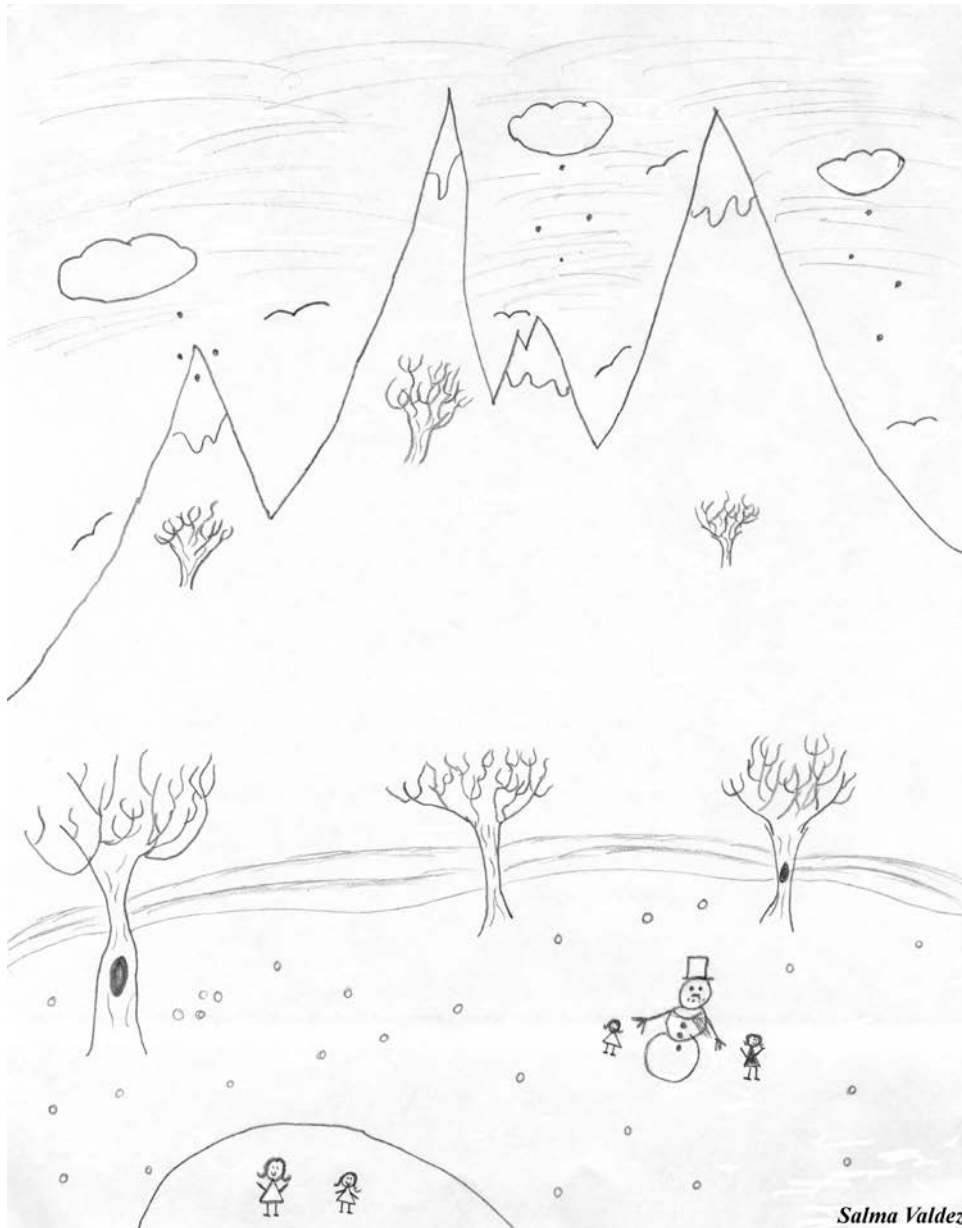

TEXAS REGISTER

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Salma Valdez

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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IN THIS ISSUE

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES

1 TAC §§354.2401, 354.2403, 354.2405, 354.2407215

REIMBURSEMENT RATES

1 TAC §355.8441220

TEXAS MEDICAL BOARD

LICENSURE

22 TAC §163.2223

DEPARTMENT OF AGING AND DISABILITY SERVICES

CONSUMER DIRECTED SERVICES OPTION

40 TAC §41.103226

40 TAC §41.203228

40 TAC §§41.205, 41.206, 41.225, 41.227228

40 TAC §§41.301, 41.303, 41.305 - 41.307, 41.309, 41.323, 41.325, 41.327, 41.329230

40 TAC §41.303235

ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

40 TAC §98.105235

WITHDRAWN RULES

TEXAS DEPARTMENT OF INSURANCE

PROPERTY AND CASUALTY INSURANCE

28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135, 5.4136, 5.4141 - 5.4149239

28 TAC §5.4131, §5.4132239

ADOPTED RULES

TEXAS DEPARTMENT OF AGRICULTURE

MARKETING AND PROMOTION

4 TAC §§17.30 - 17.33241

4 TAC §§17.51 - 17.53, 17.55 - 17.57, 17.59 - 17.63242

4 TAC §17.54242

4 TAC §17.73242

4 TAC §§17.600 - 17.610242

4 TAC §§17.600 - 17.604243

ECONOMIC DEVELOPMENT

4 TAC §29.3243

4 TAC §§29.20 - 29.33243

4 TAC §§29.50 - 29.56244

TEXAS RACING COMMISSION

OTHER LICENSES

16 TAC §§311.1 - 311.3, 311.5244

16 TAC §311.101, §311.102244

PARI-MUTUEL WAGERING

16 TAC §321.15245

16 TAC §§321.29, 321.31, 321.46245

16 TAC §§321.101, 321.103, 321.105, 321.107246

16 TAC §§321.121, 321.123 - 321.125, 321.127246

16 TAC §§321.131, 321.133, 321.135, 321.137, 321.139, 321.141, 321.143246

16 TAC §321.101246

16 TAC §321.215247

16 TAC §321.320, §321.321247

RULE REVIEW

Adopted Rule Reviews

Texas Department of Agriculture249

Texas Judicial Council249

TABLES AND GRAPHICS

.....251

IN ADDITION

Office of Consumer Credit Commissioner

Notice of Rate Ceilings265

Texas Commission on Environmental Quality

Agreed Orders265

Notice of Water Quality Applications269

Notice of Water Rights Application271

Texas Health and Human Services Commission

Correction to the Public Notice271

Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement272

Public Utility Commission of Texas

Notice of Application for Approval of Revised Depreciation Rate272

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171272

Open Meetings

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

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

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

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

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER K. MEDICAID RECIPIENT UTILIZATION REVIEW AND CONTROL

1 TAC §§354.2401, 354.2403, 354.2405, 354.2407

The Health and Human Services Commission (HHSC) proposes to amend §354.2401, concerning Definitions; §354.2403, concerning Monitoring and Review; §354.2405, concerning Utilization Control Methods; and §354.2407, concerning Recipient Rights.

BACKGROUND AND JUSTIFICATION

The proposed amendments update existing HHSC Office of Inspector General (OIG) provisions relating to the lock-in of recipients who overutilize Medicaid services, as authorized by federal regulations at 42 CFR §431.54(e). The HHSC-OIG may restrict (lock-in) a Medicaid recipient to a designated health care and/or pharmacy provider if it finds that a recipient has utilized health care or pharmacy services at a frequency or amount that is not medically necessary and that exceeds standards established by HHSC, such as duplicative, excessive, contraindicated, or conflicting health care services, including drugs; and/or abuse, misuse, or fraudulent actions relating to Medicaid benefits or services. All Medicaid-eligible recipients are subject to lock-in status regardless of their age, program type, or Medicare eligibility. The HHSC-OIG considers standards and criteria for drug use based on the Drug Use Review compendia approved by the Texas Medicaid Drug Utilization Review Board as part of the lock-in review.

The rules are being revised to update definitions and the description of case referral sources to reflect current and best practices within the industry, clarify lock-in period time frames, update and clarify requirements for recipient notice and right to appeal, and improve readability. Based on the proposed amendments, HHSC is changing the name of the program responsible for performing lock-in reviews from "Limited Program" to "Lock-in Program." The proposal does not impose additional requirements or reduce existing requirements to persons who must comply with the amendments.

SECTION-BY-SECTION SUMMARY

Section 354.2401 (relating to Definitions) adds definitions for "lock-in" and "lock-in period" to follow terminology in 42 CFR

§431.54(e); clarifies the definitions for "contraindicated," "designated provider," and "referrals"; and deletes certain definitions that are unnecessary.

Section 354.2403 (relating to Monitoring and Review) clarifies the federal authority for the lock-in program and simplifies requirements relating to HHSC-OIG lock-in review.

Section 354.2405 (relating to Utilization Control Methods) revises the section title to "Utilization Control," and it clarifies HHSC-OIG processes for restricting a recipient to a designated primary care or pharmacy provider. This section also includes the provisions regarding the notice of the intent to restrict, the lock-in periods and qualifications of restriction, and the changes to a designated provider.

Section 354.2407 (relating to Recipient Rights) clarifies the HHSC-OIG processes relating to notice of intent to restrict a recipient to a designated provider and recipient rights to a fair hearing and access to services, including timeliness requirements governing the HHSC-OIG and the recipient. The section also updates the Texas Administrative Code reference relating to a recipient's right to a fair hearing to conform to current construction.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendments are in effect, there will be no cost to state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There is no anticipated adverse economic effect on small businesses or micro-businesses as a result of administering the proposal. This proposal does not impose any new requirements on providers or change any substantive Medicaid policies. There is no anticipated economic cost to persons who are required to comply with this proposal. The proposal will not affect a local economy. These rules will not have an impact on local employment.

PUBLIC BENEFIT

Douglas C. Wilson, Health and Human Services Commission Inspector General, has determined that for the first five years the proposal is in effect, the expected public benefit of enforcing the proposal is the prevention and detection of inappropriate utilization of drugs or medical services by Medicaid recipients.

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 Judy Knobloch, Texas Health and Human Services Commission, Office of Inspector General, P.O. Box 85200, MC I-1320, Austin, Texas 78708-5200; by fax to (512) 833-6520; or by e-mail to judy.knobloch@hhsc.state.tx.us within 30 days of publication in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled on January 25, 2013, at 9:00 a.m. in the Lone Star Conference Room at 11209 Metric Boulevard, Building H, Austin, Texas 78758. For further information or to request special assistance or accommodations, please contact Judy Knobloch at (512) 491-2070 at least two business days prior to the hearing.

LEGAL AUTHORITY

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

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

§354.2401. Definitions.

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

(1) Abuse--Practices that are inconsistent with sound fiscal, business, or medical practices and that result in unnecessary program cost or in reimbursement for services that are not medically necessary, do not meet professionally recognized standards for health care, or do not meet standards required by contract, statute, regulation, previously sent interpretations of any of the items listed, or authorized governmental explanations of any of the foregoing. [Practices that are not medically necessary and consequently result in an unnecessary cost to the Medicaid program; improper or excessive use or treatment.]

(2) Conflicting--Incompatible, unsuitable for use together because of undesirable chemical or physiological effects. For example, the recipient may receive drugs and/or health care services which may be inadvisable in the presence of certain medical conditions or which conflict with the care ordered by another provider.

(3) ~~Contraindicated--Condition or factor that indicates [To indicate] the inadvisability of a medical treatment or procedure. [The definition is similar to conflicting.]~~

(4) Designated Provider--A provider [of medical services] enrolled in the Texas Medicaid program that is not on payment review status; under administrative action, sanction, or investigation for failure to comply with Medicaid rules or acceptable Medicaid practices; or under sanction or inactive or other limited administrative status by a state licensing board or other regulatory entity. The designated provider oversees the Medicaid benefits or services provided to a recipient in lock-in status and includes: [; and in good standing with the Medicaid program to whom the Medicaid recipient is assigned by the Limited Program. The designated provider may include primary care providers and primary care pharmacies.]

(A) a primary health care provider who provides and/or directs all medically necessary health care benefits or services for which the recipient is eligible. The primary health care provider may include a physician, physician group, dentist, dental home, advanced practice nurse, physician assistant, outpatient clinic, Rural Health Clinic, or Federally Qualified Health Center; or

(B) a pharmacy that monitors medications prescribed to a recipient in lock-in status for contraindicative, conflicting, duplicative, or excessive use and that ensures the recipient's use does not represent abuse, misuse, or fraud.

~~{(5) Designated Provider Referral--Communication from the designated provider to another enrolled Medicaid provider requesting certain services be provided to the recipient on Limited Status.}~~

~~{(6) Duplicative--To do over or again, without due justification. The word duplicative applies to, but is not limited to, use of drugs and health care services. For example, the recipient received health care services from two or more providers for the same or similar condition(s) in an overlapping time frame or the recipient received two or more similarly acting drugs in an overlapping time frame, which may result in a harmful drug interaction or an adverse reaction.}~~

(5) ~~{(7) Emergency medical condition--A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care could result in:~~

- (A) placing the patient's health in serious jeopardy;
- (B) serious impairment to bodily functions;
- (C) serious dysfunction of any bodily organ or part;
- (D) serious disfigurement; or

(E) ~~[in the case of a pregnant woman,] serious jeopardy to the health of the fetus of a pregnant Medicaid recipient.~~

(6) ~~{(8) Emergency services--Covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish such services under a Medicaid provider agreement and are services which are needed to evaluate or stabilize an emergency medical condition.~~

(7) ~~{(9) Excessive Use or Overuse--Exceeding what is usual, medically necessary or customary use of Medicaid services and benefits. Also defined as, but not limited to, the following:~~

(A) receipt [Receipt] of [treatments, drugs, medical supplies or other] Medicaid benefits or services from one or multiple providers of service in an amount, duration, or scope in excess of

which would reasonably be expected to result in a medical or health benefit to the patient; or

(B) use [Use] exceeding the standards and criteria for utilization of outpatient drugs or products, as [prescription drug utilization] listed in the compendia and peer reviewed medical literature and/or criteria and standards approved by the Texas Medicaid Drug Utilization Review Board.

(8) [(40)] Fraud--Any act that constitutes fraud under applicable federal or state law, including any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. Fraud may include any acts prohibited by the Texas Human Resources Code, Chapter 36 or Texas Penal Code, Chapter 35A. [The intentional deception or misrepresentation made by a person with the knowledge that it could result in an unauthorized or medically unnecessary benefit.] Fraudulent activities include, but are not limited to:

(A) lending [Lending] or altering a Medicaid card for the purpose of obtaining Medicaid [medicael] benefits or services for which a person is not legitimately entitled;

(B) falsely [Falsely] representing medical coverage;

(C) using [Using] the Medicaid Identification card of another or [and] altering or duplicating [of a] Medicaid identification; [ID]

(D) furnishing [Furnishing] incorrect eligibility or false information to a vendor to obtain treatment;

(E) possessing [Possessing] blank or forged prescription pads;

(F) forging [Forging], duplicating or altering a prescription;

(G) [Knowingly] assisting providers in rendering services or defrauding the Medicaid program; or

(H) selling [Selling] or trading, or attempting to sell or trade, drugs, products, or supplies acquired independently or through Medicaid that results in duplicative services.

(9) Lock-in--An action taken by the Health and Human Services Commission (HHSC) restricting a Medicaid recipient to a designated pharmacy or health care provider.

(10) Lock-in period--The effective time period of a lock-in measured in cumulative eligibility time frames of 36 months, 60 months, or lifetime. Eligibility time frames may or may not be contiguous.

[(11) Limited Program--The Medicaid recipient must access services and benefits through a designated provider. The Medicaid recipient may be limited to a designated provider if, on review, it is found the recipient received duplicative, excessive, contraindicated, or conflicting health care services and/or drugs; or if the review indicates abuse, misuse, or fraudulent actions related to Medicaid benefits and services.]

[(12) Limited Status--The Medicaid recipient's limitation to a designated provider, either a primary care provider or primary care pharmacy through the Limited Program. Recipients are limited for specific periods of time as outlined in §345.2405(e) of this title relating to Limited Status Evaluation.]

(11) [(43)] Misuse--To use incorrectly, misapply, or illegally use Medicaid benefits or services. To seek or obtain medical services from a number of like providers and in quantities that exceed the levels considered medically necessary by current medical practices,

standards and policies. [For example, the medical services are not medically necessary based on the recipient's diagnosis and / or medical condition or conditions that constitute an abuse of Medicaid benefits and services.]

[(14) Primary Care Pharmacy--Pharmacy vendor who agreed to coordinate pharmacy services for recipients with limited status. The pharmacy will ensure that all medications prescribed for the limited recipient are not contraindicated, conflicting, duplicative or excessive and that the client's use does not represent abuse, misuse or fraud.]

[(15) Primary Care Provider--Health care provider who has agreed to oversee the healthcare benefits and services of the recipient. The primary care provider will provide and/or direct all medically necessary care and services for which the recipient is eligible. The primary care provider can include, but is not limited to, a physician, physician group, Advance Practice Nurse, outpatient clinic, Rural Health Clinic (RHC), or Federally Qualified Health Center (FQHC). The designated primary care provider must be enrolled in Texas Medicaid, not be on payment review status, not be under administrative action, sanction, or investigation for failure to comply with Medicaid rules or acceptable Medicaid practices, and not be under sanction or certain administrative status by the state licensing board.]

(12) [(46)] Recipient--Any individual who is deemed eligible to receive Medicaid benefits and services under the Texas Medicaid Program.

(13) [(47)] Referrals--Complaint information [supplied to the Limited Program] regarding recipient use of Medicaid benefits or [and] services supplied to HHSC for lock-in review. Sources may [can] include, but are not limited to, providers, state agencies, law enforcement officials, Medicaid managed care organizations, or members of the general public. HHSC [Referrals] may make referrals [also be made] to other state agencies and/or Medicaid managed care plans.

(14) Waste--Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.

[(18) Services--Allowable and reimbursable medical benefits and services under Title XIX Texas Medicaid Program.]

[(19) Special Message--A notice printed on the Medicaid Identification form to alert medical providers that the recipient's card was used or reportedly as used by an unauthorized person or persons or for an unauthorized purpose. This message is not considered a restriction and may be printed on the Medicaid Identification form with or without the recipient being on limited status.]

§354.2403. *Monitoring and Review.*

(a) The Health and Human Services Commission (HHSC), in accordance with the Code of Federal Regulations, Chapter 42, §431.54(e) [federal requirements], conducts a review and analysis of data and/or incoming referrals, such as referrals from medical providers, managed care organizations, state agencies, law enforcement officials, or members of the general public, to identify [identifies] Texas Medicaid eligible recipients for lock-in [the limited status program].

(1) HHSC may impose a lock-in if it finds that: [The recipient will be assigned to a designated provider for access to medical benefits and services when:]

(A) a [The] recipient received duplicative, excessive, contraindicated, or conflicting health care services, including drugs;[:]
or

(B) a [A] review indicates abuse, misuse or fraudulent actions related to Medicaid benefits and services. [or]

(2) All Texas Medicaid eligible recipients are subject to lock-in regardless of age, program type, or Medicare eligibility. [The Limited Program may also warn providers that the recipients medical identification card was reportedly used by an unauthorized person or persons, or for an unauthorized purpose. If a warning card is issued, a message will be printed on the card alerting the provider to ask the Medicaid recipient for additional identification or to take other appropriate action.]

[(b) Identification of Recipients for Review and Possible Limited Status]

[(1) Methods to identify recipients for review include, but are not limited to:]

[(A) Primary Source: Analysis of acute care data for the entire Medicaid population or subsets of the population to determine medical usage per recipient and to identify recipients usages in excess of the standards established by HHSC. The analysis will be performed on a frequency as deemed necessary by the program.]

[(B) Secondary Sources: Incoming referrals, such as referrals from medical providers, state agencies, law enforcement officials or members of the general public will be reviewed and analyzed on an individual basis.]

[(2) All Medicaid eligible recipients are subject to being identified for limited status and/or for inclusion of the special message on their Medicaid identification form regardless of their age, their program type or their Medicare eligibility.]

[(3) Recipients can be considered to be limited to a primary care provider or pharmacy provider regardless of the referral and/or review source(s). Consideration may also be given to the special message during the review.]

[(4) The decision to limit a recipient to a designated provider and/or to issue a special message on the recipient's Medicaid Identification form will be made by HHSC or the designee.]

(b) [(e) HHSC may continue the lock-in, change a designated provider(s), and/or take other interventions based on: [Limited Status Evaluation]

[(1) The effectiveness of the limited status will be evaluated during the recipient's limited status period. If required, the designated provider will be changed or other interventions may be taken by HHSC to ensure success.]

[(2) Evaluation of the need for the Medicaid recipient to continue in the limited program will be completed prior to the end of the limitation period.]

[(3) Decisions to continue a recipient in the Limited Program will include, but are not limited to, review of the following:]

(1) [(A)] utilization pattern(s) indicating excessive use or overuse [Utilization pattern in excess of the established recognized standards];

(2) [(B)] abuse [Abuse], misuse, or fraud [fraudulent actions] related to Medicaid services or [and] benefits;

(3) [(C)] non-compliance [Non-compliance] resulting in receipt of services or medications [received] from one or more non-designated providers in the absence of [without] a designated [primary care] provider referral or [in the absence of a medical] emergency medical condition, including cash payment for services, or

obtaining services through illicit methods that result in overutilization or duplicative medication or services;

(4) [(D)] a designated provider's [Designated provider(s)] recommendation to continue the lock-in [limited status] because the recipient [has] demonstrated non-compliant behavior; or [and/or]

(5) [(E)] any change [Any changes] in designated provider [made] due to [breakdown of the recipient/provider relationship as a result of] the recipient's or [the] provider's non-compliance.

[(4) Effectiveness of the special message will be evaluated by HHSC and will remain in effect throughout the assigned time period as defined in §345.2405(c)(7) of this title (relating to Utilization Control Methods).]

(c) [(4)] HHSC may terminate a recipient's lock-in status for: [Limited Status Termination]

[(1) Termination of the limited status before or during the restriction period will be determined by HHSC. This may include but is not limited to:]

(1) [(A)] the lack of a designated provider accepting [who will accept] responsibility for the recipient [client's limited status]; or

(2) [(B)] evidence of medical necessity provided [a request] by the recipient or the designated provider [for consideration of removal of the limited status based on evidence of medical necessity].

[(2) A medical review can be requested at any time.]

(d) The recipient or designated provider may request a medical review of the lock-in at any time.

§354.2405. Utilization Control [Methods].

(a) The Health and Human Services Commission [commission] (HHSC) controls a recipient's [the] inappropriate use of Medicaid benefits or [medical] services by restricting the recipient to [recipients through the designation of] a designated [primary care] provider(s).

(b) HHSC will send a recipient written notification of intent to restrict the recipient to a designated provider. The notice will include a form allowing the recipient the opportunity to select a designated provider and will inform the recipient of the length of the lock-in period and the recipient's right to a hearing. HHSC will select a designated provider for the recipient if it does not receive the completed form within ten days from the date of the initial notice.

(c) HHSC assigns a lock-in period to a recipient. A recipient remains in lock-in status regardless of a change in address or eligibility program type. HHSC will review and determine whether to continue a recipient's lock-in status prior to the end of a lock-in period.

(1) A recipient who has never been in lock-in status will be assigned a 36-month lock-in period. If a recipient's Medicaid eligibility ends and reactivates during the 36-month lock-in period, then upon reenrollment in Medicaid, that recipient will be locked in for the remaining number of months in the original lock-in period.

(2) A recipient who has completed the 36-month lock-in period and is reinstated to lock-in status will be assigned a 60-month lock-in period. If a recipient's Medicaid eligibility ends or reactivates during the 60-month lock-in period, then upon reenrollment in Medicaid, that recipient will be locked in for the remaining number of months in the lock-in period.

(3) A recipient is assigned a lifetime lock-in period if the recipient:

(A) has completed the 60-month lock-in period;

(B) is arrested, indicted, or convicted of a crime relating to Medicaid fraud, or of a felony offense relating to controlled substances; or

(C) admits guilt of Medicaid fraud, or a felony offense related to controlled substances.

~~[(1) Recipient notification—a notice of intent to identify as limited status will be sent to the recipient. The notice will include a form allowing the client the opportunity to select the provider as their designated provider. The HHSC Limited Program will select a designated provider for the recipient if the form is not completed and returned to HHSC no later than 20 days of the date of the notification letter.]~~

~~[(2) Designated Primary Care Provider or Primary Care Pharmacy must be enrolled in the Title XIX Texas Medicaid Program; not be on payment review status; and not be under administrative action; sanction; or investigation for failure to comply with Medicaid rules or acceptable Medicaid practices; not be under sanction or certain administrative status by the state licensing board.]~~

(d) [(3)] A recipient may request a change of a designated provider(s) during a lock-in period. [Changes to Designated Providers(s)]

~~[(A) The recipient may request the Limited Program change the designated provider.]~~

~~(1) [(B)] [The] HHSC determines whether [shall make the determination when] a change in the designated provider is required or warranted.~~

~~(2) [(C)] A designated provider change that is not the result of a recipient's request during the course of the lock-in [restriction] period does not require recipient approval.~~

~~(3) [(D)] HHSC may change [Changes to] a designated provider for, [include] but [are] not limited to, the following reasons:~~

~~(A) [(i)] a change [Change] of the recipient's residence from the geographic area of the designated provider(s);[-]~~

~~(B) [(ii)] notice [Notice] from the designated provider(s) that they will no longer serve as the designated [limited] provider;[-]~~

~~(C) [(iii)] closure [Closure of] or [the] relocation of a designated provider's office;[-]~~

~~(D) [(iv)] death [Death] of the designated [primary care] provider;[-]~~

~~(E) [(v)] disenrollment [Disenrollment] of the designated provider(s) from the Medicaid program;[-]~~

~~(F) [(vi)] notice [Notice] that the designated provider is under administrative action, sanction or investigation or failure to comply with Medicaid rules or acceptable Medicaid practice;[-]~~

~~(G) [(vii)] notice [Notice] that the designated provider is under sanction or other [certain] administrative actions by a state [their] licensing board or other regulatory entity that prevents the provider from practicing; [boards.]~~

~~(H) [(viii)] the primary health [Primary] care provider may be overprescribing [is over prescribing] medication or services;[-]~~

(I) [(ix)] the designated [Primary] pharmacy provider is filling prescriptions from multiple providers other than the designated primary health care provider or a prescriber to whom the recipient was referred by [and] the designated primary health care provider; or [referrals.]

(J) [(x)] a change [Change] in the recipient's medical condition that [; which] the designated primary health care provider is unable to treat or refer [referred] to another provider.

(e) A change in the designated provider or Medicaid provider does not affect the status of the lock-in period unless the recipient was receiving prescriptions pursuant to subsection (d)(3)(H) or (I) of this section.

~~[(b) Payment for services include, but are not limited to the following:]~~

~~[(1) Authorization of non-emergency ambulatory services. The primary care provider must authorize non-emergency ambulatory services as determined by the state.]~~

~~[(2) Payment for pharmacy services. The primary care pharmacy will assist the Limited Program in ensuring that prescriptions filled for recipients with limited status are written by the primary care provider or other health care providers that the primary care provider has made referrals to for the recipient. HHSC has identified by therapeutic class medications that require additional monitoring. When these medications are prescribed by the emergency room provider, the primary care pharmacy may dispense and be reimbursed for up to 72 hours or three business days of the prescribed dosage to allow for holidays and weekends. The primary care pharmacy may dispense and be reimbursed for the remainder of the medication after approval by the primary care provider or the other providers as deemed appropriate by HHSC.]~~

~~[(e) The length of limitation periods to a designated provider and/or limited status will be used as follows:]~~

~~[(1) The initial limited status period will be for a minimum of 36 months or the duration of eligibility and subsequent periods of eligibility up to but not exceeding 36 months in the Limited Program. Continued limited status determination will be made prior to the end of the 36 months period.]~~

~~[(2) The second limited status will be for an additional 60 months or the duration of eligibility and subsequent periods of eligibility up to but not exceeding 60 months. Continued limited status determination will be made prior to the end of the 60 months period.]~~

~~[(3) The third limitation period will be for the duration of eligibility and all subsequent periods of Texas Medicaid eligibility.]~~

~~[(4) Clients arrested, indicted or convicted for a crime related to Medicaid fraud will be assigned limited status for 60 months or the duration of eligibility and subsequent periods of eligibility up to or equal to 60 months. If the client admits guilt of Medicaid fraud the client will be limited for 60 months. If the decision is made to continue the recipient in the Limited Program at the end of the 60 months period the second limitation period will be for the duration of eligibility, including all subsequent periods of eligibility.]~~

~~[(5) Clients returning to the Limited Program after being removed from the limited status by HHSC or its designee will be placed at the next level of limitation.]~~

~~[(6) Recipients will remain in the limited status regardless of change in eligibility program type or change in address.]~~

~~[(7) HHSC will utilize the time frames set forth in paragraphs (1) through (6) of this subsection for the special message stated on the recipient's Medicaid identification form.]~~

§354.2407. Recipient Rights.

(a) The [In accordance with federal and state regulations, the] Health and Human Services Commission (HHSC) gives a recipient timely and adequate notice of an [the] action to assign [limit] the

recipient to a designated provider and [an] opportunity for a fair hearing. Hearings are conducted under Chapter 357, Subchapter A, of this title (relating to Uniform Fair Hearing Rules). [If a hearing is requested, the procedures described in Chapter 357 of this Title, Subchapter K, §§357.1-357.11 relating to medical fair hearings apply.]

(1) The written notice to a recipient of the recipient's right to a hearing will be mailed at least ten calendar days before the lock-in period effective date.

(2) ~~[(4)]~~ HHSC will grant a hearing if it receives a recipient's request for a hearing no later than: [The recipient can request a fair hearing within:]

(A) 90 calendar days from the date of the initial notice [notification] of intent to assign a designated provider; or

(B) 90 calendar days from the date of the notice of intent to continue a lock-in period [the recipient on limited status is made at the end of a limited period].

(3) ~~[(2)]~~ If a [the] request for a [fair] hearing is received by [before] the lock-in [deadline to change the limited status] effective date, HHSC will not implement the lock-in status [take action] until the hearing has been held and a final decision rendered.

(4) ~~[(3)]~~ If a [the] request for a [fair] hearing is received after the lock-in [deadline to change the limited status] effective date, the lock-in [limited] status will remain in effect until the hearing has been held and a final decision rendered that reverses the lock-in action.

(5) ~~[(4)]~~ The recipient does not have the right to a fair hearing when the lock-in [limited status] is the result of a misdemeanor or felony offense [conviction] related to fraud and/or abuse of Medicaid benefits and/or services, or to controlled substances.

(6) ~~[(5)]~~ During the lock-in [limited status] period, the recipient is not entitled to a fair hearing for denial of either of the following requests:

(A) change [Change] in designated [primary care] provider; or

(B) termination [Termination] of the lock-in period. [limited status]

~~[(6)]~~ The special warning message is not considered a restriction and does not require a fair hearing.

(b) A lock-in recipient must have [In accordance with federal requirements, the HHSC ensures] reasonable access to Medicaid services and benefits and must be able to [- Recipients who are on limited status may] receive emergency [care] services for an emergency medical condition. A provider [Providers] other than the designated providers may provide the emergency [care] services. The emergency care provider must certify that the recipient required emergency [care] services for an emergency medical condition.

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

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

TRD-201206654

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 10, 2013

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



CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

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

1 TAC §355.8441

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8441, concerning Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services.

Background and Justification

The current rule allows for a supplemental payment for fee-for-service dental services provided by publicly owned dental providers, including mobile dental units and clinics. This supplemental payment program was discontinued at the end of February 2012. Beginning March 1, 2012, the majority of Medicaid dental services for children are provided through managed care organizations. The rule proposal allows eligible dental providers to continue to receive additional federal funding under the Texas Healthcare Transformation and Quality Improvement 1115 Waiver. Eligible dental providers will submit a yearly cost report, and the determination of the Uncompensated Care payment will be based on a cost-to-billed-charges ratio methodology. The funding for the non-federal share of supplemental payments is limited to, and obtained through, intergovernmental transfers of funds from the governmental entity that owns the dental provider.

Section-by-Section Summary

HHSC proposes amendments to §355.8441 as follows:

Revise paragraph (10)(C) to limit its application to services provided from October 1, 2011, through February 29, 2012.

Add new paragraph (10)(D) to describe the calculation and payment of supplemental payments for services provided on or after March 1, 2012.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will be no fiscal impact to state government. There will be an impact to the federal government; however, this impact cannot be estimated at this time due to uncertainty about the extent to which publicly owned dental providers will receive supplemental payments. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the proposed amendment. The proposed amendment does not require any changes in practice or any additional cost to the contracted provider because participation in dental supplemental payment program is voluntary. Further, this rule only affects publicly owned dental providers and thus does not apply to small businesses or micro-businesses.

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

Public Benefit

Ms. McDonald has also determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the adoption of this rule because the rule provides a methodology by which publicly owned dental providers can continue to obtain supplemental payments when Medicaid dental services are provided to children.

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.

Comments

Written comments on the proposal may be submitted to Reuben Leslie, Lead Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC H-400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail at reuben.leslie@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

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

§355.8441. *Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services.*

The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, delivered [only] to Medicaid clients under age 21, also known as Texas Health Steps (THSteps) and the THSteps Comprehensive Care Program (CCP). Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) Counseling and psychotherapy services are reimbursed to freestanding psychiatric facilities in accordance with §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities).

(2) Durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) are reimbursed in the same manner as DMEPOS under home health services at §355.8021(b) of this subchapter (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies).

(3) Nursing services, including, but not limited to, private duty nursing, registered nurse (RN) services, licensed vocational nurse/licensed practical nurse (LVN/LPN) services, skilled nursing services delegated to qualified aides by RNs in accordance with the licensure standards promulgated by the Texas Board of Nursing, and nursing assessment services, are reimbursed the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC) for each of the applicable provider types as follows:

(A) Independently enrolled RNs and LVNs/LPNs, under §355.8085 of this subchapter (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners); and

(B) Home health agencies (HHAs), under §355.8021(a) of this subchapter.

(4) Physical therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter (relating to Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, Licensed Psychological Associates' Services, Maternity Clinic Services, and Tuberculosis Clinic Services);

(B) HHAs, under §355.8021(a) of this subchapter;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), under §355.8085 of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter (relating to Payment for Hospital Services).

(5) Occupational therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter;

- (B) HHAs, under §355.8021(a) of this subchapter;
- (C) CORFs and ORFs, under §355.8085 of this subchapter;
- (D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and
- (E) outpatient hospitals, under §355.8061 of this subchapter.

(6) Speech-language pathology services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

- (A) independently enrolled therapists, under §355.8081 of this subchapter;
- (B) HHAs, under §355.8021(a) of this subchapter;
- (C) CORFs and ORFs, under §355.8085 of this subchapter;
- (D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and
- (E) outpatient hospitals, under §355.8061 of this subchapter.

(7) Nutritional services provided by licensed dietitians are reimbursed the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter.

(8) Providers are reimbursed for the administration of immunizations the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter.

(9) Vaccines not covered elsewhere are reimbursed the lesser of the provider's billed charges or the actual cost of the vaccine.

(10) Dental services are reimbursed in accordance with the following Medicaid reimbursement methodologies:

(A) Dental services provided by enrolled dental providers are reimbursed in accordance with §355.8081 of this subchapter. The fees are calculated as access-based fees under §355.8085 of this subchapter and are based on a percentage of the billed charges (i.e., the usual-and-customary amount providers charge non-Medicaid clients for similar services) reported on Medicaid dental claims for each dental service, excluding billed charges that are less than or equal to the published Medicaid fee for that service.

(B) Dental services provided by federally qualified health centers (FQHCs) are reimbursed in accordance with §355.8261 of this subchapter (relating to Federally Qualified Health Center Services Reimbursement).

(C) For services provided from October 1, 2011, through February 29, 2012, publicly [Publicly] owned dental providers may be eligible to receive supplemental payments for fee-for-service dental claims. HHSC will calculate supplemental payments using the following methodology:

(i) HHSC will select a commercial dental insurance carrier fee schedule that is utilized by the provider.

(ii) For adjudicated claims, the maximum amount of supplemental payment an eligible dental provider may receive is calculated as the difference between the HHSC approved reimbursement amount from the Medicaid fee-for-service dental fee schedule and the corresponding reimbursement on the dental insurance carrier fee schedule selected in clause (i) of this subparagraph for the same procedure. The supplemental payment is calculated quarterly after the end of each

federal fiscal quarter. The supplemental payment is contingent on receipt of funds as specified in clause (iii) of this subparagraph.

(iii) The funding for the state share of supplemental payments to a dental provider is limited to and obtained through intergovernmental transfers of funds from the governmental entity that owns and operates the dental provider. An intergovernmental transfer that is not received in the manner and by the date specified by HHSC may not be accepted.

(iv) If a supplemental payment results in an overpayment or if the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC may recoup an amount equal to the federal share of supplemental payments overpaid or disallowed. To satisfy the amount owed, HHSC may recoup from any current or future Medicaid payments.

(D) Subject to approval by the Centers for Medicare and Medicaid Services, for services provided on or after March 1, 2012, publicly owned dental providers may be eligible to receive Uncompensated Care payments for dental services under the Texas Healthcare Transformation and Quality Improvement 1115 Waiver. For purposes of the section, Uncompensated Care ("UC") payments are payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act. HHSC will calculate UC payments using the following methodology:

(i) Eligible dental providers must submit an annual cost report based on the federal fiscal year. HHSC will provide the cost report form with detailed instructions to enrolled dental providers. Cost reports are due to HHSC 180 days after the close of the applicable reporting period. Providers must certify that expenditures submitted on the cost report have not been claimed on any other cost report.

(ii) Payments to eligible providers will be based on cost and payment data reported on the cost report along with supporting documentation. A cost-to-billed-charges ratio will be used to calculate total allowable cost as defined in the cost report and detailed instructions. The total allowable cost minus any payments will be the UC payment due to the provider. The UC payment is calculated yearly and is contingent on receipt of funds as specified in clause (iii) of this subparagraph.

(iii) The funding for the state share of UC payments is limited to, and obtained through, intergovernmental transfers of funds from the governmental entity that owns and operates the dental provider. An intergovernmental transfer that is not received in the manner and by the date specified by HHSC may not be accepted.

(iv) If a UC payment results in an overpayment or if the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC may recoup an amount equal to the federal share of supplemental payments overpaid or disallowed. To satisfy the amount owed, HHSC may recoup from any current or future Medicaid payments.

(11) Personal care services (PCS) are reimbursed in accordance with the following Medicaid reimbursement methodologies for the applicable provider type:

(A) School districts delivering PCS under School Health and Related Services (SHARS) are reimbursed in accordance with §355.8443 of this division (relating to Reimbursement Methodology for School Health and Related Services (SHARS)); and

(B) Providers other than school districts delivering PCS are reimbursed as follows:

(i) PCS and PCS delivered in conjunction with delegated nursing services are reimbursed fees determined by HHSC or its designee. The fees are determined using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination thereof, as determined appropriate by HHSC.

(ii) PCS delivered through the Consumer Directed Services payment option are reimbursed in accordance with §355.114 of this chapter (relating to Consumer Directed Services Payment Option).

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 December 31, 2012.

TRD-201206655

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 10, 2013

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.2

The Texas Medical Board (Board) proposes an amendment to §163.2, concerning Full Texas Medical License.

The amendment will permit applicants who graduated from U.S. medical schools that were not LCME-accredited at time of graduation to remain eligible for licensure if board certified; and the amendment clarifies that residency training will not be counted toward the three-year service requirement for foreign medical school graduates that are not U.S. citizens or aliens lawfully admitted for permanent residence, unless the residency training was in a medically underserved area or health professional shortage area.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with the Medical Practice Act.

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. The effect to individuals required to comply with the rule as proposed is undetermined as the Board does not know in what fields of medical practice the affected physicians intend to practice, and how salaries for those fields compare when practiced in medically underserved areas or health professional shortage areas, as opposed to other areas in the state. 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 com-

ments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §155.0045, Texas Occupations Code.

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

§163.2. Full Texas Medical License.

(a) Graduates of medical schools in the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school in 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 (relating to Definitions);

(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 approved medical school as defined under §163.1(1) 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 one-year training program of graduate medical training in the United States or Canada as defined under §163.1(9) of this title;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6(a) of this title (relating to Examinations Accepted for Licensure); and

(7) pass the Texas Medical Jurisprudence Examination.

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

(d) Applicants who are not U.S. citizens or permanent residents.

(1) An applicant for full licensure who is not a U.S. citizen or an alien lawfully admitted for permanent residence in the United States, must present proof satisfactory to the board that the applicant has practiced medicine full-time in Texas, in medically underserved areas and health professional shortage areas as designated by the U.S. Department of Health and Human Services, for at least three years, or has signed an agreement to practice medicine full-time in Texas, in medically underserved areas (MUAs) and health professional shortage areas (HPSAs) as designated by the U.S. Department of Health and Human Services, for at least three years. Full-time practice shall mean at least 20 hours per week for 40 weeks duration during a given year. Agreement to practice medicine for three years in qualifying HPSAs and MUAs may be evidenced by an Affidavit of Agreement submitted by the applicant to the Board.

(2) Upon completion of the requirements of paragraph (1) of this subsection, a physician must provide documentation that is acceptable to the Board to demonstrate compliance with paragraph (1) of this subsection. Documentation acceptable to the Board as proof of having completed the three-year service requirement includes:

(A) Individual Federal income tax returns, including copies of the International Medical Graduate's (IMG) W-2 forms and/or pay stubs covering the three-year period (showing employment in a qualifying underserved location);

(B) Letter(s) from the applicant's employer(s) attesting to the full-time medical service rendered during the required aggregate period; and

(C) If the applicant established his or her own practice, documents confirming establishment of the practice, e.g., documentation showing incorporation of the medical practice (if incorporated), the business license, and the business tax returns and tax withholding documents submitted for the entire three-year period.

(3) A physician licensed under this subsection, must notify any individual or entity with whom the physician contracts to practice medicine, that the physician is fulfilling a service requirement to practice full-time in Texas, in medically underserved areas and health professional shortage areas as designated by the U.S. Department of Health and Human Services, for at least three years.

(4) For the purpose of this subsection, federally designated underserved areas include Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) with facility HPSA designation.

(5) This subsection shall not be interpreted to apply to:

(A) applicants for full licensure under this chapter that have been offered employment at a graduate medical training program, and: [who are applying to practice medicine at an institution that maintains a graduate medical education program in this state;]

(i) the employment is not for the purpose of obtaining postgraduate training; or

(ii) the employment is for postgraduate training that is located in a MUA or HPSA;

(B) applicants for postgraduate training permits as described under Chapter 171 of this title (relating to Postgraduate Training Permits);

(C) applicants for temporary or limited licenses as described under Chapter 172 of this title (relating to Temporary and Limited Licenses);

(D) physicians who practiced medicine, prior to September 1, 2012, for at least one year under a postgraduate training permit, temporary license, or limited license; or

(E) physicians who had an active application for full licensure on August 31, 2012 [submit or have submitted initial applications for full licensure under this chapter prior to September 1, 2012].

(6) Applicants determined exempt under paragraph (5)(B) of this subsection and who subsequently apply for full licensure are subject to the requirements of this subsection, and any employment completed while in postgraduate training [under a postgraduate training permit] shall not be applied toward the requirements set out in paragraph (1) of this subsection unless the training program was located in an MUA or HPSA.

(7) Applicants determined exempt under paragraph (5)(A) of this subsection at time of application, but who subsequently discontinue employment before passage of three years from the date of issuance of a license, shall no longer be exempt from the requirements set out in this section. However, the applicant may count all employment obtained while practicing medicine under a full license or a temporary or limited license at an institution that maintains a graduate medication

education program in this state toward the service requirement set out in paragraph (1) of this subsection.

(e) (No change.)

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

Filed with the Office of the Secretary of State on December 27, 2012.

TRD-201206650

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: February 10, 2013

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §41.103, Definitions; §41.205, Employer Appointment of a Designated Representative; §41.225, Criminal Conviction History Checks; §41.227, Required Registry Checks; §41.301, Contracting as a Consumer Directed Services Agency; §41.305, Appointment of a Designated Representative; §41.307, Initial Orientation of an Employer; §41.309, Financial Management Services and Employer-Agent Responsibilities; §41.323, Criminal Conviction History Check; §41.325, Required Registry Checks; §41.327, Verification of Applicants for Employees, Contractors, and Vendors; and §41.329, Continued Eligibility of an Employee, Contractor, or Vendor; new §41.206, Proof of Guardianship for the Employer; §41.303, Obtaining and Revoking Federal and State Approval to be a Vendor Fiscal/Employer Agent; and §41.306, Proof of Guardianship for Financial Management Services Agencies; and the repeal of §41.203, Registration of an Employer; and §41.303, Employer Registration, in Chapter 41, Consumer Directed Services Option.

BACKGROUND AND PURPOSE

The proposed amendments, new sections, and repeals have multiple purposes. First, the proposed rules relating to criminal history checks implement Senate Bill 223, 82nd Legislature, Regular Session, 2011, which amended Texas Health and Safety Code (THSC), Chapter 250, allowing Financial Management Services Agencies (FMSAs) formerly called Consumer Directed Services Agencies (CDSAs) access to the secure Department of Public Safety (DPS) website to run criminal history checks on behalf of Consumer Directed Services (CDS) employers and forward that information to the CDS employers. Criminal history checks using the DPS public website are required for a Designated Representative (DR), a person selected by the CDS employer who volunteers to assist the CDS employer with

employer tasks, if the DR is not a relative. Second, the proposed rules address areas identified by DADS Internal Audit that need strengthening to ensure the option is operating correctly and efficiently. The proposed rules specify the frequency of registry checks for ongoing verification of provider qualifications and add a requirement for verification of social security numbers for employment. The proposed rules strengthen the FMSA contracting requirements by adding the prerequisite to pass a knowledge test before contracting with DADS and specifying that a third-party payroll agent cannot be used. The proposed rules clarify that FMSAs must function as vendor fiscal/employer agents in accordance with §3504 of the Internal Revenue Service (IRS) Code. The proposed rules also provide greater detail about the topics that FMSAs must cover in the initial orientation with the CDS employer.

FMSAs are required to provide an initial face-to-face orientation to CDS employers when they begin using the CDS option. While the current CDS rules give a general guide for what the FMSA needs to cover, DADS Internal Audit requested that more detail be provided in rule.

FMSAs are required to conduct ongoing verification of the CDS employer's service providers' qualifications. DADS Internal Audit requested that the CDS rules specify the frequency of verification of ongoing provider qualifications.

Although the CDS rules indicate that a CDS employer must not hire a person if not eligible for employment based on results of Department of Homeland Security, U.S. Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification, some FMSAs were not verifying social security numbers with the Social Security Administration and some CDS employers hired providers who were ineligible for employment. The proposed rule clarifies that FMSAs must verify employment applicants' social security numbers with the Social Security Administration.

The proposed rules also change the name from Consumer Directed Services Agencies to Financial Management Services Agencies to reflect the CMS definition and to distinguish the FMS function from that of a licensed home health agency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §41.103 changes the name of Consumer Directed Services Agencies (CDSAs) to Financial Management Services Agencies (FMSAs), a term consistent with that used by the Centers for Medicare and Medicaid Services for agencies that provide payroll services and pay employer taxes on behalf of individuals who use publically funded programs and hire their own service providers rather than using agency-delivered or provider-delivered services. The amendment also updates the definition of "service coordinator" and "contractor" and adds a definition for "relative."

The proposed repeal of §41.203 deletes actions no longer required in accordance with §3504 of the IRS Code. The FMSA must register an employer with the Internal Revenue Service.

The proposed amendment to §41.205 streamlines the process to allow a single DADS form to be used to appoint a Designated Representative (DR) and to request a criminal history check; requires a criminal history check for DRs who are not relatives of the employer; and indicates that FMSAs must use the public DPS website to conduct required criminal history checks.

Proposed new §41.206 adds a requirement that a CDS employer, if a court appointed guardian, provide proof of

guardianship to the FMSA or documentation of efforts to obtain documentation from the court.

The proposed amendment to §41.225 revises steps a CDS employer needs to take for the FMSA to perform the criminal history check in accordance with amended Texas Health and Safety Code, Chapter 250, and clarifies when a CDS employer may not hire an applicant or retain an employee due to criminal history.

The proposed amendment to §41.227 adds the required check for persons excluded from Medicaid and changes the required time period for registry checks from the first date of service to the date of hire.

The proposed amendment to §41.301 specifies that entities desiring to become an FMSA must serve as vendor fiscal/employer agents in accordance with Internal Revenue Service Code §3504, as specified by the Centers for Medicare and Medicaid Services 1915(c) Home and Community Based Waiver Technical Assistance Guide. The amendment strengthens contract eligibility requirements by specifying the type of staff who must participate in the mandated training and requiring that each person pass a knowledge test. The proposed amendment adds an ongoing training requirement for FMSAs with DADS contracts and specifies that FMSAs must not use a third party to perform payroll and tax functions.

The proposed repeal of §41.303 deletes obsolete text in accordance with §3504 of the IRS Code.

Proposed new §41.303 identifies the required steps to become an agent for each CDS employer the FMSA represents. The FMSA, not the CDS employer, assumes full IRS tax liability.

The proposed amendment to §41.305 requires a criminal background check for DRs who are not relatives, and indicates that FMSA must use the public DPS website to perform these checks.

Proposed new §41.306 adds a requirement for an FMSA to maintain documentation from the CDS employer if he or she is a court appointed guardian of an individual enrolled in the CDS option.

The proposed amendment to §41.307 adds more detail to the information that FMSAs are required to share with CDS employers and their designated representatives, including FMSA hours of operation and key contact information, how the FMSA will address complaints, how to file a complaint against the FMSA with DADS, how to recognize and report abuse and neglect, and the program requirements the CDS employer must meet.

The proposed amendment to §41.309 removes obsolete rules that have been updated and moved to §41.303.

The proposed amendment to §41.323 requires that FMSAs use the secure DPS criminal history website to obtain a report on an applicant for employment and, if requested by the CDS employer, send the original DPS criminal history report to the CDS employer and inform the CDS employer of confidentiality requirements. The amendment also clarifies when an applicant cannot be hired and an employee must be terminated.

The proposed amendment to §41.325 adds a requirement to check the online databases for persons excluded from Medicaid participation on the Health and Human Service Commission, Office of Inspector General (OIG) and the U.S. Department of Human Services OIG websites. This is in addition to the current requirements to check the Nurse Aide Registry and Employee Misconduct Registry. The amendment also changes the

required time period for registry checks from first date of service to the date of hire.

The proposed amendment to §41.327 adds a requirement for the FMSA to verify with the Social Security Administration the social security numbers of applicants for employment.

The proposed amendment to §41.329 specifies the frequency of verification for continued eligibility of an employee, including criminal history checks and other registry checks as required by Texas Health and Safety Code, Chapter 250, and Texas Health and Human Services Commission OIG and U.S. Department of Human Services OIG.

FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeals are in effect, enforcing or administering the amendments, new sections, and repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeals will not have an adverse economic effect on small businesses or micro-businesses, because the cost for running criminal history checks via the secure DPS website is lower than the cost of using the public DPS site. The other rule provisions do not impose requirements that will require FMSAs or CDS employers to expend additional resources.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Commissioner, has determined that, for each year of the first five years the amendments, new sections, and repeals are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeals is that by allowing access to the DPS secure website, individuals who use the CDS option have more comprehensive information for making an employment decision than the current process. Changes to the contracting criteria for FMSAs and ongoing training requirements will benefit CDS employers by ensuring higher quality providers. Clarification of an FMSA's roles and responsibilities related to taxes and initial orientation of CDS employers ensure that they receive the information and support needed to be successful as employers.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeals. The amendments, new sections, and repeals do 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 Elizabeth Jones at (512) 438-4855 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-9R031, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759;

or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R031" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §41.103

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.103. Definitions.

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

- (1) Adult--A person who is 18 years of age or older.
- (2) Actively involved--Involvement with an individual that the individual's service planning team deems to be of a quality nature based on the following:
 - (A) observed interactions of the person with the individual;
 - (B) a history of advocating for the best interests of the individual;
 - (C) knowledge and sensitivity to the individual's preferences, values, and beliefs;
 - (D) ability to communicate with the individual; and
 - (E) availability to the individual for assistance or support when needed.
- (3) Allowable cost--A billable service or item that is within the rate and spending limits of the rate established by the Health and Human Services Commission and that meets the requirements of an individual's program.
- (4) Applicant--Depending on the context, an applicant is:
 - (A) a person applying for employment with an employer;
 - (B) a person or legal entity applying for a contract with an employer to deliver services to an individual; or
 - (C) a person applying for services through a DADS program.

(5) Budget--A written projection of expenditures for each program service delivered through the CDS option.

(6) Budgeted unit rate--The unit rate calculated for employee compensation (wages and benefits) in the budgeting process for services delivered through the CDS option. The rate is calculated after employer support services have been budgeted.

(7) Case manager--A person who provides case management services to an individual. The case manager assists an individual who receives program services in gaining access to needed services, regardless of the funding source for the services, and assists with other duties as required by the individual's program.

(8) CDS option--Consumer Directed Services option. A service delivery option in which an individual or LAR employs and retains service providers and directs the delivery of program services.

(9) CDSA--An FMSA. ~~[Consumer directed services agency. A provider contracting with DADS that provides FMS.]~~

(10) Contractor--A person, ~~[such as a licensed or certified therapist, a licensed or registered nurse, or other professional,] who performs [has a service agreement with an employer to perform] one or more program services, offers service to the general public, performs services for payment, and with whom the CDS employer has a written service agreement. A contractor directs and controls when and how the work is performed as well as the business aspect of the job including expenses and the business relationship [as an independent contractor, rather than an employee of the employer or of an entity].~~ A contractor may be a sole proprietor.

(11) DADS--The Department of Aging and Disability Services.

(12) DR--Designated representative. A willing adult appointed by the employer to assist with or perform the employer's required responsibilities to the extent approved by the employer.

(13) Employee--A person employed by an employer through a service agreement to deliver program services and is paid an hourly wage for those services.

(14) Employer--An individual or LAR who chooses to participate in the CDS option, and, therefore, is responsible for hiring and retaining service providers to deliver program services.

(15) Employer-agent--The Internal Revenue Service (IRS) designation of an FMSA ~~[a CDSA]~~ as the entity responsible for specific activities and responsibilities required by the IRS on behalf of an employer in the CDS option.

(16) Entity--An organization that has a legal identity such as a corporation, limited partnership, limited liability company, professional association, or cooperative.

(17) Employer support services--Services and items the employer needs to perform employer and employment responsibilities, such as office equipment and supplies, recruitment, and payment of Hepatitis B vaccinations for employees and support consultation.

(18) EVV system--Electronic visit verification system. As defined in §68.102(7) of this title (relating to Definitions), an electronic visit verification system that:

(A) allows a service provider to electronically report:

(i) the service recipient's identity;

(ii) the service provider's identity;

(iii) the date and time the service provider begins and ends the delivery of services;

(iv) the location of service delivery; and

(v) tasks performed by the service provider; and

(B) meets other guidelines described on the DADS website at www.dads.state.tx.us.

(19) FMS--Financial management services. Services delivered by the FMSA ~~[CDSA]~~ to an employer such as orientation, training, support, assistance with and approval of budgets, and processing payroll and payables on behalf of the employer.

(20) FMSA--A financial management services agency. An entity that contracts with DADS to provide financial management services (FMS).

(21) ~~[(20)]~~ Individual--A person enrolled in a program.

(22) ~~[(21)]~~ LAR--Legally authorized representative. A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, managing conservator of a minor, or the guardian of an adult.

(23) ~~[(22)]~~ Minor--A person who is 17 years of age or younger.

(24) ~~[(23)]~~ Non-program resource--A resource other than an individual's program that provides one or more services or items.

(25) ~~[(24)]~~ Parent--A natural, legal, foster, or adoptive parent of a minor.

(26) ~~[(25)]~~ Program--A community services program administered by DADS.

(27) Relative--A person related to an employer within the fourth degree of consanguinity or within the second degree of affinity.

(28) ~~[(26)]~~ Service agreement--A written agreement or acknowledgment between two parties that defines the relationship and lists respective roles and responsibilities.

(29) ~~[(27)]~~ Service area--A geographic area served by a program or specified in a contract with DADS.

(30) ~~[(28)]~~ Service back-up plan--A documented plan to ensure that critical program services delivered through the CDS option are provided to an individual when normal service delivery is interrupted or there is an emergency.

(31) ~~[(29)]~~ Service coordinator--An employee of a local [mental retardation] authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services, including DADS program services. A service coordinator provides case management services to an individual.

(32) ~~[(30)]~~ Service plan--A document developed in accordance with rules governing an individual's program that identifies the program services to be provided to the individual, the number of units of each service to be provided, and the projected cost of each service.

(33) ~~[(31)]~~ Service planning team--A group of people determined based on the requirements of an individual's program. Some DADS programs refer to the service planning team as an interdisciplinary team.

(34) ~~[(32)]~~ Service provider--An employee, contractor, or vendor.

(35) ~~[(33)]~~ Support advisor--A person who provides support consultation to an employer, or a DR, or an individual receiving services through the CDS option.

(36) [(34)] Support consultation--An optional service that is provided by a support advisor and provides a level of assistance and training beyond that provided by the CDSA through FMS. Support consultation helps an employer to meet the required employer responsibilities of the CDS option and to successfully deliver program services.

(37) [(35)] Vendor--A person selected by an employer or DR to deliver services, goods, or items, other than a direct service to an individual. Examples of vendors include a building contractor, electrician, durable medical equipment provider, pharmacy, or a medical supply company.

(38) [(36)] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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 December 21, 2012.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 10, 2013

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



SUBCHAPTER B. RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES

40 TAC §41.203

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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 repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.203. Registration of an Employer.

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 December 21, 2012.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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



40 TAC §§41.205, 41.206, 41.225, 41.227

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas 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 and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.205. Employer Appointment of a Designated Representative.

(a) An employer may appoint a willing adult as a DR to assist or to perform employer responsibilities. The employer maintains responsibility and accountability for decisions and actions taken by the DR.

(b) If the employer chooses to appoint a DR or change a DR, the employer must complete DADS Form 1720, Appointment of Designated Representative.

(1) The employer must notify the FMSA [a CDSA] by fax or telephone within two working days after the appointment or change of a DR.

(2) If the employer notifies the FMSA [CDSA] by telephone, the employer must fax or mail a copy of Form 1720 to the FMSA [CDSA] within five working days after the appointment or change of a DR.

(c) The employer, if appointing a DR who is not a relative, must:

(1) obtain the DR's information required on the Appointment of Designated Representative Form (Form 1720) and request the FMSA to perform a criminal history background check through the Department of Public Safety's (DPS) public Criminal History Conviction Database website; and

(2) not appoint or retain a DR who is not a relative who:

(A) has a criminal history that indicates the person has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a); or

(B) has a criminal history that indicates the person has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

(d) [(e)] If an employer decides to revoke the appointment of a DR, the employer must:

(1) complete DADS Form 1721, Revocation of Appointment of Designated Representative; and

(2) provide a copy of the completed form to the FMSA [CDSA] within two calendar days after the effective date of the revocation.

(e) [(d)] Based on documentation provided by the FMSA [CDSA] of an employer's inability to meet employer responsibilities, the service planning team may recommend that the employer designate a DR to assist with or to perform employer responsibilities.

(f) [(e)] A DR must not:

- (1) sign or represent himself as the employer;
- (2) be paid to perform employer responsibilities;
- (3) be an employee of the employer;
- (4) have a spouse employed by the employer; or
- (5) provide a program service to the individual.

§41.206. Proof of Guardianship for the Employer.

A court appointed guardian for an individual enrolled in the CDS option must provide the FMSA with annual documentation of guardianship or documentation of efforts to obtain documentation from the court.

§41.225. Criminal [Conviction] History Check of an Employee [Checks].

(a) Before [a DR can be appointed or] an applicant can become an employee [or contractor], an employer[, or DR [if for an applicant,] must:

(1) obtain the [DR's] applicant's information required on the Criminal History and Registry Checks Form 1725 [permission] to conduct a criminal history [conviction] background check through [from] the Texas Department of Public Safety (DPS) secure online website [using Form 1725, Criminal Conviction History and Registry Checks]; [and]

(2) sign the certification section on Form 1725 acknowledging that criminal history records and reports include confidential information that must not be shared, released, or otherwise disclosed, under penalty of law; [obtain a criminal conviction history check in one of the following ways:]

[(A) obtain the criminal conviction history check directly from the DPS Criminal History Conviction Database website available at https://records.txdps.state.tx.us/dps_web/APP_PORTAL/index.aspx;

(3) [(B)] request that the FMSA [CDSA] obtain the criminal [conviction] history report [check directly] from the secure online DPS Criminal History Conviction Database website; and [or]

[(C) request that the DR or applicant obtain the criminal conviction history check directly from the DPS Criminal History Conviction Database website.]

[(b) Before hiring or retaining a DR or applicant, an employer or DR must:]

[(1) submit a copy of the person's criminal conviction history check if obtained by the employer, DR, or the applicant; or]

(4) [(2)] receive [a copy of] the original criminal history [DPS] report sent by [from] the FMSA [CDSA if obtained by the CDSA].

(b) [(e)] A criminal [conviction] history report [check] must be dated no more than 30 calendar days before the applicant's [first] date of hire [the applicant provides services to the individual].

(c) [(d)] An employer[, or DR[, if not for an applicant,] must not hire an applicant or retain an employee [a DR or applicant] who:

[(1) refuses to provide consent for a DPS criminal conviction history check; or]

(1) [(2)] has a criminal [conviction] history that indicates the applicant or employee [person] has been convicted of an offense [a crime] included in Texas Health and Safety Code (THSC), §250.006(a); or [§250.006 (relating to Convictions Barring Employment).]

(2) has a criminal history that indicates the applicant or employee has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

[(e) If a DR or applicant has a criminal conviction history that does not include the conviction of a crime listed in THSC, §250.006, the CDSA must document that the employer, and DR if for an applicant, were informed in writing that the DR or applicant:]

[(1) has a history of at least one criminal conviction;]

[(2) has no conviction listed in the THSC, §250.006; and]

[(3) may be hired or retained for service delivery at the discretion of the employer.]

(d) [(f)] An employer or DR [and the CDSA] must retain a copy of Form 1725 completed as described in subsection (a)(2) of this section [the original or a copy of each criminal conviction history check] for each [DR,] employee[, and contractor] in accordance with record retention requirements described in §41.243 of this chapter (relating to Record Retention).

(e) An employer or DR, within five calendar days after making the hiring decision, must destroy the criminal history record documents obtained from DPS for all applicants, whether or not hired or retained by the employer or DR, obtained as described in subsection (a)(3) of this section as follows:

(1) for paper records, shredding, pulping, or burning; and

(2) for electronic records, destroying the media or using specialized software to copy over the data.

(f) [(g)] An employer or DR may, at any time, obtain or request that the FMSA [CDSA] obtain an updated criminal [conviction] history report for a [check on a DR,] current employee[, or contractor].

(g) [(h)] An employer or DR must immediately terminate an [a DR,] employee[, or contractor] if an updated criminal [conviction] history check indicates that the employee [person] has been convicted of an offense [a crime] included in THSC, §250.006(a), or the employee has been convicted of an offense included in THSC, §250.006(b) within the previous five years [§250.006].

(h) [(i)] The [If budgeted, the] actual cost of a criminal [conviction] history report [check] is paid as an employer support service expenditure.[:]

[(1) to the CDSA, if the criminal conviction history check was obtained by the CDSA;]

[(2) to the employer or DR, if the criminal conviction history check was obtained by the employer or DR; or]

[(3) to the applicant, if the criminal conviction history was obtained by the applicant.]

~~[(j) An employer or DR may conduct, or request that the CDSA conduct, a check of the applicant's background using the DPS Sex Offender Registry at <https://records.txdps.state.tx.us/soSearch/default.cfm>.]~~

~~[(k) A CDSA must, if requested by the employer or DR:]~~

~~[(1) conduct a check of the DPS Sex Offender Registry; and]~~

~~[(2) inform the employer of the results of the check by providing a copy of the results to the employer or DR.]~~

~~[(i) [(H) When contracting with a contractor [an entity], the employer or DR and the entity must complete a service agreement in which the contractor [entity] certifies that the contractor [entity] has checked and verified that each person delivering a service to the individual on behalf of the entity does not have a conviction for an offense listed in THSC, §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years [is in compliance with, and will maintain compliance with, this section].~~

§41.227. Required Registry Checks.

~~(a) For [An employer must, for each DR, and an employer of the DR must, for] each applicant for employment, an employer or DR must [contractor, or person delivering services to an individual on behalf of a contracted entity]:~~

~~(1) obtain the [DR's or] applicant's required information [written permission] on the [Form 1725,] Criminal [Conviction] History and Registry Checks, (Form 1725) necessary to conduct an initial and annual [a required] check of the DADS Nurse Aide Registry and the Employee Misconduct Registry; and~~

~~(2) [obtain a check of the registries or] request that the FMSA [CDSA] obtain and document the results of the registry check for an applicant using Form 1725 and send a copy to the employer or DR [by calling 1-800-452-3934].~~

~~(b) [An employer, DR, or CDSA must document the results of a registry check for an applicant using Form 1725.] The result of a registry check must be obtained within 30 calendar days before the hire date and within 30 calendar days after the annual employment anniversary thereafter [first date the applicant provides services to the individual].~~

~~(c) An employer must not employ an [or retain a DR or] applicant, and must immediately discharge an [a DR or] employee [or contractor,] upon verification that the person is listed:~~

~~(1) [the person is listed] as revoked in the Nurse Aide Registry; or~~

~~(2) [the person is listed] as unemployable in the Employee Misconduct Registry.~~

~~(d) An employer must:~~

~~(1) submit to the FMSA, for each applicant, contractor or vendor, the information required to conduct a monthly check of the Texas Health and Human Services Commission (HHSC) - Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) - OIG Excluded Individuals/Entities Search online searchable databases; and~~

~~(2) not employ an applicant, contractor or vendor or immediately discharge an employee, contractor or vendor if listed on the HHSC or the HHS List of Excluded Individuals and Entities.~~

~~(c) [(d)] An employer must obtain and maintain a copy of completed Form 1725 documenting the results of the registry checks.~~

~~[(e) An employer must provide a copy of each completed Form 1725 to the CDSA.]~~

~~[(f) An employer and the CDSA must maintain a copy of each completed Form 1725.]~~

~~(f) [(g) When contracting with a contractor [an entity], the employer and the entity must complete a service agreement in which the contractor [entity] certifies that it [the entity] has checked and verified that each person delivering a service to the individual on behalf of the contractor [entity] is in compliance with, and will maintain compliance with, this section.~~

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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



SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF FINANCIAL MANAGEMENT SERVICES AGENCIES (FMSAS)

40 TAC §§41.301, 41.303, 41.305 - 41.307, 41.309, 41.323, 41.325, 41.327, 41.329

STATUTORY AUTHORITY

The amendments and new sections 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 and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.301. Contracting as a Financial Management [Consumer Directed] Services Agency.

~~(a) DADS enters into a contract with an entity, including a sole proprietor, to be an FMSA [contracts with a person to be a CDSA] in accordance with Chapter 49 of this title (relating to Contracting for Community Care Services). [A CDSA provides FMS and, when requested by an individual or LAR participating in the CDS option, support consultation services.]~~

(b) An FMSA must operate as a Vendor Fiscal/Employer Agent (VF/EA) in accordance with §3504 of the Internal Revenue Service (IRS) Code.

(c) An FMSA must not use a third party to perform payroll functions.

(d) To contract as an FMSA, an entity must:

(1) have key operations staff, including the program manager and payroll staff employed by the FMSA complete pre-enrollment FMSA training provided or authorized by DADS and pass a test provided or authorized by DADS to demonstrate the knowledge and skills needed to provide FMS; and

(2) have at least one employee or contractor qualified as a support advisor and available to provide support consultation services as defined in Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities).

~~[(b) Before contracting with DADS as a CDSA, an applicant must:]~~

~~[(1) have at least one person employed by the CDSA attend and complete required CDSA training provided or authorized by DADS; and]~~

~~[(2) have at least one eligible employee or contractor to provide support consultation services as defined in Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities).]~~

(e) [(e)] An FMSA [A contracted CDSA] must not provide FMS and case management services to the same individual, except in the Client Managed Personal Attendant Services program. An FMSA [A provider of one service] must not be a related party for common ownership or control of the provider of case management [the other service]. DADS evaluates common ownership and control in accordance with [using] 1 TAC §355.102(i) (relating to General Principles of Allowable and Unallowable Costs).

(f) An FMSA must participate in all mandatory training provided or authorized by DADS.

§41.303. Obtaining and Revoking Federal and State Approval to be a Vendor Fiscal/Employer Agent.

(a) An FMSA must apply for and obtain one Federal Employer Identification Number (FEIN) for the sole purpose of filing and depositing federal income tax withholding and employment taxes (i.e., Medicare and Social Security (FICA) and Federal Unemployment Insurance taxes) on behalf of employers it represents as a fiscal/employer agent. The one FEIN must cover all states and programs under which the entity functions as a FMSA.

(b) An FMSA must obtain IRS approval to act as an agent for each employer it represents by:

(1) obtaining, within 30 calendar days after the employer enrolls into the CDS option, a separate FEIN for each employer it represents by completing and submitting an IRS Form SS-4, Application for Employer Identification Number unless the individual/representative already has an FEIN;

(2) retaining a copy of an executed IRS Form SS-4 for each employer on file;

(3) applying for and receiving agent authorization from the IRS by completing and submitting an IRS Form 2678, Employer/Payer Appointment of Agent, within 30 calendar days after the employer enrolls into the CDS option, for each employer it represents; and

(4) retaining a copy of executed IRS Form 2678 for each employer on file.

(c) The FMSA must register as a reporting agent with the Texas Workforce Commission for the sole purpose of filing and depositing state unemployment taxes.

(d) If a person is no longer qualified to be an employer or transfers to another FMSA, the FMSA must revoke the FMSA's IRS and TWC agent status.

§41.305. Appointment of a Designated Representative.

(a) The FMSA must, if the employer requests to appoint a person who is not a relative as DR, use the information provided by the employer on the Appointment of Designated Representative form (Form 1720) to:

(1) obtain the criminal history information directly from the Texas Department of Public Safety's (DPS) public online criminal history website; and

(2) notify the employer, using Form 1720, that the DR has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a), or has been convicted of an offense included in THSC, §250.006(b) within the previous five years and cannot be appointed as DR.

(b) [(a)] An FMSA [A CDSA] must maintain the following documentation regarding an employer's DR:

~~[(1) Form 1725, Criminal History and Registry Check; and the Criminal Conviction History Report from DPS;]~~

(1) [(2)] Form 1720, Appointment of a Designated Representative, for:

(A) initial designations; and

(B) any change to an appointment of a DR; and

(2) [(3)] Form 1721, Revocation of Representative, if the employer elects to participate in the CDS option without the use of a DR.

(c) [(b)] An FMSA [A CDSA] must communicate with and accept direction from the employer's DR to the extent delegated by the employer on Form 1720.

§41.306. Proof of Guardianship for Financial Management Services Agencies.

An FMSA must obtain annually from the court appointed guardian of an individual using the CDS option and maintain current documentation of guardianship or documentation of the guardian's efforts to obtain documentation from the court.

§41.307. Initial Orientation of an Employer.

(a) An FMSA [A CDSA representative] must conduct an initial face-to-face orientation [in person] with the employer, and the DR if applicable, in the residence of the individual, that: [-]

(1) explains the roles, rules, and responsibilities that apply to a CDS employer, provider, FMSA, and state agencies, including:

(A) the employer budget based on the authorized service plan;

(B) the hiring process, including documents and forms to be completed for new employees; and

(C) managing paper and electronic timesheets, due dates, payday schedules, and disbursing employee payroll checks;

(2) reviews and leaves with the employer, and DR if applicable, a printed document that clearly states the FMSA's:

(A) normal hours of operation;

(B) key persons to contact with issues or questions and how to contact these persons; and

(C) the complaint process, including how to file a complaint to the FMSA or about the FMSA;

[(b) A CDSA representative must:]

[(1) provide an overview of the CDS option, including:]

[(A) the rules and requirements of applicable government agencies; and]

[(B) the roles and responsibilities of the employer and the CDSA;]

(3) [(2)] reviews [review] Form 1735, Employer and FMSA [Consumer Directed Services Agency Service] Agreement and required attachments, emphasizing rule and policy requirements of the individual's program, including: [with the employer and the DR; and]

(A) service definitions;

(B) provider qualifications;

(C) required documentation to be kept in the home;

(D) training requirements for service providers;

(E) program staff who will be reviewing the employer's records; and

(F) if applicable, nursing requirements as described on DADS Form 1747; and

(4) reviews and leaves with the employer, and DR if applicable, printed information on how to report allegations of abuse, neglect and exploitation.

(b) The FMSA must provide to the employer or DR a printed or an electronic copy of the DADS CDS Employer Manual.

(c) [(3)] The FMSA and employer must complete Form 1736, Documentation of Employer Orientation, upon conclusion of the orientation.

(d) [(e)] The FMSA [A CDSA] must receive a completed Form 1735 with required attachments signed and dated by the employer before initiation of the CDS option.

§41.309. Financial Management Services and Employer-Agent Responsibilities.

(a) An FMSA [A CDSA] must provide FMS to an employer or DR, including:

(1) providing initial orientation as described in §41.307 of this chapter (relating to Initial Orientation of an Employer);

(2) providing ongoing training, assistance, and support for employer-related responsibilities;

(3) verifying qualifications of applicants before services are delivered;

(4) monitoring continued eligibility of service providers;

(5) approving and monitoring budgets for services delivered through the CDS option;

(6) managing payroll, including calculations of employee withholdings and employer contributions and depositing these funds with appropriate agencies;

(7) complying with applicable government regulations concerning employee withholdings, garnishments, mandated withholdings, and benefits;

(8) preparing and filing required tax forms and reports;

(9) paying allowable expenses incurred by the employer;

(10) providing status reports concerning the individual's budget, expenditures, and compliance with CDS option requirements; and

(11) responding to the employer or DR as soon as possible, but at least within two working days after receipt of information requiring a response from the FMSA [CDSA], unless indicated otherwise in this chapter.

[(b) A CDSA must obtain employer-agent status with the Internal Revenue Service, the Texas Workforce Commission, and any other appropriate government agencies within the time frame established by each agency.]

[(e) The CDSA must perform all required employer-agent responsibilities required by government agencies that regulate the relationship between the employer-agent (the CDSA) and the employer (the individual or the LAR) and maintain an original or a copy of each form required to document compliance.]

[(d) The CDSA must:]

[(1) maintain a copy of required forms and reports that the CDSA files with or receives from government agencies; and]

[(2) within 30 calendar days after receipt, provide a copy of each form and report to the employer.]

(b) [(e)] The FMSA [CDSA] must enter into a service agreement provided by DADS with each of the employer's service providers before issuing the initial payment for services to the service provider.

(c) [(f)] The FMSA [CDSA] must accept the designated portion of the program service rate or a designated fee established by the Health and Human Services Commission as payment in full for FMS delivered.

(d) [(g)] The FMSA [CDSA] must maintain originals or copies of records to document compliance with this section.

(e) [(h)] The FMSA [CDSA] must not provide FMS and case management services to the same individual as prohibited in [accordance with] §41.301 of this chapter (relating to Contracting as a Financial Management [Consumer Directed] Services Agency).

§41.323. Criminal [Conviction] History Check of an Applicant to be an Employee.

(a) The FMSA must ensure that the employer or DR signs the Criminal History and Registry Checks form (Form 1725) acknowledging that criminal history reports are confidential and must not be shared, released, or otherwise disclosed, under penalty of law.

(b) The FMSA must, using the applicant information provided by the employer on the Criminal History and Registry Checks Form (Form 1725):

(1) obtain the criminal history record information directly from the Texas Department of Public Safety's (DPS) secure online criminal history website; and

(2) if requested by the CDS employer or DR, using a DPS-approved secure method, send the original printed document of the criminal history record information to the employer within two working days after the request.

~~[(a) The Texas Department of Public Safety (DPS) criminal conviction history check must be acquired directly from the DPS Criminal History Conviction Database website available at https://records.txdps.state.tx.us/dps_web/APP_PORTAL/index.aspx.]~~

~~(c) [(b)] The criminal [conviction] history report [check] must not be dated more than 30 calendar days before the date the applicant is hired.[-]~~

~~[(1) a person assumes the status of a DR for an employer; and]~~

~~[(2) the first date the applicant provides services.]~~

~~[(e) The CDSA must receive the criminal history check from the employer, DR, or applicant. If requested by the employer or DR on Form 1725, Criminal Conviction History and Registry Checks, the CDSA must obtain the DPS criminal conviction history check within two working days after the request and provide a copy to the employer or DR.]~~

~~(d) The FMSA [CDSA] must review the criminal conviction history on each applicant and notify the employer or DR in writing, using the Criminal History Registry Checks form (Form 1725), if [that] the applicant[-]~~

~~[(1) does not have a criminal conviction and the applicant may be hired or retained at the discretion of the employer or DR;]~~

~~[(2) has one or more criminal convictions that are not listed in Texas Health and Safety Code (THSC), §250.006 (relating to Convictions Barring Employment) and the applicant may be hired or retained at the discretion of the employer or DR; or]~~

~~[(3) has been convicted of an offense [one or more criminal convictions] listed in THSC, §250.006(a), or an offense listed in §250.006(b) within the previous five years, [§250.006 (relating to Convictions Barring Employment)] and the applicant must not be hired or retained.~~

~~(e) The FMSA [CDSA] must maintain a copy of the Criminal History and Registry Checks form (Form 1725) for an applicant hired by an employer or DR.[-]~~

~~[(1) the criminal conviction history check for each applicant hired or retained by the employer; and]~~

~~[(2) the written notice provided to the employer or DR for each applicant that is:-]~~

~~[(A) hired or retained by the employer; and]~~

~~[(B) not hired or retained by the employer.]~~

~~(f) The FMSA, within five calendar days after the hiring decision, must destroy the criminal history record information obtained from DPS as described in subsection (b)(1) of this section for all applicants, whether or not hired or retained by the employer or DR, as follows:~~

~~(1) for paper records, shredding, pulping, or burning; and~~

~~(2) for electronic records, destroying the media or using specialized software to copy over the data.~~

~~(g) [(f)] The FMSA [CDSA] must obtain an updated criminal [conviction] history check for a employee [service provider], if requested by the employer or DR. If the results of the updated check indicate the employee [person] has been convicted of an offense [a crime] listed in THSC, §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years [§250.006], the FMSA [CDSA] must notify the employer or DR that the person must be terminated immediately as an employee [a service provider].~~

~~(h) [(g)] The cost of a criminal [conviction] history check and other background checks must be budgeted by the employer or DR in accordance with §41.225 of this chapter (relating to Criminal History Check of an Employee). The reimbursement for each criminal history check[-; if budgeted,] is paid as an employer support service expenditure at actual cost noted on the receipt to the FMSA [person or entity] that purchased the DPS criminal [conviction] history check.~~

~~[(h) If the employer or DR requests that the CDSA check the DPS Sex Offender Registry, the CDSA must inform the employer of the results of the check and provide a copy of the results to the employer or DR.]~~

~~§41.325. Required Registry Checks.~~

~~(a) For each applicant for delivery of services through the CDS option as an employee, an FMSA [At the request of an employer or DR, a CDSA] must:~~

~~(1) check DADS' Nurse Aid Registry and Employee Misconduct Registry not more than 30 calendar days prior to the hire date [by calling 1-800-452-3934];~~

~~(2) document and maintain the results of each registry check on Form 1725, Criminal Conviction History and Registry Check; and~~

~~(3) provide a copy of completed Form 1725 to the employer.~~

~~(b) For each applicant for delivery of services through the CDS option as an employee, contractor, or vendor, an FMSA, on a monthly basis, must:~~

~~(1) check the Texas Health and Human Services Commission (HHSC) - Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) - OIG Excluded Individuals/Entities Search online searchable databases; and~~

~~(2) document the results and retain the documentation on file.~~

~~(c) To comply with the Centers for Medicare and Medicaid Services reporting requirements and 42 Code Federal Regulations §1003.102(a)(2), an FMSA must immediately report any Medicaid exclusion findings to HHSC-OIG using the self-reporting mechanism located on the HHSC-OIG website.~~

~~(d) [(b)] The FMSA [CDSA] must obtain a copy of Form 1725 documenting the results of the registry checks if the employer or DR directly conducts a check of the registries.~~

~~(e) [(e)] The FMSA [CDSA] must not approve [a DR appointed by the employer or] an applicant for employment or for a contract or a vendor upon verification that the person is listed:~~

~~(1) [the person is listed] as revoked in the Nurse Aide Registry; [or]~~

~~(2) [the person is listed] as unemployable in the Employee Misconduct Registry; or[-]~~

~~(3) on the HHSC or HHS list of excluded individuals or entities.~~

~~[(d) Registry check results must be obtained within 30 calendar days before the first date of service delivery through the CDS option.]~~

~~(f) [(e)] The FMSA [CDSA] must notify the employer or DR in writing to immediately terminate a service provider if the person is:~~

~~(1) listed as revoked in the Nurse Aide Registry; [or]~~

(2) listed as unemployable in the Employee Misconduct Registry; or[-]

(3) listed on the HHSC or HHS list of excluded individuals or entities.

§41.327. *Verification of Applicants for Employees, Contractors, and Vendors.*

(a) For each applicant for delivery of services through the CDS option as an employee, [a] contractor, or [as a] vendor, the FMSA [CDSA] must:

(1) obtain and review documentation from the employer, DR, or applicant that is required to verify each required qualification of the applicant;

(2) notify the employer or DR of required documentation not received;

(3) notify the employer or DR using the Verification of Applicant Form (DADS Form 1729) in writing within three working days after receipt of all required documentation that the applicant is[-] or is not[-] qualified to be hired or retained for delivery of the specific service or services; and

(4) retain documentation on file if the applicant is hired or retained by the employer or DR for service delivery.

(b) For each applicant for delivery of services through the CDS option as an employee or a contractor, the FMSA must verify the applicant's social security number with the Social Security Administration.

(c) [(b)] The FMSA [CDSA] must review documentation provided by the employer, DR, applicant, or service provider, to determine if the applicant or service provider meets eligibility, licensure, certification or training requirements of the individual's program and government regulations to deliver an intended service and that the planned service meets those requirements. [The required documentation may include:]

[(1) license or certification;]

[(2) official or legal permission;]

[(3) local building codes;]

[(4) Americans with Disabilities Act of 1990 as amended; and]

[(5) requirements for automotive adaptive equipment and vehicle modifications.]

(d) [(e)] The FMSA [CDSA] must not pay for services delivered if the FMSA [CDSA] has not provided written notice to the employer or DR of the service provider's eligibility even if the service provider is determined later by the FMSA [CDSA] to be eligible.

(e) [(d)] The FMSA [CDSA] must pay, but not claim reimbursement through DADS, for services delivered if the FMSA [CDSA] notified the employer or DR in error that the applicant was eligible.

(f) [(e)] If an applicant has previously been terminated by the employer or DR, the employer or DR and the FMSA [CDSA] must complete the eligibility process as a new applicant.

§41.329. *Continued Eligibility of an Employee, Contractor, or Vendor.*

(a) For each employee, contractor, or vendor, an FMSA [a CDSA] must:

(1) obtain [documentation] from the employer, DR, or service provider a copy of a renewed license or certificate, if required by

the individual's program within 30 calendar days after the expiration date of the current document on file required to maintain qualifications;

(2) notify the employer or DR to send [of] required documentation to the FMSA, if not received within the 30 days;

(3) notify the employer or DR in writing within three working days after receipt of all required documentation if the service provider is not qualified to continue service delivery; and

(4) retain the documentation on file.

(b) The FMSA [CDSA] must obtain and retain documentation that the service provider continues to meet qualifications as required by the individual's program rules, policies, and manuals, and other state and federal [government] regulations including: [-]

(1) an annual check of DADS Nurse Aid Registry and Employee Misconduct Registry; and

(2) a monthly check of the Texas Health and Human Services Commission (HHSC) - Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) - OIG Excluded Individuals/Entities Search online searchable databases.

(c) The FMSA must notify the employer or DR in writing to immediately terminate a service provider if the person is:

(1) listed as revoked in the Nurse Aide Registry;

(2) listed as unemployable in the Employee Misconduct Registry; or

(3) is listed on the HHSC or HHS List of Excluded Individuals and Entities.

(d) To comply with the Centers for Medicare and Medicaid Services reporting requirements and 42 Code of Federal Regulations §1003.102(a)(2), an FMSA must immediately report any Medicaid exclusion findings to HHSC-OIG using the self-reporting mechanism located on the HHSC-OIG website.

(e) The FMSA must obtain an updated criminal conviction history check for an employee, if requested by the employer or DR. If the results of the updated check indicate the person has been convicted of a crime listed in THSC, §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years, the FMSA must notify the employer or DR that the person must be terminated immediately as an employee.

(f) [(e)] The FMSA [CDSA] must not pay for services delivered by a service provider if the FMSA [CDSA] has not documented continuing eligibility for service delivery to the employer or DR, even if the service provider is determined later by the FMSA [CDSA] to be qualified.

(g) [(d)] The FMSA [CDSA] must pay, and not claim reimbursement through DADS, for services delivered by a service provider if the FMSA [CDSA] had notified the employer or DR in error that the service provider was qualified.

[(e) For the CDSA to continue payment to the service provider, the CDSA must receive from the employer, DR, or service provider, a copy of a renewed license, certificate, or other official or legal permission within 30 calendar days after the expiration date of the current document on file.]

(h) [(f)] The FMSA [CDSA] must not pay, and must not claim reimbursement from DADS, for services delivered on dates that the service provider was not eligible.

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 December 21, 2012.

TRD-201206632
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 10, 2013
For further information, please call: (512) 438-3734



SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF CONSUMER DIRECTED SERVICES AGENCIES

40 TAC §41.303

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; 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 repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§41.303. Employer Registration.

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 December 21, 2012.

TRD-201206633
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 10, 2013
For further information, please call: (512) 438-3734



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

SUBCHAPTER G. ENFORCEMENT

40 TAC §98.105

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §98.105, concerning administrative penalties, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements.

BACKGROUND AND PURPOSE

The purpose of the new section is to implement Senate Bill 223, 82nd Legislature, Regular Session, 2011, which added provisions to the Texas Human Resources Code (THRC), Chapter 103, to allow DADS to assess an administrative penalty against an adult day care facility that violates licensing requirements. In addition to establishing rules for applying an administrative penalty, new §98.105 includes a proposed administrative penalty schedule that reflects categories of violations and corresponding penalties to be assessed for each violation cited during a survey of a licensed adult day care facility.

The proposed new section allows DADS to impose an administrative penalty on an adult day care facility if the facility violates a rule, standard, or order under THRC Chapter 103 or the Texas Administrative Code (TAC), Title 40, Part 1, Chapter 98, Adult Day Care and Day Activity and Health Services Requirements, or the term of a license issued under 40 TAC Chapter 98.

Administrative penalties proposed in new §98.105 range from \$100 to \$500, depending on the classification of a violation. The administrative penalties associated with each violation are designed to deter potential facility violations.

SECTION-BY-SECTION SUMMARY

Proposed new §98.105 establishes that DADS may assess an administrative penalty if an adult day care facility violates a rule, standard, or order under THRC Chapter 103 or 40 TAC Chapter 98 or the term of a license issued under 40 TAC Chapter 98; submits a false statement with regard to licensure or investigation; refuses to allow DADS to inspect records or any portion of the premises of the facility; willfully interferes with the work of a representative of DADS; fails to pay an assessed penalty; or fails to notify DADS of a change of ownership. New §98.105 establishes criteria for assessing administrative penalties and continuing violations and an administrative penalty schedule. It also establishes criteria regarding: 1) the correction of a violation; 2) a recommendation to assess an administrative penalty for a violation; 3) an administrative hearing or judicial review; 4) the assessment and payment of an administrative penalty; and 5) the accrual of interest on an unpaid penalty and remittance of a penalty and interest.

FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the proposed new section is 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 new section is in effect is an estimated increase in rev-

enue of \$22,825 in fiscal year (FY) 2013; \$56,025 in FY 2014; \$49,800 in FY 2015; \$43,575 in FY 2016; \$37,350 in FY 2017; and \$31,125 in FY 2018.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new section may have an adverse economic effect on small businesses or micro-businesses, because the proposed new section will allow DADS to impose an administrative penalty ranging from \$100 to \$500. However, a penalty may be imposed only if an adult day care facility fails to comply with a rule, standard, or order under THRC Chapter 103 or 40 TAC Chapter 98 or the term of a license issued under 40 TAC Chapter 98. By complying with the requirements, a facility will not incur a penalty.

DADS estimates that the number of small businesses or micro-businesses subject to the proposed new section is 498. The economic impact for a small business or micro-business will vary according to the number and type of violations that result in an administrative penalty.

No alternatives to the proposed rule were considered, as the new section implements Senate Bill 223, 82nd Legislature, Regular Session, 2011, which requires DADS to take into account certain factors when determining the amount of an administrative penalty, as stated in subsection (b) of the proposed §98.105.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new section is in effect, the public benefit expected as a result of enforcing the new section is to ensure the health and safety of adult day care clients by allowing additional remedies for facilities that fail to comply with licensing rules.

Ms. Durden anticipates that there will be an economic cost to persons who are required to comply with the new section, because the proposed new section will allow DADS to impose an administrative penalty ranging from \$100 to \$500. However, a penalty may be imposed only if an adult day care facility fails to comply with a rule, standard, or order under THRC Chapter 103 or 40 TAC Chapter 98, or the term of a license issued under 40 TAC Chapter 98. By complying with the requirements, a facility will not incur a penalty. The new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us*. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-

delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R01" in the subject line.

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055, and Texas Human Resources Code, §§103.001 - 103.011 and §161.021.

§98.105. Administrative Penalties.

(a) DADS may assess an administrative penalty if an adult day care facility:

(1) violates Texas Human Resources Code (THRC) Chapter 103, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the facility knows or should know is false:

(A) on an application for a license or a renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by DADS;

(3) refuses to allow a DADS representative to inspect:

(A) a book, record, or file required to be maintained by an adult day care facility; or

(B) any portion of the premises of an adult day care facility;

(4) willfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(5) willfully interferes with a DADS representative who is preserving evidence of a violation of THRC Chapter 103, a rule adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under THRC Chapter 103 or a rule adopted under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.

(b) DADS assesses administrative penalties against an adult day care facility in accordance with the schedule of appropriate and graduated penalties established in this section. DADS considers the following in determining the amount of an administrative penalty:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or

potential hazard created by the situation to the health or safety of the public;

- (2) the history of previous violations by a facility;
- (3) the amount necessary to deter future violations;
- (4) the facility's efforts to correct the violation; and
- (5) any other matter that justice may require.

(c) Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction will be presumed to be the actual date of correction unless it is later determined by DADS that the correction was not made by that date or was not satisfactory.

(d) The administrative penalty schedule includes violations that warrant an administrative penalty.
Figure: 40 TAC §98.105(d)

(e) DADS may not collect an administrative penalty from an adult day care facility if, not later than the 45th day after the date the facility receives notice under subsection (j) of this section, the facility corrects the violation.

(f) Subsection (e) of this section does not apply to:

(1) a violation that DADS determines:

(A) results in serious harm to or death of a person attending the adult day care facility;

(B) constitutes a serious threat to the health and safety of a person attending the facility; or

(C) substantially limits the facility's capacity to provide care;

(2) a violation described by subsection (a)(2) - (7) of this section; or

(3) a violation of THRC Chapter 102.

(g) An adult day care facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, DADS may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. DADS is not required to provide the facility with an opportunity to correct the subsequent violation.

(h) DADS issues a preliminary report stating the facts on which DADS concludes that a violation has occurred after DADS has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(i) In the report, DADS may recommend the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(j) DADS provides a written notice of a preliminary report to the adult day care facility not later than 10 days after the date DADS issues the preliminary report. The written notice includes:

(1) a brief summary of each violation;

(2) the amount of each recommended administrative penalty;

(3) a statement of whether a violation is subject to correction in accordance with subsection (e) of this section and, if the violation is subject to correction, a statement of:

(A) the date on which the facility must file with DADS a plan of correction for approval by DADS; and

(B) the date on which the facility must complete the plan of correction to avoid assessment of the administrative penalty; and

(4) a statement that the facility has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(k) Not later than 20 days after the date on which an adult day care facility receives a written notice of a preliminary report, the facility may:

(1) give DADS written notice that the facility agrees with DADS report and consents to the recommended penalty; or

(2) make a written request for an administrative hearing.

(l) If a violation is subject to correction under subsection (e) of this section, the adult day care facility must submit a plan of correction to DADS for approval not later than 10 days after the date on which the facility receives the written notice.

(m) If a violation is subject to correction, and the adult day care facility reports to DADS that the violation has been corrected, DADS inspects the correction or takes any other step necessary to confirm the correction and notify the facility that:

(1) the correction is satisfactory and DADS will not assess an administrative penalty; or

(2) the correction is not satisfactory and DADS recommends an administrative penalty.

(n) Not later than 20 days after the date on which an adult day care facility receives a notice that the correction is not satisfactory and DADS recommends an administrative penalty, the facility may:

(1) give DADS written notice that the facility agrees with DADS determination and consents to the recommended administrative penalty; or

(2) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(o) If an adult day care facility consents to the recommended administrative penalty or does not timely respond to a notice sent under subsection (j) of this section (written notice of the preliminary report), the DADS commissioner or commissioner's designee assesses the recommended administrative penalty. If the DADS commissioner or commissioner's designee assesses the penalty, DADS gives written notice of the penalty to the facility and the facility must pay the penalty within 30 days after receiving the notice.

(p) An administrative hearing is held in accordance with Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) and HHSC rules at 1 Texas Administrative Code Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(q) An administrative law judge sets a hearing and gives notice of the hearing if an adult day care facility that is assessed a penalty requests a hearing.

(r) The hearing is held before an administrative law judge who makes findings of fact and conclusions of law regarding the occurrence of a violation under THRC Chapter 103, a rule adopted under this chapter or a term of a license issued under this chapter.

(s) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the DADS commissioner or commissioner's designee, by order, finds:

(1) a violation has occurred and assesses an administrative penalty; or

(2) a violation has not occurred.

(t) DADS commissioner or the commissioner's designee provides notice of the findings made under subsection (s) of this section to the adult day care facility charged with a violation. If the DADS commissioner finds that a violation has occurred, the commissioner or commissioner's designee provides written notice to the facility of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable on the penalty and the date on which interest begins to accrue; and

(4) the facility's right to judicial review of the order of the commissioner.

(u) Not later than the 30th day after the date on which the order of the DADS commissioner or commissioner's designee is final, the adult day care facility assessed an administrative penalty must:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(v) Notwithstanding subsection (o) of this section, DADS may permit an adult day care facility to pay an administrative penalty in installments.

(w) If an adult day care facility does not pay an administrative penalty within the period provided by subsection (o) or (u) of this section or in accordance with the installment plan permitted by DADS:

(1) the penalty is subject to interest; and

(2) DADS may refer the matter to the attorney general for collection of the penalty and interest.

(x) Interest accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(y) If the amount of a penalty is reduced or the assessment of a penalty is not upheld on judicial review, DADS commissioner or commissioner's designee must:

(1) remit to the adult day care facility the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(z) Accrued interest on the amount remitted by the DADS commissioner or commissioner's designee must be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the adult day care facility.

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 December 21, 2012.

TRD-201206628

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 10, 2013

For further information, please call: (512) 438-4466

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WITHDRAWN RULES

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

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135, 5.4136, 5.4141 - 5.4149

Proposed amended §§5.4101, 5.4102, 5.4121, 5.4133, and 5.4141 - 5.4147; and new §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, published in the June 22, 2012, issue of the

Texas Register (37 TexReg 4529), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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

TRD-201206651



28 TAC §§5.4131, §5.4132

The proposed repeal of §5.4131 and §5.4132, published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4546), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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

TRD-201206652



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

The Texas Department of Agriculture (department) adopts amendments to Chapter 17, Subchapter B, §§17.30 - 17.33, concerning the department's livestock facilities; Subchapter C, §§17.51 - 17.53, 17.55 - 17.57, 17.59, and 17.60, concerning the GO TEXAN certification and marketing program; and Subchapter D, §17.73, concerning the department's farmers market certification program. The department adopts new Chapter 17, Subchapter C, §§17.61 - 17.63, concerning the department's GO TEXAN certification and marketing program; and Subchapter J, §§17.600 - 17.604, concerning the department's GO TEXAN certified retirement community program. The department also adopts the repeal of Chapter 17, Subchapter C, §17.54, concerning denial of application to use the GO TEXAN and design mark; and existing Subchapter J, §§17.600 - 17.610, concerning the GO TEXAN Wildlife Program. The amendments, new sections, and repeals are adopted without changes to the proposal as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7825).

The amendments to §§17.30 - 17.33 are adopted to clarify references to the department's export-import facilities and make those consistent with the Texas Agriculture Code, Chapter 146, Subchapter B.

The amendment to the title of Subchapter C, as well as amendments made throughout Subchapter C, are adopted to correct the terminology used to refer to the GO TEXAN certification mark, previously referred to as the "GO TEXAN and Design Mark." The amendments to §17.51 clarify and add definitions related to the GO TEXAN program. The amendments to §17.52 add a reference to the new §17.63, as well as correct terminology referring to the GO TEXAN certification mark. The amendment to §17.53 incorporates the application denial process defined in §17.54, which is repealed. The amendments to §17.55 add renewal application procedures for those authorized to utilize the GO TEXAN certification mark. The amendments to §17.56 and §17.59 correct the terminology used to refer to the GO TEXAN certification mark. The amendments to §17.57 clarify persons eligible to qualify for associate GO TEXAN registration, as well as terminology associated with eligible registrants. The amendments to §17.60 outline benefits available to GO TEXAN Restaurant Program registrants and clarify requirements to be eligible for the program.

New §17.61 incorporates Subchapter J, §§17.600 - 17.610, concerning GO TEXAN Wildlife Program, which is repealed, into Subchapter C. New §17.62 creates a new GO TEXAN program for farm and ranch registrants and outlines application and eligibility requirements. New §17.63 defines eligibility for licensing of the GO TEXAN certification mark for commercial use, including definition of application, and provides for licensing and royalty fees.

The amendments to §17.73 define a minimum percentage of Texas grown products that farmers markets are required to provide and also make a grammatical correction.

New Subchapter J, §§17.600 - 17.604, concerning GO TEXAN Certified Retirement Community Program, transfers this program from 4 TAC Chapter 29, Subchapter C, to Chapter 17, with no substantive changes made to eligibility requirements or fees.

The amendments and new sections are also adopted to increase recognition of the GO TEXAN certification mark through additional outreach methods and to increase the consumption of Texas agricultural products through the continuation of the GO TEXAN Program.

The department received one comment in general support of the proposal.

One comment was received from an individual on a part of §17.73 that was not proposed for amendment. The commenter indicated confusion regarding the term "merchantable quality," a term used in §17.73(5). The commenter suggested that a definition of "merchantable quality" should be added to §17.73. As noted, the use or definition of the term "merchantable quality" was not proposed for amendment. In addition, the department believes that a clarification or definition is not required because the common meaning that a product must be of a quality that can be sold to and bought by the public is widely accepted.

Other comments were received indicating concerns that fees for members of the general GO TEXAN program were being increased by the proposal. There was some confusion, primarily, that the new licensing fee established in new §17.63 for the licensing of the use of the GO TEXAN mark for commercial purposes would have to be paid by general GO TEXAN members. This is not the case, general GO TEXAN members will continue to pay fees established by §17.55.

SUBCHAPTER B. LIVESTOCK FACILITIES

4 TAC §§17.30 - 17.33

The amendments to §§17.30 - 17.33 are adopted pursuant to the Texas Agriculture Code (the Code), §146.021, which provides the department with the authority to operate livestock facilities to receive and hold for processing animals and animal products transported in international trade and establish and collect reasonable fees for yardage, maintenance, feed, medical care, fa-

cility use, and other necessary expenses incurred in the course of processing those animals; and §12.016, which provides the department with the authority to adopts rules as necessary to administer its duties under the Code.

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

Filed with the Office of the Secretary of State on December 21, 2012.

TRD-201206635

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: January 10, 2013

Proposal publication date: October 5, 2012

For further information, please call: (512) 463-4075



SUBCHAPTER C. GO TEXAN CERTIFICATION MARK

4 TAC §§17.51 - 17.53, 17.55 - 17.57, 17.59 - 17.63

The amendments to §§17.51 - 17.53, 17.55 - 17.57, 17.59, and 17.60; and new §§17.61 - 17.63 are adopted pursuant to the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175; and §12.031, as amended by Senate Bill 1086, 82nd Legislature, 2011, which provides the department with the authority to assess and collect fees or royalties on department-owned registered certification marks and to collect event fees or royalties for marketing and promotional activities authorized by Texas Agriculture Code, §12.0175.

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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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



SUBCHAPTER C. GO TEXAN AND DESIGN MARK

4 TAC §17.54

The repeal of §17.54 is adopted under Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state and adopt rules to administer a program established under §12.0175.

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

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TRD-201206637

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



SUBCHAPTER D. CERTIFICATION OF FARMERS MARKET

4 TAC §17.73

The amendments to §17.73 are adopted pursuant to the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state and adopt rules to administer a program established under §12.0175.

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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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



SUBCHAPTER J. GO TEXAN WILDLIFE PROGRAM

4 TAC §§17.600 - 17.610

The repeal of §§17.600 - 17.610 is adopted pursuant to the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175.

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075



SUBCHAPTER J. GO TEXAN CERTIFIED RETIREMENT COMMUNITY PROGRAM

4 TAC §§17.600 - 17.604

New §§17.600 - 17.604 are adopted pursuant to the Texas Agriculture Code, §12.040, which provides for the department to establish and maintain a Texas Certified Retirement Community Program and adopt rules to implement the program.

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

Filed with the Office of the Secretary of State on December 21, 2012.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075



CHAPTER 29. ECONOMIC DEVELOPMENT

The Texas Department of Agriculture (the department) adopts an amendment to Chapter 29, Subchapter A, §29.3, concerning Staffing; Cooperation with Other Agencies; and the repeal of Chapter 29, Subchapter B, §§29.20 - 29.33, concerning the GO TEXAN Rural Community Program; and Subchapter C, §§29.50 - 29.56, concerning the GO TEXAN Certified Retirement Community Program. The amendment to §29.3 and the repeal of §§29.20 - 29.33 and §§29.50 - 29.56 are adopted without changes to the proposal as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7837)

The amendment to §29.3 is adopted to eliminate reference to the Texas Department of Economic Development, which no longer exists, and to update the section.

The repeal of Chapter 29, Subchapter B, §§29.20 - 29.33 is adopted to allow for the program and benefits to be incorporated into the GO TEXAN Associate Registrant section located in 4 TAC Chapter 17, Subchapter C, §17.57.

The repeal of Chapter 29, Subchapter C, §§29.50 - 29.56 is adopted to allow for that subchapter to be added to 4 TAC Chapter 17 as Subchapter J, §§17.600 - 17.604.

No comments were received on the proposal.

SUBCHAPTER A. ECONOMIC DEVELOPMENT PROGRAM

4 TAC §29.3

The amendment to §29.3 is adopted pursuant to the Texas Agriculture Code, §12.027, which provides the department with the authority to develop and maintain economic development programs for rural areas in the state to promote economic growth in rural areas and assist communities in maximizing potential business opportunities, and to charge member fees for participation in such programs.

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

Filed with the Office of the Secretary of State on December 21, 2012.

TRD-201206642
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075



SUBCHAPTER B. GO TEXAN RURAL COMMUNITY PROGRAM RULES

4 TAC §§29.20 - 29.33

The repeal of Chapter 29, Subchapter B, §§29.20 - 29.33, is adopted pursuant to the Texas Agriculture Code, §12.027, which provides the department with the authority to develop and maintain economic development programs for rural areas in the state to promote economic growth in rural areas and assist communities in maximizing potential business opportunities, and to charge member fees for participation in such programs.

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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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075



SUBCHAPTER C. GO TEXAN CERTIFIED RETIREMENT COMMUNITY PROGRAM

4 TAC §§29.50 - 29.56

The repeal of Chapter 29, Subchapter C, §§29.50 - 29.56, is adopted pursuant to the Texas Agriculture Code, §12.040, which provides for the department to establish and maintain a Texas Certified Retirement Community Program and adopt rules to implement the program.

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

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TRD-201206644

Dolores Alvarado Hibbs
General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES

The Texas Racing Commission adopts amendments to 16 TAC §§311.1, 311.2, 311.3, 311.5, 311.101, and 311.102. These sections relate to occupational licensing requirements, the application procedure to acquire an occupational license, background investigations, license categories and fees, and licenses for horse owners and greyhound owners. The rule amendments are adopted without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8409) and will not be republished.

The adopted changes to §311.1 prohibit an association from employing an unlicensed employee to work in an occupation that affords the employee an opportunity to influence racing with pari-mutuel wagering or to work in an occupation that provides significant access to the backside or restricted areas of a race-track. The amendment to §311.2 clarifies that applicants for a new license or for a license renewal may submit the application over the Internet. The amendment to §311.3 removes the provisions that permit the waiver of fingerprint requirements based on the results of a previous background check conducted in another jurisdiction. The amendment to §311.5 corrects an error in the rule by setting the licensing fee for a multiple owner's license at \$105, not \$100. The amendments to §311.101 and §311.102 add language to allow additional time for individuals to complete an application for a horse or greyhound owner's license without losing the application fee. These applications will be treated as incomplete unless the applicant actually tries to use the license by entering an animal in a race.

No comments were received regarding the adoption of these amendments.

SUBCHAPTER A. LICENSING PROVISIONS DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §§311.1 - 311.3, 311.5

The amendments are adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, §7.01, which requires the Commission to categorize the occupations of racetrack employees, and §7.02, which requires the Commission to specify by rule the qualifications and experience required for licensing in each category of occupation.

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

Filed with the Office of the Secretary of State on December 21, 2012.

TRD-201206617

Mark Fenner
General Counsel

Texas Racing Commission

Effective date: January 10, 2013

Proposal publication date: October 26, 2012

For further information, please call: (512) 833-6699



SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §§311.101, §311.102

These amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §7.02, which requires the Commission to specify by rule the qualifications and experience required for licensing in each category of occupation.

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

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TRD-201206619

Mark Fenner
General Counsel

Texas Racing Commission

Effective date: March 1, 2013

Proposal publication date: October 26, 2012

For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING

The Texas Racing Commission adopts amendments to 16 TAC §§321.15, 321.29, 321.31, 321.46, 321.215, 321.320, and 321.321. The Commission also adopts the repeal of Subchapter B, comprised of §§321.101, 321.103, 321.105, 321.107, 321.121, 321.123 - 321.125, 321.127, 321.131, 321.133, 321.135, 321.137, 321.139, 321.141, and 321.143. Existing Subchapter B, Divisions 1 - 3, will be replaced with a single

new rule, §321.101. These sections relate to: the licensing of totalisator companies; the information that must be printed on the face of each mutuel ticket and voucher; payments made after a ticket machine fails to issue a paper ticket; the list of multiple wager types; the treatment of carryover pools from the super hi-five and fortune pick (n) wagers; and the requirements and operating environment of totalisator systems. With the exception of the amendments to §321.31 and §321.46, the rule amendments and repeals are adopted without changes to the proposal as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8412) and will not be republished. Section 321.31 and §321.46 are adopted with changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8412) and will be republished.

The change to §321.15 makes a technical correction to adjust for the repeal of §321.123. The changes to §321.29 require that each pari-mutuel ticket be printed with a notice that it expires one year after issuance. Similarly, the change to §321.31 requires that a pari-mutuel voucher be printed with a notice that it expires one year after issuance. The adoption also corrects two instances in the proposal in which the term "ticket" was used instead of "voucher". The change to §321.46 permits associations to modify and use their existing forms to report any payments made after a ticket machine fails to issue a ticket and establishes a 24-hour deadline to report the transaction to the Commission. The adoption also corrects a misspelling of the word "mutuel" in the proposal. The change to §321.215 makes a technical clarification by adding the super hi-five and the fortune pick (n) wagers to the list of Multiple Wagers. The change to §321.320 authorizes an association to have a mandatory payout of the pool in a super hi-five wager on the last day of a race meet. The change to §321.321 specifies that the minor pool in a fortune pick (n) wager will be combined with the major pool for that day's wagering and both pools will be added to the carryover jackpot, which is then carried forward to the next fortune pick (n) pool. The repeal of each rule within Divisions 1, 2 and 3 of Chapter 321, Subchapter B is made in conjunction with the adoption of new §321.101, which adopts by reference the Totalisator Technical Standards of the Association of Racing Commissioners International (ARCI).

No comments were received regarding the adoption of the amendments.

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.15

The amendments are adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

Filed with the Office of the Secretary of State on December 21, 2012.

TRD-201206621

Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 10, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 833-6699

DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §§321.29, 321.31, 321.46

These amendments are adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

§321.31. *Vouchers.*

Each voucher issued must have printed on its face:

- (1) the name of the racetrack facility where the voucher was issued;
- (2) the unique computer-generated voucher number;
- (3) the date the voucher was issued;
- (4) the number of the ticket-issuing machine;
- (5) the dollar amount of the voucher; and
- (6) appropriate language to indicate the expiration of the voucher shall be the first anniversary of the day the voucher was issued.

§321.46. *Payment on No Ticket Issue.*

When a ticket issuing machine does not produce a paper ticket due to a mechanical failure, the mutuel manager may validate the wager through totalisator logs. If the transaction is a winning wager and the mutuel manager pays the patron, then the mutuel manager shall report the transaction to the Commission within 24 hours on a form prescribed by the association and approved by the executive secretary. The form must contain, at the minimum, the following:

- (1) Association name;
- (2) Date and time of the machine failure;
- (3) Terminal number;
- (4) Bet description to include:
 - (A) racetrack;
 - (B) race number;
 - (C) animal number;
 - (D) bet type;
 - (E) amount wagered;
 - (F) total ticket cost;
 - (G) winning amount; and
 - (H) ticket serial number;
- (5) Patron's name and phone number;
- (6) Signature of the patron;
- (7) Description of the incident;

- (8) Date and time of the report; and
- (9) Signature of the mutual manager.

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

Filed with the Office of the Secretary of State on December 21, 2012.

TRD-201206620
 Mark Fenner
 General Counsel
 Texas Racing Commission
 Effective date: January 10, 2013
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 For further information, please call: (512) 833-6699



SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

DIVISION 1. FACILITIES AND EQUIPMENT

16 TAC §§321.101, 321.103, 321.105, 321.107

The repeals are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The repeals implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on December 21, 2012.

TRD-201206622
 Mark Fenner
 General Counsel
 Texas Racing Commission
 Effective date: January 10, 2013
 Proposal publication date: October 26, 2012
 For further information, please call: (512) 833-6699



DIVISION 2. OPERATIONAL REQUIREMENTS

16 TAC §§321.121, 321.123 - 321.125, 321.127

The repeals are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The repeals implement Texas Revised Civil Statutes Annotated, Article 179e.

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

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 Texas Racing Commission
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 For further information, please call: (512) 833-6699



DIVISION 3. REPORTING AND LOG REQUIREMENTS

16 TAC §§321.131, 321.133, 321.135, 321.137, 321.139, 321.141, 321.143

The repeals are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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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 Mark Fenner
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 Texas Racing Commission
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 For further information, please call: (512) 833-6699



SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

16 TAC §321.101

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The rule implements Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on December 21, 2012.

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Mark Fenner
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SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.215

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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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Mark Fenner
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For further information, please call: (512) 833-6699



DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.320, §321.321

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on December 21, 2012.

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Mark Fenner
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Texas Racing Commission
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For further information, please call: (512) 833-6699



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.

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review of 4 TAC Chapter 17, concerning Marketing and Promotion, consisting of: Subchapter A, concerning Texas Commodity Referendum Law; Subchapter B, concerning Livestock Export Facilities; Subchapter C, concerning GO TEXAN and Design Mark; Subchapter D, concerning Certification of Farmers Market; Subchapter E, concerning Texas-Israel Exchange Research Program; Subchapter F, concerning Texas Wine Marketing Assistance Program; Subchapter G, concerning GO TEXAN Partner Program Rules; Subchapter H, concerning Texas Shrimp Marketing Assistance Program; Subchapter I, concerning Texas Equine Incentive Program; and Subchapter J, concerning GO TEXAN Wildlife Program. The department readopts all sections in Chapter 17, Subchapters A - J, along with the amendments, new sections and repeals proposed concurrently with the department's Notice of Intent to Review. The Notice of Intent to Review was published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 8039). No comments were received on the proposed rule review.

As part of the review process, the department proposed amendments to Chapter 17, Subchapter B, §§17.30 - 17.33; Subchapter C, §§17.51 - 17.53, 17.55 - 17.57, 17.59, and 17.60; and Subchapter D, §17.73; new Chapter 17, Subchapter C, §§17.61 - 17.63 and Subchapter J, §§17.600 - 17.604; and the repeal of Chapter 17, Subchapter C, §17.54 and existing Subchapter J, §§17.600 - 17.610. The proposal was published in the Proposed Rules section of the October 5, 2012, issue of the *Texas Register* (37 TexReg 7825). The proposed amendments, new sections and repeals are adopted without changes to the proposal in this issue of the *Texas Register*.

Texas Government Code, §2001.039, requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of 4 TAC Chapter 17, Subchapters A - J, by the department at this time indicates that, with the exception of the proposed amendments, new sections and repeals in Subchapters B, C, D, and J, the reason for readopting without changes all other sections in this chapter continues to exist.

TRD-201206641
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 21, 2012

◆ ◆ ◆
The Texas Department of Agriculture (the department) adopts the review of 4 TAC Chapter 29, concerning Economic Development, consisting of: Subchapter A, concerning Economic Development Program; Subchapter B, concerning GO TEXAN Rural Community Program Rules; Subchapter C, concerning GO TEXAN Certified Retirement Community Program; Subchapter D, concerning Texas Rural Investment Fund Program; and Subchapter E, concerning Rural Economic Development and Investment Program. The department readopts all sections in Chapter 29, Subchapters A - E, along with the amendment and repeals proposed concurrently with the department's Notice of Intent to Review. The Notice of Intent to Review was published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 8039). No comments were received on the proposed rule review.

As part of the review process, the department proposed an amendment to Chapter 29, Subchapter A, §29.3; and the repeal of Chapter 29, Subchapter B, §§29.20 - 29.33 and Subchapter C, §§29.50 - 29.56. The proposal was published in the Proposed Rules section of the October 5, 2012, issue of the *Texas Register* (37 TexReg 7837). The proposed amendment and repeals are adopted without changes to the proposal in this issue of the *Texas Register*.

Texas Government Code, §2001.039, requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment by the department of Chapter 29, Subchapters A - E, indicates that along with the adopted amendment of Subchapter A and the repeal of Subchapters B and C, the reason for readopting without changes all remaining sections in this chapter continues to exist.

TRD-201206645
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 21, 2012

◆ ◆ ◆
Texas Judicial Council

Title 1, Part 8

The Texas Indigent Defense Commission, a standing committee of the Texas Judicial Council, has completed its review and re-adopts without amendment Chapter 174, Subchapter A, §§174.1 - 174.4, concerning Minimum Continuing Legal Education Requirements; and Subchapter B, §§174.10 - 174.25, concerning Contract Defender Program Require-

ments. The notice of review was published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7301).

Texas Government Code §2001.039 requires agencies to review and consider for re-adoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The Commission reviewed each section of Chapter 174, Subchapters A and B and determined that the original justification for the rules continues to exist.

No comments were received in response to the proposed rule review.

This concludes the review of Chapter 174, Subchapters A and B.

TRD-201206653

Jim Bethke

Executive Director, Texas Indigent Defense Commission

Texas Judicial Council

Filed: December 28, 2012



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §98.105(d)

ADMINISTRATIVE PENALTY SCHEDULE Adult Day Care Facilities			
There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.			
An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.17(a) Change of Staff: New Director	✓		
§98.17(b) Change of Staff: New Activities Director	✓		
§98.17(c) Change of Staff: Request for Extension	✓		
§98.23(a) Relocation: DADS Approval Required			\$500
§98.42(b)(1) Safety: NFPA		✓	
§98.42(b)(2)(C) Safety: Fire Alarm/Smoke Detectors		✓	
§98.42(b)(2)(D) Safety: Fire Alarm Inspection		✓	
§98.42(b)(2)(D)(i) Safety: Contract Execution		✓	
§98.42(b)(2)(D)(ii) Safety: Inspection Form		✓	
§98.42(b)(2)(D)(iii) Safety: Fire Alarm Visual Inspection		✓	
§98.42(b)(2)(D)(iv) Safety: Fire Alarm Testing		✓	
§98.42(b)(2)(D)(v) Safety: Fire Alarm Maintenance		✓	
§98.42(b)(2)(D)(vi) Safety: Smoke Dampers		✓	
§98.42(b)(2)(D)(vii) Safety: Documentation of Compliance		✓	
§98.42(b)(2)(E) Safety: Sprinkler System		✓	
§98.42(b)(2)(E)(i)-(vii) Safety: Sprinkler System		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.42(b)(2)(F)(i) Safety: Mixed Occupancy		✓	
§98.42(b)(2)(F)(ii) Safety: Two Remote Exits		✓	
§98.42(b)(2)(F)(ii)(I) Safety: Hardware Opens with Single Motion		✓	
§98.42(b)(2)(F)(ii)(II) Safety: Occupant Loads Greater Than 50		✓	
§98.42(b)(2)(F)(iii) Safety: Window for Rescue/Ventilation		✓	
§98.42(b)(2)(F)(iv) Safety: Interior Stairways		✓	
§98.42(b)(2)(F)(v) Safety: Floor Coverings		✓	
§98.42(b)(2)(F)(vi) Safety: Smoke Detection System		✓	
§98.42(b)(2)(F)(vii) Safety: Fire Department Notification		✓	
§98.42(b)(3)(A) Safety: Smoke Detector Powered by Facility Electricity		✓	
§98.42(b)(3)(B) Safety: Smoke Compartmentation		✓	
§98.42(b)(3)(C) Safety: Emergency Lighting		✓	
§98.42(b)(3)(D) Safety: Electrical Receptacle Covers		✓	
§98.42(b)(3)(E) Safety: Ventilation Control		✓	
§98.42(b)(3)(F) Safety: Public Corridors		✓	
§98.42(b)(4)(A) Safety: New Construction Codes, Municipal		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.42(b)(4)(B) Safety: New Construction Codes, National		✓	
§98.42(b)(4)(C) Safety: HVAC		✓	
§98.42(b)(4)(D)(i)-(ii) Safety: Electrical and Illumination Systems		✓	
§98.42(b)(5) Safety: Existing Building		✓	
§98.42(b)(6) Safety: Permanent Type Construction			\$500
§98.42(b)(7) Safety: Walking Surface		✓	
§98.42(b)(8) Safety: Modifications to Existing Buildings		✓	
§98.42(c)(1)(A) Safety: Fire Marshal Inspection Report		✓	
§98.42(c)(1)(B) Safety: Storage of Materials to Minimize Fire Hazard			\$500
§98.42(c)(1)(C) Safety: Building in Good Repair		✓	
§98.42(c)(1)(D) Safety: Systems in Good Repair			\$500
§98.42(c)(1)(E) Safety: Use of Electrical Appliances, Devices, and Lamps		✓	
§98.42(c)(1)(F) Safety: Extension Cords		✓	
§98.42(c)(1)(G)(i)-(iv) Safety: Smoking Regulations		✓	
§98.42(c)(1)(H) Safety: Emergency Fire Lane		✓	
§98.42(c)(1)(I)-(J) Safety: Gas Lines and Heating System		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.42(c)(1)(K) Safety: Curtains or Drapes Flame Retardant		✓	
§98.42(c)(1)(L) Safety: Portable Fire Extinguishers		✓	
§98.42(c)(1)(M)(i) Safety: Portable Fire Extinguishers Visual Inspection		✓	
§98.42(c)(1)(M)(ii) Safety: Fire Extinguishers Annual Inspection and Maintenance		✓	
§98.42(c)(1)(M)(iii) Safety: Fire Extinguishers Annual Inspection and Maintenance Record		✓	
§98.42(c)(1)(N) Safety: Approved Waste Containers		✓	
§98.42(c)(2)(A) Safety: Exterior Site Condition		✓	
§98.42(c)(2)(B) Safety: Stairway Hand Rails		✓	
§98.42(c)(2)(C) Safety: Tubs/Shower Surfaces		✓	
§98.42(c)(2)(D) Safety: Elevators		✓	
§98.42(c)(2)(E) Safety: Hot Water		✓	
§98.42(c)(2)(F) Safety: Adverse Activities		✓	
§98.42(c)(2)(G) Safety: Capacity Calculation		✓	
§98.42(c)(2)(H) Safety: Office Area		✓	
§98.42(c)(2)(I) Safety: Rest Area		✓	
§98.42(c)(2)(J) Safety: Private Rooms		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.42(c)(2)(K) Safety: Examination Room		✓	
§98.42(c)(2)(L) Safety: Outdoor Recreation Area		✓	
§98.43(a)(1) Sanitation: Wastewater and Sewage		✓	
§98.43(a)(2) Sanitation: Water Supply		✓	
§98.43(a)(3) Sanitation: Disposal of Refuse		✓	
§98.43(a)(4) Sanitation: Building and Grounds Maintained		✓	
§98.43(a)(5) Sanitation: Adverse Conditions		✓	
§98.43(a)(6) Sanitation: Pest Control Program		✓	
§98.43(a)(7) Sanitation: Odors/ Refuse/Hazards		✓	
§98.43(a)(8) Sanitation: Rest Room Facilities		✓	
§98.43(a)(9) Sanitation: Ventilation for Odor Control		✓	
§98.43(a)(10) Sanitation: Cross Contamination Procedures for Kitchen and Laundry		✓	
§98.43(b)(1) Sanitation: Food Service		✓	
§98.43(b)(2) Sanitation: Sinks		✓	
§98.43(b)(3) Sanitation: Hand-washing Fixtures		✓	
§98.43(b)(4) Sanitation: No Separate Hand-washing Fixtures		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.61(b)(1) General Requirements: Advance Directive			\$500
§98.61(b)(2) General Requirements: HSC Chapter 250 Compliance		✓	
§98.61(b)(3)(A) General Requirements: Employment Prohibition		✓	
§98.61(b)(3)(B) General Requirements: Registry Search Notification		✓	
§98.61(b)(3)(C)(i)(I) General Requirements: Registry Search		✓	
§98.61(b)(3)(C)(i)(II) General Requirements: Registry Search		✓	
§98.61(b)(3)(C)(ii) General Requirements: Registry Search Documentation		✓	
§98.61(b)(4) General Requirements: Workplace Standards for HIV/AIDS		✓	
§98.61(b)(5) General Requirements: Communicable Disease Policies		✓	
§98.61(b)(6) General Requirements: Compliance with Federal and State Standards		✓	
§98.61(b)(7) General Requirements: THRC Chapter 102 Compliance		✓	
§98.61(c)(1)-(8) General Requirements: Individual Rights		✓	
§98.61(c)(6) General Requirements: Informing Physicians		✓	
§98.61(d)(1) General Requirements: Reporting of Abuse or Neglect Allegation		✓	
§98.61(d)(2) General Requirements: Incident Report Record Keeping		✓	
§98.61(d)(3) General Requirements: Client Record Confidentiality		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.61(d)(4) General Requirements: Informing Client of Rights		✓	
§98.61(e)(1) General Requirements: Display of License		✓	
§98.61(e)(2) General Requirements: Display of Complaint Procedures		✓	
§98.61(e)(3) General Requirements: Display of Report Availability		✓	
§98.61(e)(4) General Requirements: Display of Most Recent Inspection Report		✓	
§98.61(e)(5) General Requirements: Display Facility Hours and Activity		✓	
§98.61(e)(6) General Requirements: Display Emergency Telephone Numbers		✓	
§98.62(a)(1)(A)-(B) Program Requirements: Qualifications of Director, Education			\$500
§98.62(a)(1)(C)-(D) Program Requirements: Qualifications of Director, Multiple Roles	✓		
§98.62(a)(1)(E) Program Requirements: Qualifications of Director, Delegation Policy	✓		
§98.62(a)(1)(F) Program Requirements: Qualifications of Director, Waiver	✓		
§98.62(a)(2) Program Requirements: Facility Nurse			\$500
§98.62(a)(2)(A) Program Requirements: Qualifications of Nurse, RN License		✓	
§98.62(a)(2)(B) Program Requirements: Qualifications of Nurse, LVN License		✓	
§98.62(a)(2)(C) Program Requirements: Facility Nurse Duties		✓	
§98.62(a)(3)(A) Program Requirements: Qualifications of Activities Director, Education		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.62(a)(4) Program Requirements: Qualifications of Attendants	✓		
§98.62(a)(5) Program Requirements: Qualifications of Food Service Personnel	✓		
§98.62(a)(6)(B)(i) Program Requirements: Requirements of Driver. Safety		✓	
§98.62(a)(6)(B)(ii) Program Requirements: Requirements of Driver. CPR Certification		✓	
§98.62(b)(1) Program Requirements: Staffing Ratio. Direct Service		✓	
§98.62(b)(2) Program Requirements: Staffing Ratio. Nurses		✓	
§98.62(b)(3) Program Requirements: Staffing Ratio. Facility Director		✓	
§98.62(b)(4) Program Requirements: Staffing Ratio. Activities Director		✓	
§98.62(b)(5) Program Requirements: Staffing Ratio. Sufficient to Meet Needs		✓	
§98.62(c) Program Requirements: Staff Health. Communicable Diseases		✓	
§98.62(d)(1)(A)-(H) Program Requirements: Staff Responsibilities, Facility Director		✓	
§98.62(d)(2)(A)-(H) Program Requirements: Staff Responsibilities, Facility Nurse		✓	
§98.62(d)(3)(A)-(E) Program Requirements: Staff Responsibilities, Activities Director		✓	
§98.62(d)(4)(A)-(C) Program Requirements: Staff Responsibilities, Attendant		✓	
§98.62(d)(5)(A)-(B) Program Requirements: Staff Responsibilities, Food Service Personnel		✓	
§98.62(d)(6)(A)-(C) Program Requirements: Staff Responsibilities, Dietitian Consultant	✓		

ADMINISTRATIVE PENALTY SCHEDULE

Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.62(d)(7)(A)-(F) Program Requirements: Staff Responsibilities, RN Consultant		✓	
§98.62(e)(1)(A)(i) Program Requirements: Training, Within Three Work Days	✓		
§98.62(e)(1)(A)(ii) Program Requirements: Training, Within Three Months		✓	
§98.62(e)(1)(B) Program Requirements: Training, Substitutes	✓		
§98.62(e)(2)(A) Program Requirements: Training, Ongoing	✓		
§98.62(e)(2)(A) Program Requirements: Training, Quarterly		✓	
§98.62(f)(1)(A) Program Requirements: Medications, Administration by Others		✓	
§98.62(f)(1)(B) Program Requirements: Medications, Dispensation		✓	
§98.62(f)(1)(C) Program Requirements: Medications, Physician Samples		✓	
§98.62(f)(1)(D) Program Requirements: Medications, Profile Record		✓	
§98.62(f)(2) Program Requirements: Medications, Assistance/Self-Administration		✓	
§98.62(f)(3)(A) Program Requirements: Medications, Self-Administration Counseling		✓	
§98.62(f)(3)(B) Program Requirements: Medications, Self-Administration Access		✓	
§98.62(f)(4)(A) Program Requirements: Medications, Report Reactions		✓	
§98.62(f)(4)(B) Program Requirements: Medications, Document Missed Medications		✓	
§98.62(f)(5)(A) Program Requirements: Medications, Locked Area for Storage		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.62(f)(5)(B) Program Requirements: Medications, Separate Storage		✓	
§98.62(f)(5)(C) Program Requirements: Medications, Refrigeration		✓	
§98.62(f)(5)(D) Program Requirements: Medications, Storage of External Use Only		✓	
§98.62(f)(5)(E) Program Requirements: Medications, Storage of Schedule II Drugs		✓	
§98.62(f)(6)(A) Program Requirements: Medications, Disposal by Pharmacist		✓	
§98.62(f)(6)(B) Program Requirements: Medications, Disposal of Needles and Syringes		✓	
§98.62(f)(6)(C) Program Requirements: Medications, Release to Responsible Party		✓	
§98.62(g)(1) Program Requirements: Accident/Injury/Illness, First Aid Supplies	✓		
§98.62(g)(2)(A) Program Requirements: Accident/Injury/Illness, Transfer		✓	
§98.62(g)(2)(B) Program Requirements: Accident/Injury/Illness, Notification		✓	
§98.62(g)(2)(C) Program Requirements: Accident/Injury/Illness, Documentation		✓	
§98.62(h)(1) Program Requirements: Menus, Meals Served According to Approved Menus	✓		
§98.62(h)(2) Program Requirements: Menus, Special Diet Meals Labeled		✓	
§98.63 Peer Review	✓		
§98.64(b)(1)-(4) Emergency Preparedness and Response: Administration		✓	
§98.64(c)(1)-(5) Emergency Preparedness and Response: Plan		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.64(d)(1) Emergency Preparedness and Response: Plan, Direction and Control		✓	
§98.64(d)(2) Emergency Preparedness and Response: Plan, Warning		✓	
§98.64(d)(3) Emergency Preparedness and Response: Plan, Communication		✓	
§98.64(d)(4) Emergency Preparedness and Response: Plan, Sheltering-in-Place		✓	
§98.64(d)(5) Emergency Preparedness and Response: Plan, Evacuation		✓	
§98.64(d)(6) Emergency Preparedness and Response: Plan, Transportation		✓	
§98.64(d)(7) Emergency Preparedness and Response: Plan, Health and Medical Needs		✓	
§98.64(d)(8) Emergency Preparedness and Response: Plan, Resource Management		✓	
§98.64(e) Emergency Preparedness and Response: Training		✓	
§98.64(f)(1)(A)-(H) Emergency Preparedness and Response: Fire Safety Plan		✓	
§98.64(f)(2)-(3) Emergency Preparedness and Response: Fire Safety Plan, Fire Report		✓	
§98.64(f)(4) Emergency Preparedness and Response: Fire Safety Plan, Life Safety Code		✓	
§98.64(f)(5)(B) Emergency Preparedness and Response: Fire Safety Plan, Drill Relocation		✓	
§98.64(f)(5)(C) Emergency Preparedness and Response: Fire Safety Plan, Drill Report		✓	
§98.64(f)(5)(D) Emergency Preparedness and Response: Fire Safety Plan, Inspection Report		✓	
§98.64(f)(5)(F) Emergency Preparedness and Response: Fire Safety Plan/Posting Report		✓	

ADMINISTRATIVE PENALTY SCHEDULE
Adult Day Care Facilities

There are three classes of administrative penalties. Penalty amounts for Level A violations will be \$100-\$250 per violation. Penalty amounts for Level B violations will be \$300-\$500. Other violations will be assessed a prescribed amount. These penalties are indicated in the "Prescribed Amount" column.

An adult day care facility is subject to the indicated penalty when found to be in violation of any requirements related to:	LEVEL A	LEVEL B	Prescribed Amount
§98.81(g) Procedural Requirements: Access to Facility Records		✓	
§98.82(f) Determinations and Actions Pursuant to Inspections: Plan of Correction		✓	
§98.92(a)-(b) Abuse, Neglect, or Exploitation: Reporting to DADS			\$500
§98.92(c) Abuse, Neglect, or Exploitation: Written Report			\$500
§98.105(a)(2)(A)-(B) Administrative Penalties: Making a False Statement			\$500
§98.105(a)(3) Administrative Penalties: Refusing to Allow a DADS Representative to Inspect			\$500
§98.105(a)(4) Administrative Penalties: Willfully Interfering with a DADS Representative, Work or Enforcement			\$500
§98.105(a)(5) Administrative Penalties: Willfully Interfering with a DADS Representative, Preserving Evidence			\$500
§98.105(a)(7) Administrative Penalties: Failing to Notify DADS of a Change of Ownership Before Effective Date			\$500

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

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 12/31/12 - 01/06/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/31/12 - 01/06/13 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201206647

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 27, 2012



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is February 11, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on February 11, 2013. 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 com-

ment 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: Amy Nguyen dba Henderson Drive In; DOCKET NUMBER: 2012-0748-PST-E; IDENTIFIER: RN102462249; LOCATION: Palacios, Matagorda County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; 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: \$8,881; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Appleby Water Supply Corporation; DOCKET NUMBER: 2012-1691-PWS-E; IDENTIFIER: RN101438596; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F)(i), by failing to provide a sanitary control easement covering all land within 150 feet of Well Number 2 (G1740005B); 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps that have a total capacity of 2.0 gpm per connection; PENALTY: \$577; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: BABA NANAK, INCORPORATED dba Mini Mart 8; DOCKET NUMBER: 2012-2398-PST-E; IDENTIFIER: RN101742203; LOCATION: Cypress, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: BABAJI & COMPANY, INCORPORATED dba T Food Mart; DOCKET NUMBER: 2012-2514-PST-E; IDENTIFIER: RN102028974; 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 corrosion protection for the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: BAYOU DEVELOPMENT, LLC; DOCKET NUMBER: 2011-1265-MWD-E; IDENTIFIER: RN101246601; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY:

wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014326001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §§305.125(1) and (17), 319.1 and 319.7(d), and TPDES Permit Number WQ0014326001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report for the monitoring period ending April 30, 2011, by the 20th day of the following month and by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$6,004; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Bengé, Cody W; DOCKET NUMBER: 2012-2396-WOC-E; IDENTIFIER: RN106488315; LOCATION: Fritch, Hutchinson County; TYPE OF FACILITY: public water supply operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: BIBIJAN ENTERPRISES, INCORPORATED dba Rite Track 9; DOCKET NUMBER: 2012-2400-PST-E; IDENTIFIER: RN102253515; LOCATION: Lindale, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2), by failing to provide piping in a underground storage tank system that shall be monitored in a manner which will detect a release from any portion of the piping system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Black Canyon Construction Company; DOCKET NUMBER: 2012-2302-WQ-E; IDENTIFIER: RN106501489; LOCATION: League City, Galveston County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Bradberry, Timothy M; DOCKET NUMBER: 2012-2223-WOC-E; IDENTIFIER: RN103744884; LOCATION: Boyd, Wise County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: BRAZOS VALLEY SEPTIC & WATER, INCORPORATED; DOCKET NUMBER: 2012-1643-PWS-E; IDENTIFIER: RN102692811; LOCATION: College Station, Robertson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the well; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological plan; 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine in each pressure tank and throughout the distribution system at all times; PENALTY: \$255; ENFORCEMENT COORDINATOR: Abigail

Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: BROWN'S EXXON, INCORPORATED; DOCKET NUMBER: 2012-2543-PST-E; IDENTIFIER: RN101628758; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 239-2578; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: Caterpillar, Incorporated; DOCKET NUMBER: 2012-1825-AIR-E; IDENTIFIER: RN105667349; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: engine assembly; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3363, General Terms and Conditions (GTC), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2), THSC, §382.085(b), and FOP Number O3363, GTC, by failing to submit a deviation report within 30 days after the end of the reporting period; PENALTY: \$7,701; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: CHAUDHRY ENTERPRISES, INCORPORATED dba Bearcat Grocery; DOCKET NUMBER: 2012-1887-PST-E; IDENTIFIER: RN102839727; LOCATION: Beckville, Panola County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the product piping associated with the underground storage tank system; PENALTY: \$3,510; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: City of Atlanta; DOCKET NUMBER: 2012-2368-WQ-E; IDENTIFIER: RN104686878; LOCATION: Atlanta, Cass County; TYPE OF FACILITY: municipal services; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: City of Austin; DOCKET NUMBER: 2012-1791-MWD-E; IDENTIFIER: RN101607794; LOCATION: Austin, Travis County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010543012, Monitoring and Reporting Requirements Number 7.a. and 30 TAC §305.125(9), by failing to notify the TCEQ Regional Office within 24 hours of becoming aware of the noncompliance; and TPDES Permit Number WQ0010543012, Permit Conditions Number 2.g., 30 TAC §305.125(1), and TWC, §26.121(a), by failing to prevent an unauthorized discharge of wastewater from the collection system into water in the state; PENALTY: \$10,001; Supplemental Environmental Project offset amount of \$10,001 applied to Austin Parks Foundation - Restoration and Rehabilitation of the Barton Springs Pool Bypass Tunnel; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: City of Hereford; DOCKET NUMBER: 2012-1275-MWD-E; IDENTIFIER: RN101612570; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC

§305.125(1), and Permit Number WQ0010186002, Effluent Limitations and Monitoring Requirements Number A, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (9)(A) and Permit Number WQ0010186002, Monitoring and Reporting Requirements Number 7.c, by failing to report any effluent violation which deviates from the permitted limitation by more than 40% in writing to the Amarillo Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance events for the months of May, June, August and October, 2011, and April 2012; PENALTY: \$10,499; Supplemental Environmental Project offset amount of \$8,400 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Cleanup; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Compass Development and Construction, Incorporated; DOCKET NUMBER: 2012-2085-WQ-E; IDENTIFIER: RN106496987; LOCATION: Lufkin, Tyler County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2012-1811-PWS-E; IDENTIFIER: RN102229572; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: \$204; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(19) COMPANY: DRISCOLL CHILDREN'S HOSPITAL; DOCKET NUMBER: 2012-2524-PST-E; IDENTIFIER: RN101798635; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: medical; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: East Marion County Water Supply Corporation; DOCKET NUMBER: 2012-2008-PWS-E; IDENTIFIER: RN101282556; LOCATION: Marion County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: \$175; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: GF GROUP, INCORPORATED dba Hill Country RV Resort and Event Center; DOCKET NUMBER: 2012-1864-PWS-E; IDENTIFIER: RN102361284; LOCATION: Medina, Bandera County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(B) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform during the months of May and June 2012 and by failing to timely provide public notification of the MCL for the month of June 2012; 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by fail-

ing to collect routine distribution water samples for coliform analysis for the month of April 2012; and 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring to the executive director for the reporting period from January 1, 2011 - December 31, 2011; PENALTY: \$715; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: G-M Water Supply Corporation; DOCKET NUMBER: 2012-1831-PWS-E; IDENTIFIER: RN101261691; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.118(b), by failing to comply with the maximum secondary constituent level for manganese of 0.05 milligrams per liter (mg/L); and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a chloramine residual of 0.5 mg/L throughout the distribution system at all times; PENALTY: \$636; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Harwin Business, Incorporated dba Fuel Express 8; DOCKET NUMBER: 2012-1866-PST-E; IDENTIFIER: RN101832533; 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 proper release detection for the product piping associated with the UST system; PENALTY: \$5,230; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: HAZARA ENTERPRISES, INCORPORATED dba Super Kwik Food Store; DOCKET NUMBER: 2012-2553-PST-E; IDENTIFIER: RN102821402; LOCATION: Cleveland, Liberty 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 corrosion protection for the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Headrick, Jeff Rainey; DOCKET NUMBER: 2012-2395-WOC-E; IDENTIFIER: RN106516669; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: public water supply operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(26) COMPANY: J&U DISTRIBUTING COMPANY, INCORPORATED dba One Stop Food Mart Valero; DOCKET NUMBER: 2012-2515-PST-E; IDENTIFIER: RN105382006; LOCATION: Killeen, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: James, Gary W; DOCKET NUMBER: 2012-2472-WOC-E; IDENTIFIER: RN106442379; LOCATION: Adrian, Oldham County; TYPE OF FACILITY: water operator; RULE VIOLATED:

30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(28) COMPANY: Ken Dietz Homes, Incorporated; DOCKET NUMBER: 2012-2486-WQ-E; IDENTIFIER: RN106507692; LOCATION: Flint, Smith County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(29) COMPANY: Kenneth Mock and Thomas Mock dba Mock's Grocery; DOCKET NUMBER: 2012-1438-PST-E; IDENTIFIER: RN101728947; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; 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: \$8,507; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Kim Ivey; DOCKET NUMBER: 2012-1960-OSS-E; IDENTIFIER: RN106283526; LOCATION: Rochelle, McCulloch County; TYPE OF FACILITY: private property; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the discharge of wastewater into or adjacent to any water in the state; and 30 TAC §285.3(b)(1) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain authorization from the TCEQ prior to constructing, installing and operating an on-site sewage facility; PENALTY: \$688; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(31) COMPANY: Lehnert, David R; DOCKET NUMBER: 2012-2439-WOC-E; IDENTIFIER: RN104062179; LOCATION: Cameron, Milam County; TYPE OF FACILITY: wastewater treatment plant operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(32) COMPANY: LUCAS FOOD MART, INCORPORATED dba Lucas Food Mart; DOCKET NUMBER: 2012-2554-PST-E; IDENTIFIER: RN102353414; LOCATION: Lucas, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: Mai Nguyen dba MN Grocery & Hardware; DOCKET NUMBER: 2012-2513-PST-E; IDENTIFIER: RN102012705; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated

with the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Monika M. Plotner dba M & R Convenience Store; DOCKET NUMBER: 2012-2399-PST-E; IDENTIFIER: RN101660462; LOCATION: Killeen, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor underground storage tanks for releases at least once a month (not to exceed 35 days between each monitoring); PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(35) COMPANY: Neudorf, John; DOCKET NUMBER: 2012-2673-WOC-E; IDENTIFIER: RN106535768; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(36) COMPANY: OB-GYN and Anaesthesia Associates, P.A.; DOCKET NUMBER: 2012-1686-EAQ-E; IDENTIFIER: RN104737234; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: medical office building; RULE VIOLATED: 30 TAC §213.4(k) and Water Pollution Abatement Plan (WPAP) Number 13-05081706, Standard Conditions (SC) Number 2, by failing to submit proof of deed recordation to the TCEQ San Antonio Regional Office within 60 days of WPAP Number 13-05081706 approval; 30 TAC §213.5(f)(1) and WPAP Number 13-05081706, SC Number 5, by failing to submit the required notification to commence construction to the TCEQ San Antonio Regional Office no later than 48 hours prior to commencement of a regulated activity; 30 TAC §213.4(k) and WPAP Number 13-05081706, SC Number 2, by failing to maintain operation and maintenance records for the site; 30 TAC §213.4(j) and WPAP Number 13-05081706, SC Number 4, by failing to obtain approval of a modification to an approved WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.5(b)(5)(A) and WPAP Number 13-05081706, SC Number 15, by failing to maintain the permanent best management practices at the site; and TWC, §26.121, by failing to prevent the discharge of storm water into or adjacent to water in the state; PENALTY: \$9,500; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(37) COMPANY: Plainview BioEnergy, LLC; DOCKET NUMBER: 2012-2140-PWS-E; IDENTIFIER: RN101983278; LOCATION: Plainview, Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(c)(6) and (e), by failing to timely report to the executive director quarterly sampling results for nitrate/nitrite for the second - fourth quarters of 2011; PENALTY: \$150; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(38) COMPANY: PRUSKI SERVICE CENTER, INCORPORATED dba Pruskis; DOCKET NUMBER: 2012-1621-PST-E; IDENTIFIER: RN101761971; LOCATION: Floresville, Wilson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; and 30 TAC §334.10(b), by failing to main-

tain underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$12,850; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(39) COMPANY: R R N ENTERPRISES, INCORPORATED dba R & F Food Store; DOCKET NUMBER: 2012-2401-PST-E; IDENTIFIER: RN102033396; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Raymond Fraga dba Desert West Oil Recovery; DOCKET NUMBER: 2012-1741-WQ-E; IDENTIFIER: RN100523448; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: transport/transfer used oil; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with used oil recycling activities; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(41) COMPANY: Raymond Louis Franz; DOCKET NUMBER: 2012-1704-PWS-E; IDENTIFIER: RN106237043; LOCATION: Katy, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1), and Texas Health and Safety Code, §341.035(a), by failing to submit engineering plans and specifications to the executive director and obtain approval of the plans and specifications prior to the operation of a new public water system; PENALTY: \$55; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: Seema Enterprises, Incorporated dba N P Food Mart; DOCKET NUMBER: 2012-1813-PST-E; IDENTIFIER: RN102480852; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: SHAZAD, INCORPORATED dba Regal Pantry; DOCKET NUMBER: 2012-1655-PST-E; IDENTIFIER: RN102357258; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage 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) and §334.49(e), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(44) COMPANY: TAWAKUL INVESTMENTS, INCORPORATED dba Spring Time; DOCKET NUMBER: 2012-2010-PST-E; IDENTIFIER: RN101447167; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline;

RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$5,782; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(45) COMPANY: TC Manufacturing; DOCKET NUMBER: 2012-2345-WQ-E; IDENTIFIER: RN100684075; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: manufacturing of plastic packaging products; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(46) COMPANY: United Telephone Company of Texas, Incorporated; DOCKET NUMBER: 2012-2217-PST-E; IDENTIFIER: RN102858263; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(47) COMPANY: WM Recycle America LLC; DOCKET NUMBER: 2012-2301-WQ-E; IDENTIFIER: RN104963319; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(48) COMPANY: Woods, Brian H Sr.; DOCKET NUMBER: 2012-2181-WOC-E; IDENTIFIER: RN106487085; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201206646

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 27, 2012



Notice of Water Quality Applications

The following notices were issued on December 14, 2012 through December 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

BAYOU FOREST VILLAGE INC has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012259001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per

day. The facility is located approximately 2,500 feet southeast of the intersection of Aldine Mail Road and Aldine-Westfield Road at 12500 Aldine-Westfield in Harris County, Texas 77039.

ENTERPRISE PRODUCTS OPERATING LLC P.O. Box 4324, Houston, Texas 77210, which operates Enterprise Pasadena Plant, has applied for a major amendment to TPDES Permit No. WQ0004867000 to authorize the relocation of Outfall 001 from the unnamed ditch on private property adjacent to the facility, to a direct discharge to the Houston Ship Channel via proposed Outfall 002. The existing permit authorizes the discharge of cooling tower blowdown and boiler blowdown at a daily average flow not to exceed 55,000 gallons per day, and a daily maximum flow not to exceed 190,000 gallons per day via Outfall 001. The facility is located approximately 9,500 feet north of the intersection of North South Street (Preston Road) and State Highway 225 and within an industrial complex shared by Abermarle Corporation, Ethyl Corporation, MEMC and Enterprise Products Operating LLC in the City of Pasadena, Harris County, Texas 77503.

CITY OF TEXAS CITY has applied for a renewal of TPDES Permit No. WQ0010375001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 12,400,000 gallons per day. The facility is located approximately one mile north of State Highway Loop 197 and four miles east of State Highway 146, in the northeast portion of the City of Texas City at 3901 Bay Street Extension in Galveston County, Texas 77590.

LAKE FOREST PLANT ADVISORY COUNCIL has applied for a renewal of TPDES Permit No. WQ0011084001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,760,000 gallons per day. The facility is located south of Cypress Creek, approximately 0.5 mile west of State Highway 249 and 1.25 miles north of Grant Road in Harris County, Texas 77070.

MEMORIAL POINT UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011147001 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 at 105 Echo Lane, Livingston, two miles south of the intersection of Farm-to-Market Roads 2457 and 3277 on the east side of Lake Livingston in Polk County, Texas 77351.

CITY OF LA VERNIA has applied for a renewal of TPDES Permit No. WQ0011258001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located on River Street, approximately 2,000 feet east of Farm-to-Market Road 775 in Wilson County, Texas 78121.

PURE UTILITIES LC has applied for a renewal of TPDES Permit No. WQ0011621001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at 337 Harbor Drive, approximately 3,000 feet north of Farm-to-Market Road 2457 and approximately 12 miles northwest of the City of Livingston on the east shore of Lake Livingston in Polk County, Texas 77351.

MILLENIUM RAIL INC DBA WATCO MECHANICAL SERVICES has applied for a renewal of TPDES Permit No. WQ0012390001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 1365 Verhalen Drive, approximately 1000 feet south of Farm-to-Market Road 1998, approximately 3500 feet west of the intersection of Farm-to-Market Roads 1998 and 2199 in Harrison County, Texas 75688.

ELITE COMPUTER CONSULTANTS LP has applied for a renewal of TPDES Permit No. WQ0012600001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000

gallons per day. The facility is located at 15110 Grant Road Cypress, on the south bank of Faulkey Gully, approximately 600 feet west of Shaw Road and approximately 800 feet northeast of Grant Road in Harris County, Texas 77429.

PURE UTILITIES LC has applied for a renewal of TPDES Permit No. WQ0014014001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located at 258 East Lake Drive, approximately 500 feet east of U.S. Highway 59, approximately one mile south of the intersection of U.S. Highway 59 and Farm-to-Market Road 1988, approximately three miles south of the intersection of U.S. Highway 59 and State Highway 190 in Polk County, Texas 77351.

QUADVEST LP has applied for a renewal of TPDES Permit No. WQ0014542001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 38119 Sulphur Creek Drive, Magnolia, Texas, approximately 500 feet south-southwest of the intersection of Magnolia Industrial Boulevard and Farm-to-Market Road 1774 in Montgomery County, Texas 77355.

D BAR B WATER WASTEWATER SUPPLY CORPORATION, 2870 Dowdy Ferry Road, Trailer 95, Dallas, Texas 75217, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0014628001 to authorize the relocation of outfall approximately 0.6 mile upstream of the original outfall and a change in the discharge route. The facility is located at 2870 Dowdy Ferry Road, Dallas, approximately 1/2 mile northeast of the point where Dowdy Ferry Road crosses the Trinity River, on the east side of Dowdy Ferry Road in Dallas County, Texas 75217.

QUADVEST LP has applied for a major amendment to TPDES Permit No. WQ0014755001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 150,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 5,100 feet northeast of the intersection of East Benders Landing and Irish Ivy Court in Montgomery County, Texas 77386.

CITY OF CISCO has applied for a renewal of TPDES Permit No. WQ0014877001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 1,900 feet east and 4,500 feet north of the intersection of U.S. Highway 183 and U.S. Highway 80 in Eastland County, Texas 76437.

TEXAS RENAISSANCE FESTIVALS INC has applied for a renewal of TCEQ Permit No. WQ0014913001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,600 gallons per day via surface irrigation of 6.5 acres of non-public access agricultural land. The draft permit also authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via evaporation for eight weekends in a year. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 21778 Farm-to-Market Road 1774, adjacent to and west of Farm-to-Market Road 1774, approximately 4.2 miles northwest of the City of Magnolia in Grimes County, Texas 77363.

SAMPOGNA PROPERTIES LP has applied for a renewal of TPDES Permit No. WQ0014966001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 1525 Collins Road, Houston in Harris County, Texas 77093.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office

of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

CITY OF MATHIS has applied for a minor amendment to the TPDES Permit No. WQ0010015001 to authorize sludge disposal at Texas Sludge Disposal Municipal Solid Waste (MSW) Permit No. 2319 in San Patricio County. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 947,000 gallons per day. The facility is located approximately 1.25 miles northwest of the intersection of State Highway Spur 198 and Farm-to-Market Road 1068, along the access road northwest extension of San Patricio Avenue in the City of Mathis in San Patricio County, Texas 78368.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the TPDES Permit No. WQ0010743001 issued to Texas Department of Criminal Justice to change the E. coli discharge limitation from 399 CFU or MPN per 100 milliliters (single grab) to 399 CFU or MPN per 100 milliliters (daily maximum). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 59 Darrington Road, within the Darrington Prison Farm, approximately one mile west of the intersection of Farm-to-Market Road 521 and County Road 43, approximately fifteen miles west of the City of Alvin and approximately four miles northwest of the City of Rosharon in Brazoria County, Texas 77583.

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

TRD-201300002
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 2, 2013



Notice of Water Rights Application

Notice issued December 21, 2012.

APPLICATION NO. 12470A; Rowan Companies, Inc., 2800 Post Oak, Suite 5450, Houston, Texas 77056, Applicant, has applied to amend its Water Use Permit No. 12470 to increase the non-consumptive diversion amount authorized per year from the Sabine Pass Channel, Neches-Trinity Coastal Basin, with no increase in consumptive use. The application and partial fees were received on April 25, 2011. Additional information and fees were received on April 20, May 10, and June 16, 2011. The application was declared administratively complete and accepted for filing on June 23, 2011. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete

notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201300003
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 2, 2013



Texas Health and Human Services Commission

Correction to the Public Notice

The Texas Health and Human Services Commission (HHSC) published a public notice of its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10317). The announcement incorrectly described the fiscal impact of the proposed state plan amendment. The correct fiscal impact is as follows:

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$21,300,000 for the remainder of federal fiscal year (FFY) 2013, consisting of \$12,600,000 in federal funds and \$8,700,000 in state general revenue. For FFY 2014, the estimated additional annual expenditure is \$28,500,000 consisting of \$16,900,000 in federal funds and \$11,600,000 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Gary Young by mail at Texas Health and Human Services Commission, 11209 Metric Boulevard, Building H, Mail Code 425, Austin, Texas 78758-4183; by telephone at (512) 491-1105; by fax to (512) 491-1971; or by e-mail to gary.young@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services.

TRD-201206649

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 27, 2012

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Philotechnics, LTD (TLLRWDC #1-0025-00)

201 Renovare Blvd.

Oak Ridge, TN 37830

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by January 29, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

333 Guadalupe Street, #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201300004

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: January 2, 2013

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for Approval of Revised Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 20, 2012, for approval of a revised depreciation rate pursuant to §52.252 and §53.056, of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007 and Supp. 2012).

Docket Title and Number: Application of Ganado Telephone Company, Inc. for Approval of a Revised Depreciation Rate Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 41068.

The Application: Ganado Telephone Company, Inc. (Ganado) filed an application to revise the depreciation rate for Account 2423 - Buried Cable - Metallic. Ganado proposed an effective date of January 1, 2012. Ganado requested a new depreciation rate for Account 2423 of 4.8%. Based upon a projected average service life of 14 years, Ganado's current depreciation rate of 7.1% will depreciate the cable at a faster rate than necessary. In requesting the 4.8% rate, the estimated remaining life of plant in Account 2423 was calculated to be three

years based upon an average service life of 14 years and a weighted average age of plant of 11 years. However, because of the effect of Ganado's weighted average age of plant, lowering the depreciation rate from 7.1% to 4.8% will allow Ganado to depreciate the buried cable in Account 2423 by an additional four years.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 41068.

TRD-201206634

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: December 21, 2012

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 21, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Riviera Telephone Company Inc. for Approval of a Minor Rate Change, Pursuant to Substantive Rule §26.171, Tariff Control Number 41069.

The Application: Riviera Telephone Company, Inc. (Riviera Telephone or Applicant) filed an application with the commission for revisions to its Local Exchange Tariff to increase the rates associated with certain Residential and Business Services. Riviera Telephone proposed an effective date of January 1, 2013. The estimated annual revenue increase recognized by the Applicant is \$29,827 of its gross annual intrastate revenues. The Applicant has 1,034 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by January 18, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by January 18, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41069.

TRD-201300001

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 2, 2013

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)