension until such time as the licensee is no longer in default - statutorily required
Fees, failure to provide explanation of	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.025); §101.351 (establishes requirement and excludes application of §101.351 to physicians who post a billing practice sign in their waiting room)	Remedial Plan: 8 hours of ethics/risk management/billing practices and \$500 administration fee	Agreed Order: 8 - 16 hours of CME in ethics, risk management, billing practices, and CPT coding, \$2,000 admin penalty
Fraud on a diploma/in an exam	§164.052(a)(2); §164.052(a)(3) (describes offense as presenting an illegally or fraudulently obtained credential and cheating on exams)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.

Fraudulent, improper billing practices - requires that Respondent knows the service was not provided or knows was improper, unreasonable, or medically or clinically unnecessary. Should not sanction for an unknowing and isolated episode.	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.0025); §164.053(a)(7) (prohibits violation of Health and Safety Code §311.0025)	Agreed order: Including, but not limited to: monitoring of billing practices; directed CME; restitution; and administrative penalty of \$1,000, but not to exceed the amount of improper billing	Public reprimand, monitoring of practice, including billing practices; directed CME; restitution; and administrative penalty of \$3,000 per violation
Health care liability claim, failure to report	§160.052(b) (requires reporting health care liability claims to Board) Rule §176.2 and §176.9 (prescribes form for such reporting)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
Impairment (no history and no aggravating factors such as SOC, boundary violation, or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Refer to PHP--Public referral via remedial plan or agreed order required if case involves discharge from PHP, otherwise private referral is OK if appropriate	Voluntary surrender or temporary suspension
Impairment (with history or SOC violation or boundary violation or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Order IME with report to ED or to panel at re-convened ISC, restrict practice or voluntary suspension pending report; if impairment is found at ISC, suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine, with conditions to be determined by a subsequent panel	Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine. <b>OR:</b> Suspension probated for 10 years with terms and conditions including but not necessarily limited to: drug testing; restrictions on practice; AA or NA attendance evidenced by logs; IME for psychiatric/psychological evaluation and treatment; proficiency testing <b>OR</b> revocation.
Intimidation of Complainant	§164.052(a)(5) (prohibits unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	Single Incident: Public reprimand and fine	Multiple/Egregious: Suspension and/or revocation; significant admin penalty; CME in ethics; JP exam

Medical Records: failure to release/overcharging for	§159.006 of the Act (information furnished by licensee); §164.051(a)(3) (prohibits rule violations); Rule §165.2 (requires release to proper person as described therein unless release would harm the patient and prescribes allowable charges - no more than \$25 for the first 20 pages and \$0.50 per page thereafter)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$2,000 admin penalty; JP exam. Also, §159.006 (Board may appoint temp or permanent custodian of patient records held by a physician)
Misleading advertising with regard to board certification	§164.052(6) (prohibits false advertising); Rule §164.4(e) (defines the offense re: board certification)	Remedial Plan: 8 hours of ethics/risk management, correct the advertisement and \$500 administration fee	Agreed Order: 16 hours of ethics/risk management in person, correct the advertisement, \$5,000 admin penalty, JP exam
Operating an unlicensed pharmacy	§158.001(b) (requires physicians to comply with Occupations Code Chapter 558 to operate a retail pharmacy)	Agreed Order: Must pass JP within 1 year, \$2,000 penalty, CME - medical ethics	JP exam; cease operating pharmacy; CME - ethics and risk management
Overbilling. See fraudulent, improper billing			
Peer review action: See Discipline by peers			
Physician-patient relationship, Improper termination of	Rule §190.8(1)(J) (requires reasonable notice to patient of termination)	Single incident: Remedial Plan: 8 hours CME - 4 risk management and 4 ethics, \$500 administration fee	Multiple instances: Public reprimand, risk management, fine, CME - in physician-patient communications
Pill mills, unregistered pain clinics, overprescribing - See Delegation, Supervision, Prescribing			Revocation
Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically	§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic <i>per se</i> or because of the way it is administered or prescribed)	Agreed Order: chart monitor, directed CME, restrictions on practice, including prescribing, administering controlled substances and dangerous drugs	Low sanctions plus restrictions on practice, including prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and administrative penalty of \$3,000 per violation. If there are aggravating factors, revocation should be considered.



Prescribing to self	§164.051(a)(6); Rule §190.8(1)(M)	Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; consider chart monitor at least 8 cycles; admin penalty	Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and administrative penalty of \$3,000 per violation
Prescribing, writes false or fictitious prescriptions <b>OR</b> prescribes or dispenses drugs to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs <b>OR</b> writes prescriptions for or dispenses to a person who the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs <b>OR</b> inconsistent with public welfare	§164.053(a)(3) - (6) (defines the violations under unprofessional conduct)	Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; chart monitor at least 8 cycles; if Respondent does not use one, order to develop a pain management contract with specific provisions for termination of physician-patient relationship on a maximum of 3 violations by the patient including a positive test for a controlled substance not prescribed by Respondent, drug screens required by contract; admin penalty	Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and administrative penalty of \$3,000 per violation.
Refusal to respond to board subpoena	§160.009 of the Act and Rule §179.4 of this title (relating to Request for Information and Records from Physicians); §164.052(a)(5) (prohibits unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	If records eventually received, Remedial Plan of 8 hours of ethics/risk management and \$500 administration fee	If records never received and intentionally withheld, public reprimand; JP exam; admin penalty; CME in medical ethics
Reporting false or misleading information on an initial application for licensure or for licensure renewal	§164.052(a)(1) (forbids submission of false or misleading statements of documents in an application for a license)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan-- 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Self-Prescribing: See "Prescribing to self."			

Solicitation of patients/Drumming	§165.155 (provides a Class A misdemeanor penalty)	Agreed Order (if no conviction): 8 hours of ethics/risk management and \$500 administration fee	Egregious: Public reprimand, chart sign off, \$5,000 fine, JP exam, CME in medical ethics OR referral to county attorney for prosecution as Class A misdemeanor under §165.155(e)
Standard of Care - one patient, no prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Remedial Plan*: CME in appropriate area; \$500 administration fee per year. *No RP if case concerns a patient death	Proficiency testing; directed CME; chart monitor for 8 cycles; administrative penalty of \$3,000 per violation
Standard of care - one patient, one prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Agreed Order: Chart monitor; directed CME	Limiting the practice of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice; public reprimand; and administrative penalty of \$3,000 per violation.
Standard of care - one patient, multiple prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence likely to injure the public); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Proficiency testing; directed CME; monitoring of the practice; administrative penalty of \$3,000 per violation	Agreed Order: K-STAR or PACE proficiency testing; directed CME; chart monitoring, restricting the practice; withdrawal of prescribing privileges or delegating privileges; public reprimand; administrative penalty of \$3,000 per violation

Standard of care - multiple patients, no prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Remedial Plan*: Chart Monitor for 8 cycles; CME in appropriate area; \$500 administration fee per year *No RP if case concerns a patient death	Proficiency testing; directed CME; chart monitor 12 cycles; public reprimand; and administrative penalty of \$3,000 per violation
Standard of care - multiple patients, multiple prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Proficiency testing; directed CME; monitoring for 12 cycles; requiring oversight or restricting of the practice; public reprimand; and administrative penalty of \$3,000 per violation.	Suspension and revocation
Supervision of midlevels, failure to perform: See "Failing to adequately supervise subordinates and improper delegation."			
Unlicensed practice of medicine	§165.052(a) (see definition of "practice of medicine" at §151.002(a)(13))	Cease and Desist Order and referral of Order to District Attorney or Attorney General	Cease and Desist Order; referral to Attorney General's office for injunction or civil penalties
Unsound Mind - adjudicated (See also "Impairment")	§164.051(a)(5) (enables Board to take action if a licensee or applicant "is found by a court to be of unsound mind")	Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine; IME and return to ISC panel with results	Temporary suspension prior to seeking revocation; show cause hearing under §164.056
Violation of Board Order	§164.052(a)(5) (enables sanctioning of unprofessional or dishonorable conduct as defined by §164.053 or conduct that injures the public)	Administrative in nature-Administrative Penalty of \$1,000; Substantive in nature-extension of order and increase the terms of the original order	Low sanctions plus: public reprimand; admin penalty of \$3,000 - \$5,000

Violation of state or federal law connected with physician's practice	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine")	If criminal law, see above under "Crime." If civil law, must pass JP exam and 8 hours of risk management/ethics (remedial plan or agreed order)	Agreed Order: public reprimand; restriction of license; surrender of controlled substance privileges; plus low sanctions
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# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

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

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/08/12 - 10/14/12 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/08/12 - 10/14/12 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 10/01/12 - 10/31/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 10/01/12 - 10/31/12 is 18% for Commercial over \$250,000.

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

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

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

TRD-201205176

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 2, 2012

## Texas Council for Developmental Disabilities

### Notice of Revision for Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) published a Request for Proposals (RFP) for Promotion of Self-Advocacy at Texas Conferences in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6954). The deadline for submitting that proposal has been extended by one week.

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

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

Funds available for this project are to be used to increase the number of individuals who have intellectual and developmental disabilities (IDD) who serve as speakers and/or facilitators at conferences or trainings held in Texas. The selected grantee will be responsible to recruit and facilitate necessary supports for a diverse group of individuals with IDD who are willing to speak at conferences; conduct outreach to other

organizations holding conferences in Texas; and provide administrative support for activities.

TCDD has approved funding up to \$125,000 per year, for up to four years, for one project. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP or more information about TCDD may be obtained through TCDD's website at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or via email [Joanna.Cordry@tcdd.state.tx.us](mailto:Joanna.Cordry@tcdd.state.tx.us). Application packets must be requested in writing or downloaded from the Internet.

TRD-201205201

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: October 3, 2012

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is November 12, 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 November 12, 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: Calpine Hidalgo Energy Center, L.P., Brownsville Public Utilities Board, and Calpine Operating Services Company, Incorporated; DOCKET NUMBER: 2012-1126-IWD-E; IDENTIFIER: RN100224989; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: electric power generating plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004138000, Outfall Number 001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,515; Supplemental Environmental Project offset amount of \$3,612 applied to Trans-Pecos Water and Land Trust - Trans-Pecos Water Rights Acquisition Project; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Chambers County Improvement District Number 1; DOCKET NUMBER: 2012-1181-MWD-E; IDENTIFIER: RN104788914; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014661001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,300; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Christina Ndidi-Amaka Awodein; DOCKET NUMBER: 2012-0611-MWD-E; IDENTIFIER: RN101524510; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014156001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014156001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2011 by September 1, 2011; PENALTY: \$16,800; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Brazoria; DOCKET NUMBER: 2012-0703-MWD-E; IDENTIFIER: RN101613552; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (18) and Texas Pollutant Discharge Elimination System Permit Number WQ0014581001, Other Requirements Number 11, by failing to submit quarterly progress reports regarding the attainment of the final effluent limitation for two-hour peak flow; PENALTY: \$9,920; Supplemental Environmental Project offset amount of \$7,936 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Henrietta; DOCKET NUMBER: 2012-1371-PWS-E; IDENTIFIER: RN101258978; LOCATION: Henrietta, Clay County; TYPE OF FACILITY: municipal 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 low pressure event or water outage using the prescribed format in 30 TAC §290.47(e); PENALTY: \$360; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Mineral Wells; DOCKET NUMBER: 2012-0921-MLM-E; IDENTIFIER: RN101610517; LOCATION: Mineral Wells, Palo Pinto County; TYPE OF FACILITY: wastewater treatment plant and associated collection system; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010585001, Permit Conditions Number 2.g., 30 TAC §305.125(4) and (5), and TWC, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the collection system; TPDES Permit Number WQ0010585001, Monitoring and Reporting Requirements Number 7 and 30 TAC §305.125(1), by failing to report all instances of non-compliance to the TCEQ; TPDES Permit Number WQ0010585001, Effluent Limitations and Monitoring Requirements Number 2 and 30 TAC §319.5(a), by failing to sample the chlorine residual at the location specified in the permit; and TPDES Permit Number WQ0010585001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1), and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$21,563; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Mullin; DOCKET NUMBER: 2011-2330-MWD-E; IDENTIFIER: RN102186756; LOCATION: Mullin, Mills County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013758001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits; and 30 TAC §305.125(11)(a) and §319.4 and TPDES Permit Number WQ0013758001, Monitoring and Reporting Requirements Numbers 1 and 3.a., by failing to collect and analyze samples for required parameters at the frequency specified in the permit; PENALTY: \$11,500; Supplemental Environmental Project offset amount of \$9,200 applied to Sewer Repair Project; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of Rosebud; DOCKET NUMBER: 2012-1106-PWS-E; IDENTIFIER: RN101392322; LOCATION: Rosebud, Falls County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) 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(f)(3) and §290.122(f) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform for the month of November 2011 and by failing to timely provide the executive director a certified copy of the public notice posted for failure to comply with the MCL for total coliform within 10 days of distributing the notice; and 30 TAC §290.109(c)(2)(F) and §290.122(f), by failing to collect at least five routine distribution coliform samples the month following a total coliform-positive result during the month of December 2011; PENALTY: \$2,002; ENFORCEMENT COORDINATOR:

James Fisher, (512) 239-2537; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Copano Field Services/North Texas, L.L.C.; DOCKET NUMBER: 2012-1215-IHW-E; IDENTIFIER: RN105487227; LOCATION: Montague, Montague County; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the shipment of class 1 waste to an unauthorized facility; PENALTY: \$6,928; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Cypress Hill Municipal Utility District Number 1; DOCKET NUMBER: 2012-1103-MWD-E; IDENTIFIER: RN103102125; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012327001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: \$2,745; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: D & G STORE LLC dba ONE STOP; DOCKET NUMBER: 2012-0054-PST-E; IDENTIFIER: RN102254109; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 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 every month (not to exceed 35 days between each monitoring); PENALTY: \$8,272; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Davis Gas Processing, Incorporated; DOCKET NUMBER: 2012-0982-AIR-E; IDENTIFIER: RN100217686; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: natural gas compression and treatment plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4); Permit Number 48944, Special Conditions Number 1; Federal Operating Permit Number O3060, Special Terms and Conditions Number 5 and General Terms and Conditions; and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a) and THSC, §382.085(b), by failing to submit an initial notification for Incident Number 160052 within 24 hours after discovery of the emissions event; PENALTY: \$6,538; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(13) COMPANY: Devon Energy Production Company, L.P.; DOCKET NUMBER: 2012-1487-WR-E; IDENTIFIER: RN106444870; LOCATION: Godley, Johnson County; TYPE OF FACILITY: natural gas drilling site; RULE VIOLATED: TWC, §11.121 and §11.042 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water and by failing to obtain a bed and banks permit to introduce groundwater into a state watercourse; PENALTY: \$869; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: DLUGOSCH III, LLC dba The Texan; DOCKET NUMBER: 2012-0875-PST-E; IDENTIFIER: RN106353600; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.75(b), by failing to contain and immediately clean up a spill or overflow of any petroleum substance or any petroleum product from an underground storage tank (UST) that is less than 25 gallons; 30 TAC §334.7(a)(1) and §334.8(c)(4)(B), by failing to register with the commission, on authorized agency forms, USTs in existence on or after September 1, 1987, by submitting a properly completed UST registration and self-certification form to the agency within 30 days after the date any regulated substance was placed into the USTs; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized 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 §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$43,265; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Donna Independent School District; DOCKET NUMBER: 2012-1134-PST-E; IDENTIFIER: RN102465051; LOCATION: Donna, Hidalgo County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: Dream Enterprises, Incorporated dba Gibby's Food Store; DOCKET NUMBER: 2012-1092-PST-E; IDENTIFIER: RN101984094; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$3,050; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: El Campo Independent School District; DOCKET NUMBER: 2012-1187-PST-E; IDENTIFIER: RN102017043; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the product piping associated with the underground storage tank system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: El Paso County Water Control and Improvement District Number 4; DOCKET NUMBER: 2012-1299-MWD-E; IDENTIFIER: RN101608164; LOCATION: Fabens, El Paso County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC,

§26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010166001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,825; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(19) COMPANY: Ghene's, Incorporated dba Rite Track; DOCKET NUMBER: 2012-1114-PST-E; IDENTIFIER: RN102052073; LOCATION: Overton, Rusk 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 tank system; PENALTY: \$2,943; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Guardian Industries Corporation; DOCKET NUMBER: 2012-1173-AIR-E; IDENTIFIER: RN100221811; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: glass manufacturing; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), New Source Review (NSR) Permit Numbers 8518 and PSDTX370M3, Special Conditions (SC) Numbers 1 and 17 and Texas Health and Safety Code (THSC), §382.085(b), by failing to keep mineral spirits usage rates limited to a maximum of 100 gallons per day; and 30 TAC §101.20(3) and §116.115(c), NSR Permit Numbers 8518 and PSDTX370M3, SC Number 36.C., and THSC, §382.085(b), by failing to accurately record daily mineral spirits usage during eight 24-hour periods between December 19, 2010 - May 1, 2011; PENALTY: \$9,842; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Hansford Hospital dba Hansford County Hospital District; DOCKET NUMBER: 2012-1280-PST-E; IDENTIFIER: RN102892585; LOCATION: Spearman, Hansford County; TYPE OF FACILITY: hospital with an emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$7,650; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(22) COMPANY: Jackie Diane Powell dba Best American Facility; DOCKET NUMBER: 2012-1384-IWD-E; IDENTIFIER: RN103123170; LOCATION: Houston, Harris County; TYPE OF FACILITY: auto parts salvage yard; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0003007000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$3,725; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Kirbyville Consolidated Independent School District; DOCKET NUMBER: 2012-1009-PST-E; IDENTIFIER: RN101834570; LOCATION: Kirbyville, Jasper County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the underground storage tank

(UST); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: M S MARKETING, INCORPORATED dba Food Town; DOCKET NUMBER: 2012-1330-PST-E; IDENTIFIER: RN102056629; LOCATION: East Bernard, Wharton 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 (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain the UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: New Delta Business LLC dba Delta Food Mart 2; DOCKET NUMBER: 2012-1164-PST-E; IDENTIFIER: RN101887891; LOCATION: Bridge City, Orange 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 (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$17,550; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: New TelAir, Incorporated dba Hobby Food Mart; DOCKET NUMBER: 2012-0954-PST-E; IDENTIFIER: RN102971009; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$7,784; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: OLADUNNI ENTERPRISES, INCORPORATED dba Exxon Tiger Mart; DOCKET NUMBER: 2012-1077-PST-E; IDENTIFIER: RN101679124; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank (UST) records and making them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,063; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(28) COMPANY: SAND HILLS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-1236-PWS-E; IDENTIFIER: RN101211688; LOCATION: Center, Shelby County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification within



24 hours after the occurrences of chloramine residuals below 0.5 milligrams per liter using the prescribed notification format as specified in 30 TAC §290.47(e); and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day; PENALTY: \$624; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: SIGNATURE FLIGHT SUPPORT CORPORATION; DOCKET NUMBER: 2012-0934-PST-E; IDENTIFIER: RN102381647; LOCATION: Houston, Harris County; TYPE OF FACILITY: general aviation with an associated aircraft refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the facility's UST system; PENALTY: \$5,145; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Treasure Island Municipal Utility District; DOCKET NUMBER: 2012-1261-PWS-E; IDENTIFIER: RN101450252; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: \$750; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201205173

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 2, 2012



#### Enforcement Orders

An agreed order was entered regarding AM/PM GROCERY, INC., Docket No. 2011-0201-PST-E on September 14, 2012, assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Toll Dallas TX LLC, Docket No. 2011-1835-WR-E on September 14, 2012, assessing \$1,880 in administrative penalties with \$376 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ikoankar LLC dba One Stop 13, Docket No. 2011-1887-PST-E on September 14, 2012, assessing \$6,379 in administrative penalties with \$1,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B. K. TRADING, INC. dba Speedy Stop 8, Docket No. 2012-0126-PST-E on September 14, 2012, assessing \$3,275 in administrative penalties with \$655 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mooreville Water Supply Corporation, Docket No. 2012-0166-PWS-E on September 14, 2012, assessing \$985 in administrative penalties with \$197 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bonham Concrete Inc., Docket No. 2012-0308-PST-E on September 14, 2012, assessing \$1,606 in administrative penalties with \$321 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GLOBAL JUBILEE 2007 INC. dba Jet Travel Plaza, Docket No. 2012-0329-PST-E on September 14, 2012, assessing \$5,128 in administrative penalties with \$1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark A. Clampitt, Docket No. 2012-0361-LII-E on September 14, 2012, assessing \$1,207 in administrative penalties with \$241 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oscar Hernandez dba O J's Discount, Docket No. 2012-0417-PST-E on September 14, 2012, assessing \$6,013 in administrative penalties with \$1,202 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cross-Cut Hardwoods, Inc., Docket No. 2012-0438-AIR-E on September 14, 2012, assessing \$1,620 in administrative penalties with \$324 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Omar Saif Enterprises, Inc. dba Khan C Store, Docket No. 2012-0445-PST-E on September 14, 2012, assessing \$4,128 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gilbert Daniel Jr. and Noelle Glass dba Daniel's Chevron and dba Fairfield Truck Center, Docket No. 2012-0461-PST-E on September 14, 2012, assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S. M. MOON INVESTMENTS CORPORATION dba Exxon, Docket No. 2012-0465-PST-E on September 14, 2012, assessing \$3,675 in administrative penalties with \$735 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nabors Well Services Co., Docket No. 2012-0487-AIR-E on September 14, 2012, assessing \$3,280 in administrative penalties with \$656 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alice Southern Equipment Services, Inc., Docket No. 2012-0496-WR-E on September 14, 2012, assessing \$1,694 in administrative penalties with \$338 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C & D Charles Street GP, LLC, Docket No. 2012-0497-PWS-E on September 14, 2012, assessing \$2,681 in administrative penalties with \$535 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johnson County Redi-Mix, Ltd., Docket No. 2012-0502-WQ-E on September 14, 2012, assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALL SAINTS CORPORATION dba Texas Food Store, Docket No. 2012-0506-PST-E on September 14, 2012, assessing \$1,370 in administrative penalties with \$274 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHNSON RESOURCES, INC., Docket No. 2012-0509-IHW-E on September 14, 2012, assessing \$1,886 in administrative penalties with \$377 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-

6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hemphill Independent School District, Docket No. 2012-0541-PST-E on September 14, 2012, assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AWSH-Q Inc. dba Kool Corner, Docket No. 2012-0551-PST-E on September 14, 2012, assessing \$2,636 in administrative penalties with \$527 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALTOGA WATER SUPPLY CORPORATION, Docket No. 2012-0570-PWS-E on September 14, 2012, assessing \$120 in administrative penalties with \$24 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CROWN RETAIL BUSINESS CORPORATION dba Fuel Depot 15, Docket No. 2012-0613-PST-E on September 14, 2012, assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GATE TREE, LLC dba Patios Del Lago Felipes Restaurant, Docket No. 2012-0614-PWS-E on September 14, 2012, assessing \$711 in administrative penalties with \$142 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Groesbeck, Docket No. 2012-0688-MWD-E on September 14, 2012, assessing \$4,430 in administrative penalties with \$885 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michelle Enterprises, Inc. dba Sam's Shell, Docket No. 2012-0694-PST-E on September 14, 2012, assessing \$1,754 in administrative penalties with \$350 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASHIR PETROLEUM, INC. dba Grogans Mill Shell Car Care, Docket No. 2012-0724-PST-E on September 14, 2012, assessing \$3,838 in administrative penalties with \$767 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAZE CHEMICAL, INC. formerly known as INTERCHEM, INC., Docket No. 2012-0837-IWD-E on September 14, 2012, assessing \$1,590 in administrative penalties with \$318 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Methodist Hospital dba Methodist DeBakey Heart Center, Docket No. 2012-0881-PST-E on September 14, 2012, assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Everest Financial Corporation dba Shell/KwikMart/Popeyes, Docket No. 2012-0910-PST-E on September 14, 2012, assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Turner Industries Group LLC, Docket No. 2012-1246-WQ-E on September 14, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Larry Rambo Trucking, Docket No. 2012-1247-WQ-E on September 14, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Granbury, Docket No. 2012-1251-WQ-E on September 14, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding John Merritt Homes, Inc., Docket No. 2012-1252-WQ-E on September 14, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding North Texas Maverick Builders LP, Docket No. 2012-1260-WQ-E on September 14, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Estuberto Flores, Jr., Docket No. 2010-1898-MSW-E on September 24, 2012, assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Baldemar Cienfuegos Andrade, Docket No. 2010-2058-IHW-E on September 24, 2012, assessing \$21,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ali Attayi dba Attayi Service Station, Docket No. 2011-0296-PST-E on September 24, 2012, assessing \$10,273 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Vicente Munoz, Docket No. 2011-0412-PST-E on September 24, 2012, assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Celeste, Docket No. 2011-0583-MWD-E on September 24, 2012, assessing \$47,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAG MANAGEMENT INCORPORATED, Docket No. 2011-0663-IHW-E on September 24, 2012, assessing \$14,000 in administrative penalties with \$2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edgewood, Docket No. 2011-1097-MWD-E on September 24, 2012, assessing \$6,712 in administrative penalties with \$6,712 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thu Phoung Enterprise Cleaners Incorporated dba Enterprise Cleaners, Docket No. 2011-1285-MLM-E on September 24, 2012, assessing \$103,250 in administrative penalties with \$91,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gordon Dean Rogers dba Lakeview RV Park & Motel, Docket No. 2011-1505-PWS-E on September 24, 2012, assessing \$13,282 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marcelino Lopez, Sr. dba Lantera Lopez Docket No. 2011-1625-MSW-E on September 24, 2012, assessing \$22,500 in administrative penalties with \$21,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alexis To Kik dba Tobys 2, Docket No. 2011-1783-PST-E on September 24, 2012, assessing \$13,926 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rosebud, Docket No. 2011-1884-MWD-E on September 24, 2012, assessing \$34,050 in administrative penalties with \$34,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SYNERGY MANAGEMENT GROUP, L.L.C., Docket No. 2011-1909-MSW-E on September 24, 2012, assessing \$22,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MALIK GROUP, INC. dba Dairy Mart, Docket No. 2011-1916-PST-E on September 24, 2012, assessing \$20,959 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Carlos A. Sirgo, Docket No. 2011-2021-WOC-E on September 24, 2012, assessing \$742 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kong C. Hok dba Texas Grocery, Docket No. 2011-2067-PST-E on September 24, 2012, assessing \$5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Leander, Docket No. 2011-2089-MWD-E on September 24, 2012, assessing \$33,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amphenol Steward Enterprises, Inc. dba Steward Cable, Docket No. 2011-2122-PWS-E on September 24, 2012, assessing \$8,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRANITE STONEBRIDGE HEALTH CENTER LLC, Docket No. 2011-2158-MWD-E on September 24, 2012, assessing \$13,621 in administrative penalties with \$2,724 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding B. K. TRADING, INC. dba Speedy Stop 4, Docket No. 2011-2237-PST-E on September 24, 2012, assessing \$3,631 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SHREEDHAR CORPORATION INC. dba Slaton Truck Stop, Docket No. 2011-2244-PST-E on September 24, 2012, assessing \$17,313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ernesto E. Ramirez, Docket No. 2011-2248-MSW-E on September 24, 2012, assessing \$33,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pleasanton Retail, Inc. dba Diamond Xpress #2, Docket No. 2011-2263-PST-E on September 24, 2012, assessing \$10,126 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SUL'Z INTERNATIONAL INC dba Sky Top Food Mart, Docket No. 2011-2283-PST-E on September 24, 2012, assessing \$19,734 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding QUICK SHOP, INC. dba King Tobacco, Docket No. 2011-2290-PST-E on September 24, 2012, assessing \$21,135 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Absolute Fuels, LLC, Docket No. 2011-2326-PST-E on September 24, 2012, assessing \$8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding S & J OIL COMPANY INC. dba Moss Lake Community Store, Docket No. 2011-2341-PST-E on September 24, 2012, assessing \$9,038 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Monson Lee Durham, Docket No. 2011-2356-PST-E on September 24, 2012, assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jeff Barosh LLC dba Lawn Rangers, Docket No. 2012-0027-MSW-E on September 24, 2012, assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding McMullen County Water Control and Improvement District No. 2, Docket No. 2012-0030-PWS-E on September 24, 2012, assessing \$1,365 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matagorda Waste Disposal and Water Supply Corporation, Docket No. 2012-0034-MWD-E on September 24, 2012, assessing \$26,975 in administrative penalties with \$5,395 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding CHENG SUNSHINE, INC. dba Sunshine Beer and Wine, Docket No. 2012-0073-PST-E on September 24, 2012, assessing \$3,633 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Denton, Docket No. 2012-0092-MLM-E on September 24, 2012, assessing \$13,770 in administrative penalties with \$2,754 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding B. K. TRADING, INC. dba Speedy Stop 3, Speedy Stop 6, and Speedy Stop 10, Docket No. 2012-0110-PST-E on September 24, 2012, assessing \$28,851 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding David T. Gillott dba T L Water Jones Acres, Docket No. 2012-0114-PWS-E on September 24, 2012, assessing \$1,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Dupuis dba Dupuis Chevron, Docket No. 2012-0192-PST-E on September 24, 2012, assessing \$7,650 in administrative penalties with \$1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DuraTherm, Inc., Docket No. 2012-0236-MLM-E on September 24, 2012, assessing \$37,233 in administrative penalties with \$7,446 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael J. Paddack, Docket No. 2012-0237-LII-E on September 24, 2012, assessing \$1,968 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Champion Technologies, Inc., Docket No. 2012-0252-AIR-E on September 24, 2012, assessing \$7,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwest Harris County Municipal Utility District No. 15, Docket No. 2012-0256-MLM-E on September 24, 2012, assessing \$11,725 in administrative penalties with \$2,345 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INVISTA S.a.r.l., Docket No. 2012-0260-AIR-E on September 24, 2012, assessing \$16,800 in administrative penalties with \$3,360 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOSIK INC. dba Eldridge Chevron, Docket No. 2012-0278-PST-E on September 24, 2012, assessing \$9,711 in administrative penalties with \$1,942 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding F & N FOOD MARKET ENTERPRISES II, LTD. dba Nickys Food Mart, Docket No. 2012-0281-PST-E on September 24, 2012, assessing \$11,506 in administrative penalties with \$2,301 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAT Malik LLC dba Sunny's Market, Docket No. 2012-0307-PST-E on September 24, 2012, assessing \$8,124 in administrative penalties with \$1,624 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazoria County Municipal Utility District No. 21, Docket No. 2012-0317-MWD-E on September 24, 2012, assessing \$17,290 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2012-0335-AIR-E on September 24, 2012, assessing \$13,125 in administrative penalties with \$2,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-

3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Horizon Milling, LLC, Docket No. 2012-0357-AIR-E on September 24, 2012, assessing \$57,000 in administrative penalties with \$11,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2012-0358-AIR-E on September 24, 2012, assessing \$50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hunt Oil Company, Docket No. 2012-0383-AIR-E on September 24, 2012, assessing \$13,125 in administrative penalties with \$2,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SMAD ENTERPRISES INC. dba Quick Mart, Docket No. 2012-0403-PST-E on September 24, 2012, assessing \$6,368 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COLLINS CORP. dba Collins Machine Shop, Docket No. 2012-0407-MLM-E on September 24, 2012, assessing \$18,100 in administrative penalties with \$3,620 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding George Mathis, Docket No. 2012-0418-MSW-E on September 24, 2012, assessing \$35,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2012-0455-AIR-E on September 24, 2012, assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BECK'S TEXAS TIRE TERMINAL, INC., Docket No. 2012-0467-MSW-E on September 24, 2012, assessing \$23,026 in administrative penalties with \$4,605 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Accel Quick Stop, Inc. dba Libby Food Store, Docket No. 2011-0882-PST-E on September 24, 2012, assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Scott Humphrey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Krebs Utilities, Inc. dba Padok Timbers Subdivision WS and K Estates Water System, Docket No. 2011-0416-UTL-E and 2011-0417-UTL-E on September 25, 2012, assessing \$1,548 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201205199  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: October 3, 2012



#### Notice of a Public Meeting and a Proposed Amendment and Renewal of a General Permit

The Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew a general permit, Texas Pollutant Discharge Elimination System (TPDES) Permit Number TXR150000, authorizing the discharge of stormwater and certain non-stormwater discharges from construction sites into surface water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

**PROPOSED GENERAL PERMIT.** The executive director has prepared a draft renewal with amendments to the existing general permit that authorizes the discharge of stormwater runoff associated with small and large construction sites and certain non-stormwater into surface water in the state. The proposed changes to the general permit are included in the proposed general permit and described in the fact sheet.

The proposed general permit specifies which sites must submit a Notice of Intent (NOI) to obtain permit coverage, which may obtain waivers, which are eligible for coverage without submitting a NOI, and which must obtain individual permit coverage. This general permit would also authorize the discharge of stormwater from industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site. Non-stormwater discharges that are not specifically listed in the general permit are not authorized by the general permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office (GLO) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief

Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F, Austin, Texas 78753. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ Web site at [http://www.tceq.texas.gov/permitting/stormwater/wq\\_construction.html](http://www.tceq.texas.gov/permitting/stormwater/wq_construction.html).

**PUBLIC COMMENT AND PUBLIC MEETING.** You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the general permit. A public meeting is not a contested case hearing. The public comment period will end at the conclusion of the public meeting.

The public meeting will be held at **1:30 p.m., November 12, 2012**, TCEQ complex, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) by the end of the public comment period on November 12, 2012.

**APPROVAL PROCESS.** After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comments in making its decision and will either adopt the executive director's response or prepare its own response to the comments. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit, 2) the permanent mailing list for a specific county, or both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about the proposed general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our Web site at: [www.tceq.texas.gov](http://www.tceq.texas.gov).

Further information may also be obtained by calling the TCEQ's Water Quality Division, Stormwater and Pretreatment Team, at (512) 239-4671.

*Si desea información en español, puede llamar 1-800-687-4040.*

TRD-201205171  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: October 2, 2012



## Notice of Correction to Agreed Order Number 10

In the August 31, 2012, issue of the *Texas Register* (37 TexReg 6954), the Texas Commission on Environmental Quality published a notice of Agreed Orders. Agreed Order Number 10, concerning Equistar Chemicals, LP, which appeared on page 6956 has been revised. The Supplemental Environmental Project should be Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program instead of Houston Regional Monitoring Corporation (HRMC) - HRMC Houston Area Air Monitoring.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201205174

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 2, 2012



## Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 12, 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 A, 3rd Floor, Austin, Texas 78753, (512) 2393400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 12, 2012**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Amin Makhani d/b/a Asian Groceries; DOCKET NUMBER: 2011-1950-PST-E; TCEQ ID NUMBER: RN102783867; LOCATION: 2300 Northeast Loop 410, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b) and TCEQ Agreed Order Docket Number 2007-1603-PST-E, Ordering Provision Number 2.a., by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.8(c)(5)(C) and TCEQ Agreed Order Docket Number 2007-1603-PST-E, Ordering

Provision Number 2.b., by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), 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; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring) and by failing to provide release detection for the piping associated with the USTs; and TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; PENALTY: \$11,582; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Dae H. Lee d/b/a Smile Mart; DOCKET NUMBER: 2011-1382-PST-E; TCEQ ID NUMBER: RN102380722; LOCATION: 10101 Long Point Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$9,375; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: EAS Oil, LLC d/b/a Stage Coach Stop; DOCKET NUMBER: 2012-0355-PST-E; TCEQ ID NUMBER: RN101776540; LOCATION: 24 Ranch Road 1376, Fredericksburg, Gillespie County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the USTs; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: \$37,332; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Edward DeVoe Smith d/b/a Smittys; DOCKET NUMBER: 2011-1158-PST-E; TCEQ ID NUMBER: RN101433688; LOCATION: 606 North Crockett Avenue, Sonora, Sutton County; TYPE



OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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); PENALTY: \$7,777; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Fort Apache Energy, Inc.; DOCKET NUMBER: 2011-1093-AIR-E; TCEQ ID NUMBER: RN106144488; LOCATION: 8631 Baker Street, Hitchcock, Galveston County; TYPE OF FACILITY: oil and gas production site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: \$14,813; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Luis Escobedo d/b/a Pallet Services; DOCKET NUMBER: 2011-1777-MLM-E; TCEQ ID NUMBER: RN100669217; LOCATION: 4700 Durazno Avenue, El Paso, El Paso County; TYPE OF FACILITY: wood pallet recycling facility; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector Industrial General Permit Number TXR050000; 40 CFR §279.22 and 30 TAC §324.1, by failing to prevent an unauthorized discharge of used oil; 40 CFR §279.22(b)(1) and 30 TAC §324.1, by failing to store used oil in containers that are in good condition; and 40 CFR §279.22(c)(1) and 30 TAC §324.1, by failing to label or clearly mark containers used to store used oil; PENALTY: \$2,868; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(7) COMPANY: Pokhara Corporation and Oinville Grocery, Inc.; DOCKET NUMBER: 2012-0444-PST-E; TCEQ ID NUMBER: RN102163476; LOCATION: 6573 Farm-to-Market Road 438, Troy, Bell County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: \$5,131; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: RHIMCO INDUSTRIES, INC.; DOCKET NUMBER: 2011-0637-WQ-E; TCEQ ID NUMBER: RN100751981; LOCATION: 4150 Britton Road, Mansfield, Tarrant County; TYPE OF FACILITY: electronic connector manufacturing company; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regu-

lations §122.26(c)(1), by failing to obtain authorization to discharge storm water, associated with industrial activity, under the Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) or the No Exposure Certification for exclusion from permit requirements of the TPDES MSGP; PENALTY: \$1,020; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: ROLLINS & ROLLINS ENTERPRISES, INC. d/b/a Mr. Wills; DOCKET NUMBER: 2011-1890-PST-E; TCEQ ID NUMBER: RN104459540; LOCATION: 550 Northeast Stallings Drive, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed 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(b), 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 UST 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 monitor the piping associated with the UST system; 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 §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$13,739; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: SHEEMA ENTERPRISE, INC. d/b/a Highway 59 Phillips 66; DOCKET NUMBER: 2012-0721-PST-E; TCEQ ID NUMBER: RN100697564; LOCATION: 6502 Southwest Freeway, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,000; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: THALJI ENTERPRISES, INC. d/b/a La Marque Mobil; DOCKET NUMBER: 2012-0987-PST-E; TCEQ ID NUMBER: RN102881646; LOCATION: 720 Highway 3, La Marque, Galveston County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail gasoline sales; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$2,954; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Tom Green County Fresh Water Supply District 2; DOCKET NUMBER: 2012-0957-PWS-E; TCEQ ID NUMBER: RN101426047; LOCATION: 508 Anson Street, Christoval, Tom Green County; TYPE OF FACILITY: public water system; RULES

VIOLATED: 30 TAC §290.42(d)(15)(C)(vi) and TCEQ Agreed Order Docket Number 2010-1414-PWS-E, Ordering Provision Number 2.b.i., by failing to provide jar tests for determining the optimum coagulant dose; 30 TAC §290.46(s)(1) and TCEQ Agreed Order Docket Number 2010-1414-PWS-E, Ordering Provision Number 2.b.ii., by failing to calibrate flow measuring devices at least once every 12 months; 30 TAC §290.46(s)(2)(B)(i) and TCEQ Agreed Order Docket Number 2010-1414-PWS-E, Ordering Provision Number 2.b.iii., by failing to calibrate the benchtop turbidimeter with primary standards at least every 90 days; 30 TAC §290.46(f)(3)(E)(i) and §290.111(h)(2) and TCEQ Agreed Order Docket Number 2010-1414-PWS-E, Ordering Provision Number 2.a.i., by failing to maintain on file and make available for commission review accurately completed copies of Surface Water Monthly Operating Reports; 30 TAC §290.46(s)(2)(B)(iv) and TCEQ Agreed Order Docket Number 2010-1414-PWS-E, Ordering Provision Number 2.a.iii., by failing to check the calibration of the online turbidimeters at least once a week using a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the online unit with the results from a properly calibrated benchtop unit; Texas Health and Safety Code, §341.033(a) and 30 TAC §290.46(e)(5)(F), by failing to ensure that the facility has at least one Class "C" or higher surface water operator on duty when it is in operation or that the facility is provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the facility is not staffed; 30 TAC §290.46(s)(2)(A) and (C)(i), by failing to properly calibrate the pH meters and by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(2)(B)(iii), by failing to calibrate the on-line turbidimeter with primary standards at least once every 90 days; 30 TAC §290.111(d)(2)(A), by failing to measure the performance of the disinfectant facilities (disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone) at least once each day during a time when peak hourly raw water flow rates are occurring to ensure that appropriate disinfectant levels are maintained and conducted at sites designated in the facility's monitoring plan; 30 TAC §290.111(e)(5)(C)(i), by failing to ensure that a facility that utilizes continuous turbidity monitoring has a properly functioning electronic device for recording turbidity level readings at least once every 15 minutes so that the operator can accurately determine the turbidity levels; 30 TAC §290.111(e)(5)(C)(iii), by failing to conduct grab sampling every four hours in the event the facility's continuous turbidity monitoring equipment malfunctions; and 30 TAC §290.121(a), by failing to develop, maintain on hand at each water treatment plant, and make available to the executive director upon request an accurate and up-to-date chemical and microbiological monitoring plan; PENALTY: \$4,990; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(13) COMPANY: Tristar Convenience Stores, Inc. DBA Handi Stop 65; DOCKET NUMBER: 2011-2176-PST-E; TCEQ ID NUMBER: RN102444502; LOCATION: 2607 South Richey Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: \$3,950; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Valley Assets Holding, Inc. DBA Lucky 88; DOCKET NUMBER: 2011-1337-PST-E; TCEQ ID NUMBER: RN102047859; LOCATION: 753 Biddle Street, San Benito, Cameron County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure that a corrosion protection system is designed, installed, operated and maintained in a manner that will provide continuous protection to all metal components of the UST system; and 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,500; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Yushra Investment, Inc. d/b/a Store T24 #2; DOCKET NUMBER: 2011-1801-PST-E; TCEQ ID NUMBER: RN102254091; LOCATION: 9947 Garland Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to monitor the piping associated with the USTs; PENALTY: \$2,379; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201205186  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: October 2, 2012



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 12, 2012**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 12, 2012**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: BKK Holdings Inc. d/b/a Four Foxes 1; DOCKET NUMBER: 2012-0710-PST-E; TCEQ ID NUMBER: RN102245339; LOCATION: 1102 West Pearl Street, Granbury, Hood County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protections for the UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain the UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,881; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bob King's Truck Beds, LLC d/b/a Kings Truck Beds; DOCKET NUMBER: 2011-2252-AIR-E; TCEQ ID NUMBER: RN104311055; LOCATION: 1667 East Highway 114, Boyd, Wise County; TYPE OF FACILITY: fabricated metals products plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), 30 TAC §116.110(a), and Agreed Order Docket Number 2009-0562-AIR-E, Ordering Provision Numbers 2.a. - 2.c., by failing to obtain a permit or satisfy the conditions for a Permit by Rule before conducting surface coating operations at the plant; and THSC, §382.0518(a) and §382.085(b), 30 TAC §116.110(a), and Agreed Order Docket Number 2009-0562-AIR-E, Ordering Provision Numbers 2.a. - 2.c., by failing to obtain a permit or satisfy the conditions for a Permit by Rule before conducting dry abrasive cleaning operations; PENALTY: \$30,420; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Rene Navarette d/b/a Tire Enterprise Towing & Recovery; DOCKET NUMBER: 2012-0494-MLM-E; TCEQ ID NUMBER: RN106256845; LOCATION: 716 West El Paso Street, Sierra Blanca, Hudspeth County; TYPE OF FACILITY: damaged vehicle towing and recovery service; RULES VIOLATED: 30 TAC §324.1 and 40 Code of Federal Regulations (CFR) §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words "Used Oil"; 30 TAC §324.15, Texas Health and Safety Code, §371.041, and 40 CFR §279.22(d), by failing to perform response action upon detection of a release of used oil; 30 TAC §328.58(a), by failing to document the removal and disposal of all scrap tires stored at the facility by completing a manifest; and 30 TAC §328.56(d)(2), by failing to obtain a scrap tire storage 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; PENALTY: \$3,150; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: El Paso Regional Of-

fice, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201205187

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 2, 2012



### Notice of Opportunity to Comment on Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 12, 2012**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 12, 2012**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Ghanshayam Enterprise LLC DBA Sunmart 140; DOCKET NUMBER: 2011-1555-PST-E; TCEQ ID NUMBER: RN102024387; LOCATION: 15303 Ella Boulevard, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily

injury and property damage caused by accidental releases arising from the operation of the petroleum UST system; TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$7,822; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201205188

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 2, 2012



### Notice of Water Quality Applications

The following notices were issued on September 19, 2012, through September 28, 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

MCLENNAN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010344001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1,500 feet southeast of Farm-to-Market Road 308 and approximately 4,000 feet east-northeast of the intersection of Interstate Highway 35 and Farm-to-Market Road 308 in McLennan County, Texas 76640.

CEMEX CONSTRUCTION MATERIALS SOUTH LLC which operates Cemex Cement Houston Terminal, has applied for a major amendment of TPDES Permit No. WQ0001021000, to authorize the discharge of vehicle washdown water, stormwater runoff associated with the operation of a cement distribution terminal, and process area stormwater runoff associated with clinker grinding or petroleum coke grinding activities on an intermittent and flow variable basis via Outfalls 001 and 003, and to authorize sampling to occur during normal business hours of operation at Outfalls 001, 002, and 003. The current permit authorizes the discharge of process area stormwater from material storage piles and cooling tower blowdown on an intermittent and flow variable basis via Outfalls 001 and 003, and the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 6203 Industrial Way, 0.5 mile north of Navigation Boulevard at the termination of Industrial Way, on Buffalo Bayou, in the City of Houston, Harris County, Texas 77011.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO 52 has applied for a renewal of TPDES Permit No. WQ0010528001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is lo-

cated at 14401 Paradise Valley Drive, approximately 2 and 3/4 miles northeast of the intersection of Farm-to-Market Road 1960 and State Highway 249, at the north end of Paradise Valley Drive bounded on the north and west by Cypress Creek in Harris County, Texas 77069.

CITY OF MARBLE FALLS has applied for a major amendment without renewal to TCEQ Permit No. WQ0010654003, to account for the disposal of effluent on Chapter 210 land in addition to currently permitted land (including the development of conditions related to use of currently permitted land) and the recalculation of storage requirements by the application of daily water balance calculations. The current permit authorizes the disposal of treated domestic wastewater effluent at an annual average flow not to exceed 1.5 MGD via surface irrigation of 360 acres of non-public access agricultural land in the final phase. The storage requirements in the interim and final phases will be two effluent storage ponds approximately 110 ac-ft each with a total storage capacity of 220 acre feet. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on March 8, 2012. The wastewater treatment facility and disposal site are located north of the City of Marble Falls approximately one mile northwest of the Intersection of U.S. Highway 281 and Farm-to-Market Road 1431 in Burnet County, Texas 78654.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 109 has applied for a renewal of TPDES Permit No. WQ0011026002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 13415 Bammel North Houston Road in Harris County, Texas 77066.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 33 has applied for a renewal of TPDES Permit No. WQ0011904001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 700 feet east of the intersection of Greens Bayou with Veterans Memorial Drive on the north bank of Greens Bayou at 10922 1/2 Veterans Memorial Drive in northwest Harris County, Texas 77067.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 86, has applied for a renewal of TPDES Permit No. WQ0012065001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 16371 Ella Boulevard, Houston, Texas, approximately 0.4 mile south of the intersection of Farm-to-Market Road 1960 and Ella Boulevard (formerly Medberry Road) in Harris County, Texas 77090.

YES COMPANIES LLC has applied for a renewal of TPDES Permit No. WQ0012218001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 122,000 gallons per day. The facility is located at 14022 Walters Road approximately 3.5 miles west of Interstate Highway 45 and 0.75 mile south of Farm-to-Market Road 1960 in Harris County, Texas 77014.

PINEWOOD COMMUNITY LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. WQ0012643001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 9601 Dowdell Road, Tomball, approximately 1/4 mile northeast from the intersection of Dowdell Road with Farm-to-Market Road 2920 in Harris County, Texas 77375.

GREENS PARKWAY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012754001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located approximately 5,000 feet east of the intersection of Hardy Road and Greens

Road, and 400 feet north of Greens Road, at 1715 West Greens Road, Houston, in Harris County, Texas 77032.

AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION has applied for a major amendment to TPDES Permit No. WQ0013981001 to authorize a variance to the buffer zone requirements and an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 25,000 gallons per day to a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,100 feet west of Farm to Market Road 55 and approximately 1,900 feet south of the intersection of Farm-to-Market Road 55 and State Highway 34 in the community of Avalon in Ellis County, Texas 76623.

IVY VALLEY UTILITIES LP has applied for a renewal of TPDES Permit No. WQ0014841001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located on the north bank of the West Fork Trinity River, approximately 4,200 feet southwest of the intersection of State Highway 730 and County Road 4481 in Wise County, Texas 76023.

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

TRD-201205198

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 3, 2012

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## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for a renewal to the Youth Empowerment Services (YES) waiver program, under the authority of §1915(c) of the Social Security Act. The Youth Empowerment Services waiver program is currently approved for the three-year period beginning April 1, 2010, and ending March 31, 2013. The effective date for the renewal is April 1, 2013.

The program is designed to provide community-based services to children with severe emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The waiver program serves up to an estimated 400 youth at any given time who are at least age 3 but under age 19 and who are predicted to remain in the waiver program for 12 months. The waiver is currently limited to individuals residing in Bexar, Tarrant, and Travis Counties and will be expanded to Harris County with this renewal.

The Texas Health and Human Services Commission is requesting that the waiver renewal be approved for the period beginning April 1, 2013, through March 31, 2018. This renewal maintains cost neutrality for waiver years 2013 through 2018.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at [Christine.Longoria@hhsc.state.tx.us](mailto:Christine.Longoria@hhsc.state.tx.us).

TRD-201205156

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 1, 2012

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## Department of State Health Services

### Designation of Bay Area Quick Care as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Bay Area Quick Care, located at 9929 South Padre Island Drive #109, Corpus Christi, Texas 78418. The designation is based on the clinic being located in an area with an insufficient number of physicians providing services to eligible client populations.

Oral and written comments on this designation may be directed to Iris Rodriguez, Program Director, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, DSHS CSX, 311 East 14th Street, Austin, Texas 78701-1447; telephone (512) 776-2775. Comments will be accepted for 30 days from the publication date of this notice.

TRD-201205170

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: October 2, 2012

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## Texas Department of Housing and Community Affairs

### Announcement of Request for Application to Administer the Community Services Block Grant and Comprehensive Energy Assistance Program in Edwards, Kinney, Real, Uvalde, Val Verde, and Zavala Counties

The Texas Department of Housing and Community Affairs (the "Department") is soliciting applications for an organization to administer the Community Services Block Grant (CSBG) and Comprehensive Energy Assistance Program (CEAP) in Edwards, Kinney, Real, Uvalde, Val Verde, and Zavala Counties.

The Department is seeking an organization to provide CSBG funded and/or CSBG supported services and activities and CEAP services to low-income persons in the identified service area. As per the CSBG Act (42 U.S.C. §§9901 et seq.), the service delivery system must be staffed with personnel able to implement programs which strengthen the communities' capabilities for the use of a broad range of federal, state, local, and other assistance related to the elimination of poverty and to utilize CSBG funds in a manner that is responsive to local needs and conditions. The services provided must have a measurable and potentially major impact on the causes of poverty in the community and assist families and individuals to achieve self-sufficiency.

The Low-Income Home Energy Assistance Act of 1981 (LIHEAP), 42 U.S.C. §§8621 et seq., created grants for states to assist low-income households, particularly those with the lowest income, that pay

a high-proportion of household income for home energy, primarily in meeting their immediate home energy needs. The CEAP, funded by LIHEAP, 42 U.S.C. §§8621 et seq., and the Texas Government Code, §2306.097, is designed to assist low income households in meeting their immediate energy needs and to encourage consumers to control energy costs through energy education. The purpose of the CEAP is to provide energy assistance to eligible client households assisting clients with the greatest need first. Assistance can be provided for energy bill payment assistance and/or some households can qualify for repair of heating and cooling units or purchase of portable units in crisis situations.

#### **Application Deadline**

The deadline for receipt of application is 5:00 p.m. C.S.T. Wednesday, November 14, 2012.

Application forms are available on the Department's web site at <http://www.tdhca.state.tx.us/community-affairs/csbg/nofas.htm>.

All applications must be submitted electronically to be considered eligible applications. Applicants must follow the submission instructions found on the following page: <http://www.tdhca.state.tx.us/community-affairs/csbg/nofas.htm>.

#### **Questions**

For questions, contact Sharon Gamble, Project Manager for Planning, Community Affairs Division, (512) 475-0471 or at [sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us).

TRD-201205202

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 3, 2012

### **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:

Philotechnics, Ltd. (TLLRWDC #1-0016-00)

201 Renovare Blvd.

Oak Ridge, Tennessee 37830

The application is being placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by October 29, 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](mailto:administration@tllrwdcc.org).

TRD-201205169

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: October 2, 2012

#### **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:

Thomas Gray & Associates/Environmental Management & Controls (TLLRWDC #1-0017-00)

3106 S. Faith Home Road

Turlock, California 95380

The application is being placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by October 29, 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](mailto:administration@tllrwdcc.org).

TRD-201205204

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: October 3, 2012

### **North Central Texas Council of Governments**

#### **Request for Proposals**

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting consultant services for collecting data on travel behavior by using different available technologies such as cell phone triangulation, mobile applications, and on-person or in-vehicle GPS tracking. The main task in this work is to conduct a demonstration which requires documentation and testing to prove that the technology is capable of reporting trips by geographical location and time through a small-scale data collection. The consultant will be expected to provide the required equipment for the data collection technology demonstration and a complete documentation of all work. These demonstrations will assist NCTCOG in the evaluation of possible technologies that they may use in their upcoming regional household travel survey data collection.

#### **Due Date**

Proposals must be received no later than 5:00 p.m., on Friday, November 9, 2012, to Kathy Yu, Senior Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be

available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, October 12, 2012. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

#### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201205203

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: October 3, 2012

## Public Utility Commission of Texas

### Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 25, 2012, for an amendment to certificated service area for a service area exception within Lubbock County, Texas.

Docket Style and Number: Application of South Plains Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a Service Area Exception in Lubbock County, Texas. Docket Number 40794.

The Application: South Plains Electric Cooperative, Inc. (SPEC) filed an application for a service area exception to allow SPEC to be the lone provider for a specific customer whose property is located in both SPEC territory and Southwestern Public Service Company territory. Mr. Steve Homer, property owner, has provided an affidavit requesting service from SPEC.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 19, 2012, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40794.

TRD-201205139

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 28, 2012

### Public Notice of Workshop

The Public Utility Commission of Texas (commission) will hold a workshop on Wednesday, October 17, 2012, regarding Project No. 39246, *Rulemaking Proceeding Concerning Recovery of Purchased Power Capacity Costs, Including Amendment of Substantive Rule §25.238*. The workshop will be held from 9:00 a.m. to 12:30 p.m. in the Commissioners' Hearing Room on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

By Friday, October 12, 2012, commission staff will make available in Central Records under Project No. 39246 a meeting agenda and a draft amended rule that will include revised language for discussion at the workshop. The agenda and draft rule will also be available for download by visiting the commission's website at [www.puc.state.tx.us](http://www.puc.state.tx.us) and clicking on the Filings/Interchange and Filings Retrieval links.

Questions concerning the workshop or this notice should be referred to Darryl Tietjen, Director of Rate Regulation, at (512) 936-7436 or [darryl.tietjen@puc.state.tx.us](mailto:darryl.tietjen@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201205140

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 28, 2012

## Railroad Commission of Texas

### Correction of Error

The Railroad Commission of Texas proposed amendments to 16 TAC §3.8 in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7555). In the same issue, the commission also proposed amendments to 16 TAC §§4.201 - 4.204; the repeal of §§4.205 - 4.226; and new §§4.205 - 4.293 (37 TexReg 7562).

On pages 7557 and 7569, the deadline for receipt of public comments for the rule actions is incorrect. Instead of Tuesday, October 9, 2012, the correct deadline is noon on Monday, October 29, 2012, which is 31 days after the proposals were published in the *Texas Register*.

Issued in Austin, Texas, on October 1, 2012.

TRD-201205157

Mary Ross McDonald

Director, Pipeline Safety Division

Railroad Commission of Texas

Filed: October 1, 2012

### Extension of Comment Period

The Railroad Commission of Texas (Commission) proposed amendments to §3.13, relating to Casing, Cementing, Drilling, and Completion Requirements; §3.99, relating to Cathodic Protection Wells; and §3.100, relating to Seismic Holes and Core Holes. The proposed amendments to §3.13 would implement Article 2 of House Bill 2694 (82nd Legislature, 2011) and update the rule with respect to drilling, casing, cementing, well control, and hydraulic fracturing. The proposed amendments to §3.99 and §3.100 would conform the definition of "protection depth."

The proposed amendments were published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7021) with a 30-day comment period to end at noon on Tuesday, October 9, 2012.

The Commission has received requests for an extension of the public comment period for between 45 to 60 days; therefore, the Commission has extended the comment period until noon on November 20, 2012.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.php](http://www.rrc.state.tx.us/rules/commentform.php); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.php](http://www.rrc.state.tx.us/rules/proposed.php).

Issued in Austin, Texas, on October 2, 2012.

TRD-201205193

Mary Ross McDonald

Director, Pipeline Safety Division

Railroad Commission of Texas

Filed: October 2, 2012

## Texas Department of Transportation

### Aviation Division - Request for Proposal for Professional Engineering Services

The City of Eagle Lake, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Eagle Lake Airport during the course of the next five years through multiple grants.

**Current Project:** City of Eagle Lake. TxDOT CSJ No.: 12HGEGLE. Scope: Provide engineering/design services for two (2) nested T-hangars and pavement.

The DBE goal for the current project is 11 percent. TxDOT Project Manager is Eusebio Torres, P.E.

Future scope work items for engineering/design services within the next five years may include the following:

1. Construct terminal building level 2, auto parking and entrance road
2. Install perimeter fencing
3. Install security lighting
4. Runway/taxiway rehab
5. MIRL replacement

The City of Eagle Lake reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Eagle Lake Airport." The proposal should address a technical

approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven eight and one half inch by eleven inch pages of data plus two optional pages consisting of an illustration page and a proposal summary page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half inch by eleven inch size. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound or folded in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### Please note:

Six completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 6, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Engineering Proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager, at (512) 416-4557.

TRD-201205197

Joanne Wright

General Counsel

Texas Department of Transportation

Filed: October 2, 2012

## Texas Water Development Board

### Notice of Public Hearing



Texas Water Development Board (Board) will conduct a public hearing on proposed new rules in 31 TAC Chapter 356, relating to groundwater management.

The hearing will begin at 1:30 p.m. on Monday, October 22, 2012, in Room 1-170 of the Stephen F. Austin State Office Building at 1700 North Congress Avenue, Texas State Capitol Complex, in Austin, Texas. Paid parking is available in the visitors parking garage on San Jacinto Street between 12th and 13th Street (first two hours are free).

The proposed rules were published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7967). A copy of the proposed rules can be found on the Secretary of State's website at <http://www.sos.state.tx.us/texreg/index.shtml> or the Texas Water Development Board's website at <http://www.twdb.texas.gov/about/rules/index.asp>.

Interested persons may attend the hearing and present comments concerning the proposed rules. Alternatively, or additionally, persons may submit written comments by the rule comment deadline of November 4, 2012, to Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or by e-mail at [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov).

TRD-201205175

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: October 2, 2012



## 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)