# TEXAS REGISTER

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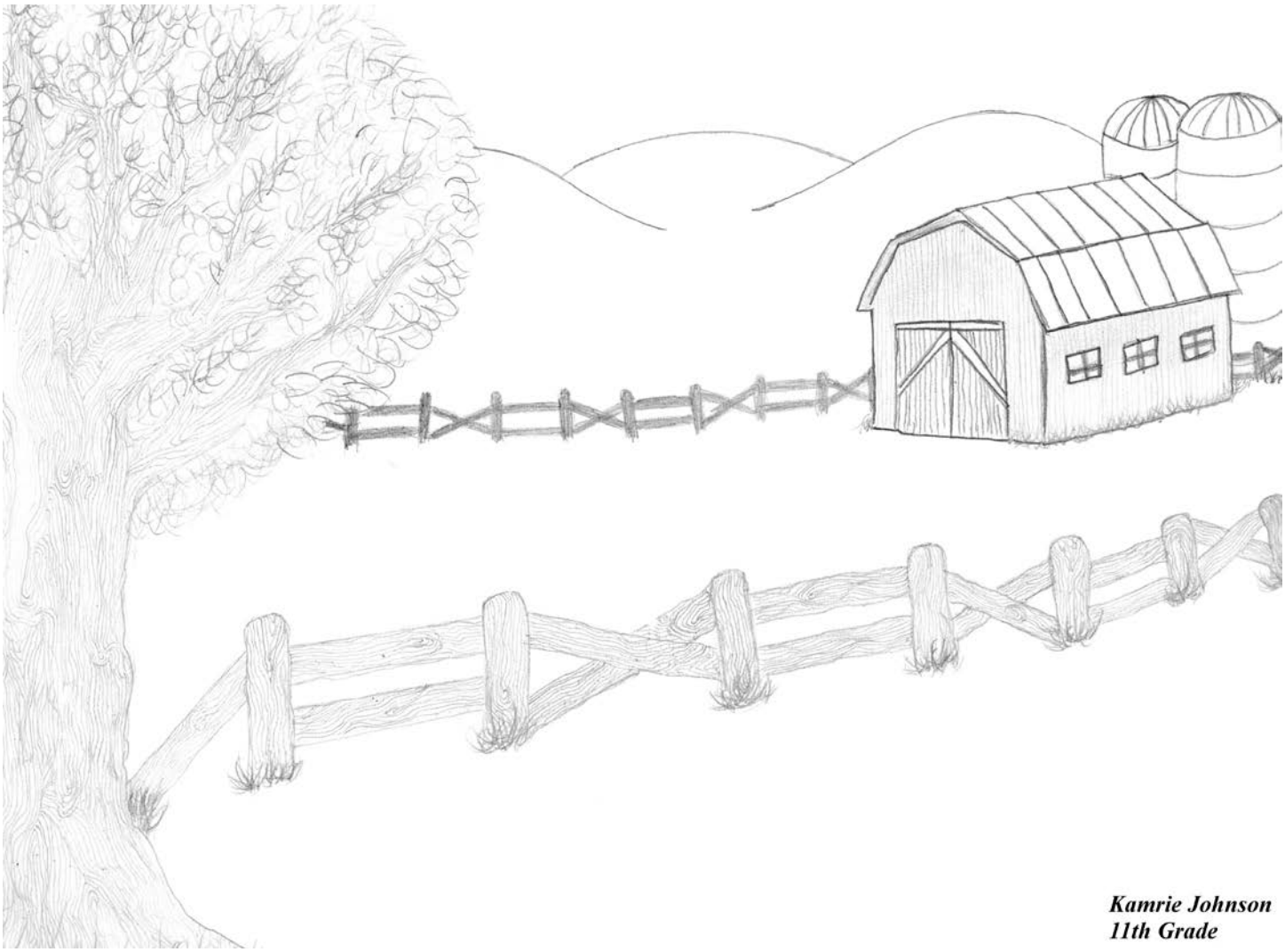

*Kamrie Johnson*
*11th Grade*

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

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

## Requests for Opinions

**RQ-1189-GA**

**Requestor:**

The Honorable Dan Flynn

Chair, Select Committee on Transparency in State Agency Operations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether section 361.0961 of the Texas Health and Safety Code prohibits municipalities from adopting ordinances that ban plastic bags (RQ-1189-GA)

**Briefs requested by March 26, 2014**

**RQ-1190-GA**

**Requestor:**

The Honorable John E. Davis

Chair, Committee on Economic and Small Business Development

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

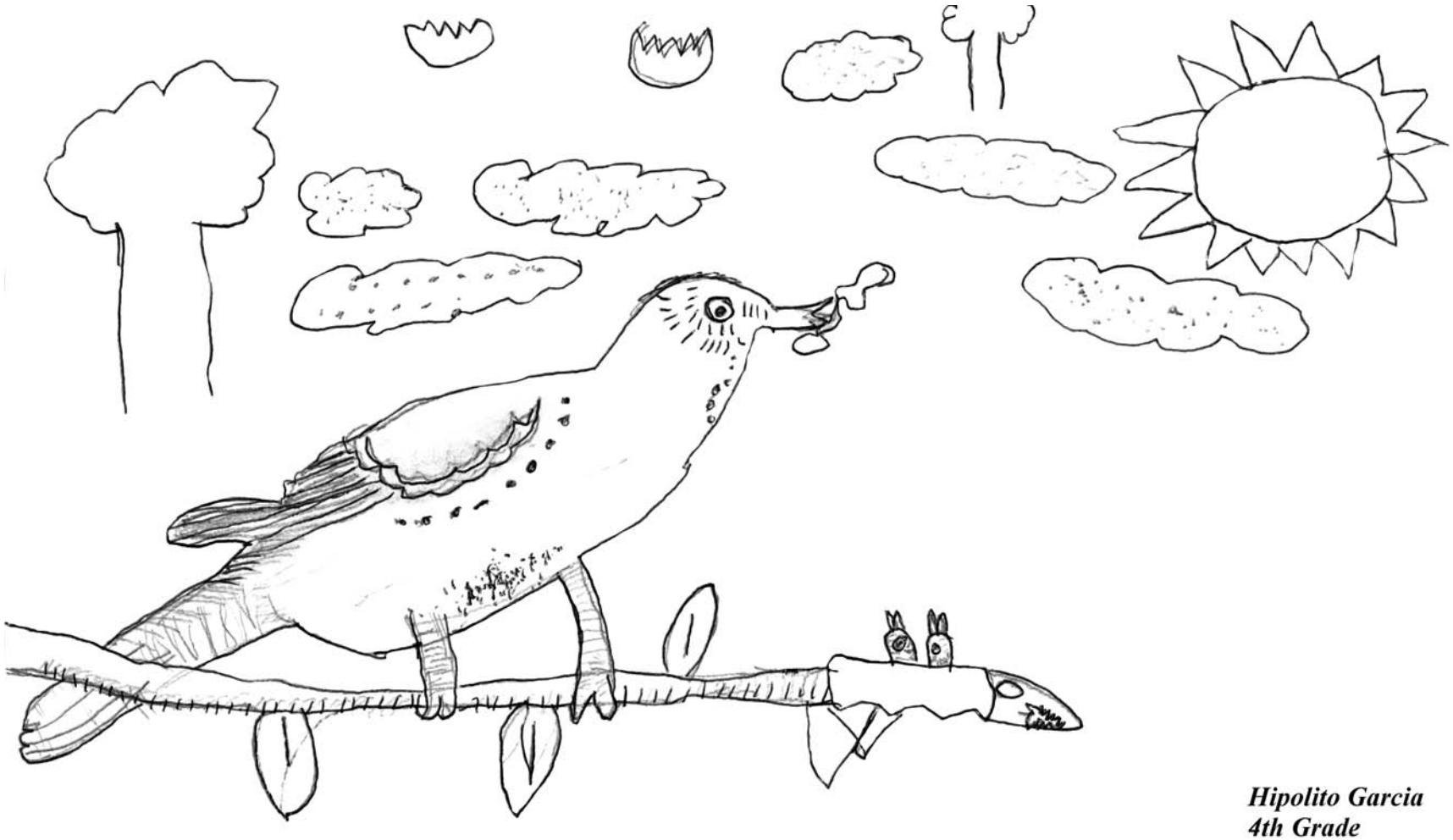
Re: The authority and obligations of a declarant in relation to a home owners' association under section 209.00591 of the Property Code (RQ-1190-GA)

**Briefs requested by March 31, 2014**

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

TRD-201401141
Katherine Cary
General Counsel
Office of the Attorney General
Filed: March 12, 2014

♦ ♦ ♦



***Hipolito Garcia***
***4th Grade***

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 4. OFFICE OF THE SECRETARY OF STATE

### CHAPTER 81. ELECTIONS

### SUBCHAPTER M. IMPLEMENTATION OF THE MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT

**1 TAC §81.420**

The Office of the Secretary of State, Elections Division, proposes an amendment to 1 TAC §81.420, which concerns the modification and adjustment of election dates and deadline necessary to ensure compliance with the federal Military and Overseas Voter Empowerment ("MOVE") Act, Pub. L. No. 111-84, 123 Stat. 2190 (2009).

Keith Ingram, Director of Elections, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Ingram has also determined that for each year of the first five-year period the proposed amended rule is in effect, the public benefit will be to provide voters by allowing political subdivisions, other than counties, additional dates to hold a runoff election.

Mr. Ingram also has determined that for the first five-year period the proposed rule is in effect, there will be no effect on small businesses or micro-businesses.

Comments on the proposal may be submitted to the Office of the Secretary of State, Keith Ingram, Director of Elections, P.O. Box 12060, Austin, Texas 78711. Comments may also be sent via email to: elections@sos.texas.gov. For comments submitted electronically, please include "Proposed Amendment of Rule §81.420" in the subject line. Comments must be received no later than twenty (20) days from the date of publication of the proposal in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The amendment is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws and Act of May 31, 2011, 82nd Leg., R.S., Chapter 1318, §50.

No other section is affected by the amendment.

*§81.420. Modifications of Election Dates and Procedures under Senate Bill 100 and the MOVE Act.*

The Office of Secretary of State issues the following clarifications and adjustments to election procedures and deadlines pursuant to Act of May 31, 2011, 82nd Leg., R.S., Chapter 1318, §50. [~~The changes are effective upon preclearance by the United States Department of Justice of Senate Bill 100 under the Voting Rights Act.~~]

(1) Notwithstanding §41.001(c), Texas Election Code, upon the approval of the Office of the Secretary of State, a runoff election under §2.025 may be ordered no earlier than twenty (20) days after the runoff primary held the fourth Tuesday in May under §41.007(b).

(2) Notwithstanding §202.006(a), Texas Election Code, if a vacancy in an office of the state or county government occurs on or before the 5th day before the date of the regular primary filing deadline, the political party's state, district, county or precinct executive committee, as appropriate, may nominate a candidate for the unexpired term.

[~~(1) Notwithstanding any requirement under general or special law that the general election of a political subdivision shall be held on the May uniform election date in even-numbered years, §41.0052(a), Texas Election Code, authorizes the governing body of all political subdivisions holding general elections on the May uniform election date in even-numbered years to order a change in the date of the general election to another uniform election date under §41.001(a) of the Code as necessary to provide access to county election equipment and services.~~]

[~~(2) The primary withdrawal deadline for the 2012 election year is the 79th day before the general primary election day. The primary withdrawal deadline enacted in §34 of House Bill 2817, Chapter 1164, 82nd Legislature, 2011, directly conflicts with the deadline enacted in §35 of Senate Bill 100, Chapter 1318, 82nd Legislature, 2011. Per §49 of Senate Bill 100, provisions contained in Senate Bill 100 enacted at the same session prevail to the extent of any conflict.~~]

[~~(3) Notwithstanding §§202.004(a)(2), 202.004(b), and 202.004(c), Texas Election Code, if a vacancy in an office of the state or county government occurs on or before the 5th day before the date of the regular primary filing deadline, the filing deadline for a place on the general primary ballot for the office is 6:00 p.m. of the 5th day after the regular primary filing deadline.~~]

[~~(4) Notwithstanding §§172.054(b), 172.057 and 172.058, Texas Election Code, the extended filing deadline for a place on the general primary ballot is 6:00 p.m. of the 5th day after the regular primary filing deadline. Notwithstanding §172.054(a), the date by which a candidate death, withdrawal, or declaration of ineligibility must have occurred to trigger the extended filing deadline under §172.054(b) is the 1st day after the regular primary filing deadline.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2014.

TRD-201401122
Keith Ingram
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 463-5650

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# TITLE 13. CULTURAL RESOURCES

## PART 9. TEXAS HOLOCAUST AND GENOCIDE COMMISSION

### CHAPTER 191. COMMISSION PROCEDURES

**13 TAC §191.8**

The Texas Holocaust and Genocide Commission (Commission) proposes amendments to §191.8, concerning Commission procedures. These procedures were adopted to establish rules for the Commission's grant program. The proposed amendments will allow organizations to submit in-kind services as part of a required one-to-one match for grants.

Peter Berkowitz, Chair, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to the state or local governments as a result of enforcing or administering the amended rule and procedures.

Mr. Berkowitz has also determined that for the first five-year period the amended rule is in effect, the public benefit will be deliverance of further genocide and Holocaust-related programs for the public in addition to those already provided by the Commission. There will be no adverse economic effect on small or micro businesses as the rule will apply only to the Commission. There are no anticipated economic costs to persons as a result of this amended rule.

The Commission will consider all public comments on the proposed amendments and any request for a public hearing that are received no later than 30 days from the date that this proposal is published in the *Texas Register.* Comments and requests may be submitted to Charles Sadnick, Coordinator, Texas Holocaust and Genocide Commission, 1511 Colorado Street, Austin, Texas 78711; via facsimile (512) 475-3122; or to charles.sadnick@thc.state.tx.us.

The amendments are proposed under Texas Government Code §449.052(c), relating to general powers and duties of the Commission, which authorizes the Commission to adopt rules for its own procedures and Texas Government Code §572.051(c), which requires each state agency to adopt an ethics code.

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

*§191.8. Grant Program.*

(a) The purpose of this grant program is to provide funds for organizations and projects that support the Texas Holocaust and Genocide Commission's (THGC) mission.

(b) Only nonprofit organizations are eligible to apply for funds. Organizations must meet all program requirements to be eligible for grants.

(c) Grants may fund costs for staff, equipment, [~~capital expenditures,~~] supplies, professional services, and other operating expenses, as permitted by the Uniform Grant Management Standards.

(d) Except as specifically provided in this section, competitive grants may not fund the following costs:

(1) building construction or renovation;

(2) food, beverages, awards, honoraria, prizes, or gifts;

(3) equipment or technology not specifically needed to carry out the goals of the grant;

(4) transportation/travel for project participants or non-grant funded personnel; or

(5) advertising or public relations costs, unless identified by recipient and approved by the THGC.

(e) Applicants eligible to receive grant assistance must provide a minimum of 50% of the project's costs. In-kind services may [~~will not~~] be counted toward the one-to-one match.

(f) To be considered for the grant program, organizations must submit an application form.

(1) Application schedules and deadlines will be set by the commission. Application forms must be received by the THGC by these deadlines or will be returned unopened to the sender.

(2) To be eligible for grants, applicants must complete the grant application form and include all required attachments as stated in the grant application.

(3) Grant applications that are incomplete or received after the application deadline are ineligible for funding.

(g) Representatives from the commission, THGC Friends, and commission staff will evaluate grant applications.

(1) Applications will be scored using the following process:

(A) The reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposals in relation to the specific requirements of the criteria and will assign a numerical value, depending on the points assigned to each criterion.

(B) No reviewer who is associated with an applicant or with an application, or who stands to benefit directly from an application, may participate in the evaluation of applications for that grant. Any reviewer who feels unable to evaluate a particular application fairly may withdraw from the review process for that grant.

(C) Panel members must make their own individual decisions regarding the applications. The panel may discuss applications and make recommendations as the result of a collective decision or vote after the initial scoring of applications is complete.

(D) Reviewers may not discuss proposals with any applicant before the reviewing and scoring process is completed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

(E) Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable,

amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions.

(2) General selection criteria include:

(A) relevance to THGC mission;

(B) qualifications of the applying organization;

(C) potential impact of proposed project;

(D) project feasibility;

(E) estimated cost;

(F) timetable for project; and

(G) geographic diversity.

(h) All payments of grant funds are made on a reimbursable basis upon completion of the project, submission of a project report, and acceptable proof of incurred allowable expenses.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400962
Peter Berkowitz
Chairman
Texas Holocaust and Genocide Commission
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 463-8815

♦ ♦ ♦

# TITLE 16. ECONOMIC REGULATION

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 22. PROCEDURAL RULES
### SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

**16 TAC §22.252**

*(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 Public Utility Commission of Texas or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Public Utility Commission of Texas (commission) proposes the repeal of §22.252, relating to Procedures for Approval of ERCOT Fees and Rates. The proposed repeal will remove from the commission's procedural rules an obsolete section that no longer has a function and that does not accurately reflect the process used by the commission when it reviews and approves the ERCOT budget. Project Number 42227 is assigned to this proceeding.

Slade Cutter, Rate Regulation Division, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Cutter has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be the elimination of a section no longer required. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the repeal.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 at 1:00 p.m. on Wednesday, April 23, 2014. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, on or before April 21, 2014. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 42227.

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which gives the commission authority to make and enforce rules of practice and procedure; and specifically, PURA §39.151, which grants the commission oversight and review authority over an independent organization to which the commission delegates its authority to adopt and enforce rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among market participants. PURA §39.151 also provides that an independent organization is directly responsible and accountable to the commission; provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that it adequately performs its functions and duties; and requires an independent organization to provide reports and information relating to the independent organization's performance of its functions and relating to the organization's revenues, expenses, and other financial matters. This section directs the commission to investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and permits it to require an independent organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or the effectiveness or efficiency of the organization.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, and 39.151.

*§22.252. Procedures for Approval of ERCOT Fees and Rates.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2014.

TRD-201401070
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 936-7223

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# PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 82. BARBERS

### 16 TAC §§82.10, 82.20 - 82.22, 82.31, 82.52, 82.53, 82.70 - 82.72, 82.80, 82.120

The Texas Department of Licensing and Regulation (Department) proposes amendments to §§82.10, 82.20 - 82.22, 82.31, 82.52, 82.53, 82.70 - 82.72, 82.80, and 82.120, regarding the Barber program.

The proposed rules are necessary to implement House Bill 2095 (HB 2095), 83rd Legislature, Regular Session (2013), which amended Texas Occupations Code, Chapters 1601, 1602, and 1603 and the Texas Commission of Licensing and Regulation (Commission's) general rulemaking authority.

The proposed amendments create mini-barbershops and mini-dual shops and include licensing requirements, responsibilities of licensees, license terms, license fees and renewal fees. The proposed amendments also establish requirements for barber schools using distance education, define guest presenters, establish licensing and curriculum requirements for a hair braiding specialty instructor license, and set out the equipment requirements for schools teaching the hair braiding curriculum.

The proposed amendment to §82.10(15) adds a definition for "distance education" to implement HB 2095. Proposed amendments to §82.10 add definitions for "common area," "mini-barbershop," "mini-dual shop," and "mini-barbershop permittee" to implement HB 2095. Proposed amendment to §82.10(17) defines "guest presenter" as a person who possesses subject matter knowledge in a specific curriculum topic and who provides instruction to students in a barber school while a licensed instructor is present.

Proposed amendment to §82.20(m) establishes requirements for a hair braiding specialty instructor license including holding a current hair braiding specialty license, completing 50 hours of teaching instruction in a barber school and passing a written exam.

The proposed amendments to §82.22(e) and (f) establish requirements for obtaining a mini-barbershop or mini-dual shop permit. Proposed amendments to §82.31 add mini-barbershop permit and mini-dual shop permit to the license types that have two year terms and proposed amendments to §82.52 and §82.53 add dual shop, mini-dual shop and mini-barbershop to the types of establishments that are included in periodic and risk-based inspections.

Proposed amendments to §82.71(c) require shop owners or managers to maintain a current list of all individuals who engage in barbering in the shop. Proposed amendments to §82.71(d) requires mini-barbershop permittees and mini-dual shop permittees to maintain a list of every person working in the mini-barbershop or mini-dual shop. The proposed amendments to §82.72(h) set out equipment requirements for barber schools when teaching the hair braiding curriculum.

The proposed amendments to §82.72(q) establish responsibilities for barber schools which choose to provide distance education including the requirement that distance education content be limited to instruction in theory and are proposed to implement HB 2095.

Proposed amendments to §82.80 set a $60 license fee and a $60 renewal fee for both the mini-barbershop permit and the mini-dual shop permit.

Proposed amendment to §82.120 add technical requirements for the hair braiding specialty instructor license.

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

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be the enhanced flexibility that schools and students will gain along with commuting time students will save by using distance education to earn theory curriculum hours. The change in licensing requirements for the hair braiding specialty instructor license will enable instructors to become licensed and begin instructing students quicker than current requirements allow.

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

There will be no anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed because establishing licensing requirements for mini-barbershops and mini-dual shops are necessary to implement HB 2095, as are the guidelines for distance education which is an optional method for providing instruction.

In addition, because the definition of "guest presenter" is the current guideline used by barber schools when bringing in guests to teach specific and limited topics, there will be no economic effect on schools who are required to comply with this proposed amendment.

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

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

The amendments are proposed under Texas Occupations Code, Chapters 51, 1602 and 1603, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601 and 1603. No other statutes, articles, or codes are affected by the proposal.

*§82.10. Definitions.*

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

(1) Act--Texas Occupations Code, Chapters 1601 and 1603.

(2) Barber Establishment--A barbershop, mini-barbershop, specialty shop, dual shop, mini-dual shop, mobile shop, or school that is subject to regulation under the Act.

(3) Barber Instructor--A person authorized by the department to perform or offer instruction in any act or practice of barbering under Texas Occupations Code §1601.002.

(4) Barber School--An entity that holds a permit issued under this chapter to teach the practice of barbering and that may be privately or publicly funded. The term includes a barber college.

(5) Barber Technician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C), (D), (F), (G) and (I).

(6) Barber Technician/Manicurist--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C) - (G).

(7) Barber Technician/Hair Weaver--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C), (D), (G) and (H).

(8) Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture.

(9) Board--The Advisory Board on Barbering.

(10) Booth Rental Permit--A permit issued or renewed to an applicant at the same time the applicant is issued one of the following license types: barber, barber instructor, specialty instructor, barber technician, manicurist, barber technician/manicurist, barber technician/hair weaver, hair weaver, or hair braider; which allows the holder to lease space on the premises of a barber shop, specialty shop, mini-barbershop, [~~or~~] dual shop, or mini-dual shop to engage in the practice of barbering as an independent contractor.

(11) Class A Barber--A person authorized by the department to perform any act or practice of barbering under Texas Occupations Code §1601.002.

(12) Commission--The Texas Commission of Licensing and Regulation.

(13) Common Area--An area within a barbering establishment that contains equipment and facilities available for use by all persons who practice barbering on the premises under a license, certificate, or permit issued under this chapter.

(14) [~~(13)~~] Department--The Texas Department of Licensing and Regulation.

(15) Distance Education--A formal instructional process in which the student and teacher are separated by physical distance and a variety of communication technologies are used to deliver instruction in theory to the student. Courses taught by distance education do not satisfy the requirements of the practical portion of the course curriculum.

(16) [~~(14)~~] Dual Shop--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license under Texas Occupations Code, Chapter 1603.

(17) Guest Presenter--A person who possesses subject matter knowledge in a specific curriculum topic and who has the teaching ability necessary to impart the information to students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom sessions in order for students to earn hours.

(18) [~~(15)~~] Hair braider--A person who holds a Hair Braiding Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(K).

(19) [~~(16)~~] Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(20) [~~(17)~~] Hair weaver--A person who holds a Hair Weaving Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(H).

(21) [~~(18)~~] License--A license, permit, certificate, or registration issued under the authority of the Act.

(22) [~~(19)~~] License by reciprocity--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(23) [~~(20)~~] Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(24) [~~(21)~~] Manicurist--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(E) and (F).

(25) Mini-Barbershop--A barber establishment in which a person practices barbering under a license, certificate, or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(26) Mini-Dual Shop--A shop owned, operated, or managed by a person holding a mini-barber and mini-beauty shop license under Texas Occupations Code §1603.207.

(27) Mini-Barbershop Permittee--A person or entity that holds a license for a mini-barbershop or mini-dual shop. The mini-barbershop permittee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603 and 16 TAC Chapters 82 and 83 for its mini-barbershop or mini-dual shop.

(28) [~~(22)~~] Mobile Shop--A barbershop, specialty shop, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(29) [~~(23)~~] Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(30) [~~(24)~~] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(31) [~~(25)~~] Shampoo Apprentice Permit--A non-renewable permit that allows a person to perform the practice of barbering defined in Texas Occupations Code §1601.002(1)(I).

(32) [~~(26)~~] Sideburn--Part of a haircut or style that is a continuation of the natural scalp hair growth, does not extend below the line of demarcation, and is not connected to any other bearded area on the face.

(33) [~~(27)~~] Specialty Instructor--A person authorized by the department to perform or offer instruction in an act or practice of barbering limited to Texas Occupations Code §1601.002(1)(C) - (H) and (K).

(34) [~~(28)~~] Specialty Shop--A barber establishment in which only the practice of barbering as defined in Texas Occupations Code §1601.002(1)(E), (F), (H) or (K) is performed.

(35) [~~(29)~~] Student Permit--A permit issued by the department to a student enrolled in barber school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

(36) [~~(30)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

*§82.20. License Requirements--Individuals.*

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

(l) To be eligible for a Specialty Instructor License as a Manicurist Instructor, Barber Technician Instructor, Barber Technician/Manicurist Instructor, Barber Technician/Hair Weaving Instructor, or Hair Weaving Instructor [~~or Hair Braiding Instructor~~], an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80;

(3) be at least 18 years of age;

(4) have a high school diploma or high school equivalency certificate;

(5) hold a current specialty license in the specialty or specialties in which the applicant is seeking licensure; and

(A) have completed a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or

(B) have at least one year of licensed work experience in each of the specialties in which the applicant is seeking licensure; and

*(i)* have completed 500 hours of instruction in barber courses and methods of teaching in a barber school, or

*(ii)* have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or

*(iii)* have obtained a degree in education from an accredited college or university; and

(6) pass a written and practical exam required under §82.21.

(m) To be eligible for a Hair Braiding Specialty Instructor License, on or after September 1, 2014, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80;

(3) be at least 18 years of age;

(4) have a high school diploma or high school equivalency certificate;

(5) hold a current hair braiding specialty certificate;

(6) have completed a 50 hour hair braiding instructor course in a barber school; and

(7) pass a written examination required under §82.21. No practical examination is required.

*§82.21. License Requirements--Examinations.*

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

(d) Notwithstanding subsection (c), no practical examination is required for the Hair Braiding Specialty Instructor license.

(e) [~~(d)~~] Examinees must pass the written examination before being eligible to take the practical examination.

(f) [~~(e)~~] When appearing for an examination the examinee shall bring the instruments necessary to give a practical demonstration of the barbering services applicable to the license for which the examinee is applying.

(g) [~~(f)~~] The examinee shall provide a model, of 16 years of age or older, on whom to demonstrate the practical work. The department may require parental approval for models under 18 years of age.

(h) [~~(g)~~] To be admitted to an examination, the examinee must present a current, valid government-issued photo identification, which includes the applicant's full name and date of birth.

(i) [~~(h)~~] Examinees are required to wear a smock or professional attire for the practical examination.

(j) [~~(i)~~] The department will notify an examinee if the examinee fails either the written or practical examination.

(k) [~~(j)~~] Any student or applicant having had a name change during his or her enrollment at any department licensed barber school must notify the department in writing prior to the date on which the student or applicant is scheduled to take any examination, written or practical.

*§82.22. Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, Mini-Dual Shops, Mobile Shops, and Booth Rental.*

(a) To be eligible for a Barbershop, Specialty Shop Permit, a Dual Shop or Mobile Shop License, Mini-Barbershop or Mini-Dual Shop Permit, or a Booth Rental Permit, an applicant must:

(1) submit the completed application on a department approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act and this chapter.

(b) - (d) (No change.)

(e) Mini-Barbershop Permit--To be eligible for a Mini-Barbershop Permit, on or after September 1, 2014, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.303 and §1603.207.

(f) Mini-Dual Shop Permit--To be eligible for a Mini-Dual Shop Permit, on or after September 1, 2014, an applicant must comply with the requirements of the Act, this chapter, Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 for obtaining a beauty salon license and a barbershop permit.

(g) [~~(e)~~] Mobile Shop License--To be eligible for a Mobile Shop License, an applicant must:

(1) provide a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use;

(2) provide a permanent mailing address where correspondence from the department may be received; and

(3) verify that the mobile shop complies with the requirements of the Act and this chapter.

(h) [~~(f)~~] Booth Rental Permit--To be eligible for a booth rental permit, an applicant must hold a valid department-issued Class A barber certificate, barber technician license, barber technician/manicurist license, barber technician/hair weaving license, barber instructor license, specialty instructor license, manicurist license, hair weaving specialty certificate of registration, or hair braiding specialty certificate of registration and meet the requirements of this section.

*§82.31. Licenses--License Terms.*

(a) The following licenses issued under this chapter shall have a term of two years from the date of issuance:

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

(7) Mini-Barbershop Permit;

(8) [~~(7)~~] Specialty Shop Permit;

(9) [~~(8)~~] Dual Shop License;

(10) Mini-Dual Shop Permit;

(11) [~~(9)~~] Mobile Shop License; and

(12) [~~(10)~~] Booth Rental Permit.

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

*§82.52. Periodic Inspections.*

(a) Each barbershop, [~~and~~] specialty shop, dual shop, mini-barbershop, and mini-dual shop shall be inspected at least once every two years. Each barber school shall be inspected at least twice per year.

(b) The barbershop, [~~or~~] specialty shop, dual shop, mini-barbershop, or mini-dual shop owner, manager, or their representative must, upon request, make available to the inspector the list required by §82.71(c) of all individuals who work in the shop.

(c) - (e) (No change.)

*§82.53. Risk-Based Inspections.*

(a) (No change.)

(b) Barber establishments subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:
Figure: 16 TAC §82.53(b)

(c) - (f) (No change.)

*§82.70. Responsibilities of Individuals.*

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

(c) Only a permitted barber school, barbershop, mini-barbershop, specialty shop, dual shop, mini-dual shop, mobile shop, or a licensed barber may advertise as a "Barber."

(d) - (h) (No change.)

*§82.71. Responsibilities of Barbershops, Specialty Shops, [~~and~~] Dual Shops, Mini-Barbershops, and Mini-Dual Shops.*

(a) The owner of a barbershop, dual shop, [~~or~~] specialty shop, mini-barbershop, or mini-dual shop and the shop manager in whose name the shop permit is jointly issued, if different from the owner, shall both be responsible individually and jointly for ensuring that all persons who work in a shop are properly licensed at all times. Individuals who do not hold a current license and /or permit required by the department shall not be allowed to engage in barbering. Shop owners and shop managers commit an offense in violation of department rules if an individual with an expired license or permit or no license or no permit engages in barbering in a shop.

(b) Shop owners and/or shop managers shall verify that all employees and independent contractors have current licenses and permits, as applicable.

(c) The shop owner and/or shop manager shall maintain a current list of all individuals who work in a shop at the time of inspection including employees, [~~and~~] independent contractors, and mini-barbershop and mini-dual shop permittees who engage in barbering. The list must [~~is to~~] be made available to department representatives [~~inspectors~~] upon request and must contain [~~demand. The list shall contain at least~~] the following information:

(1) name of every person working in the shop including their license type, number, and license expiration date [~~each individual working in the shop~~];

[~~(2) the file number (license number) for each individual;~~]

[~~(3) the booth rental permit number for each independent contractor (booth renter);~~]

(2) [~~(4)~~] whether the person [~~individual~~] is an employee or an independent contractor who engages in barbering;

[~~(5) the type of license or permit type held by the individual (e.g., barber, manicurist);~~]

[~~(6) the expiration date of the individual's license and/or permit; and~~]

(3) [~~(7)~~] booth rental permit number and [~~the~~] expiration date of the independent contractor's booth rental permit; and[~~.~~]

(4) license number and license expiration date of each mini-barbershop and mini-dual shop.

(d) The mini-barbershop and mini-dual permittee must maintain a current list of all persons who work in a shop at the time of the inspection, including employees and independent contractors who engage in barbering, and which must include the name of each person working in the mini-barbershop or mini-dual shop, along with their license type number and expiration date. The list must be made available to department representatives upon request.

(e) [~~(d)~~] Each barbershop, dual shop, mini-barbershop and mini-dual shop may display a barber pole. This pole shall be the traditional red, white with the optional blue.

(f) [~~(e)~~] In addition, barbershops shall display on the exterior of the building or premises a sign containing the words "Barber Shop" or "Barber Salon" or any phrase containing the word "Barber".

(g) Mini-barbershops must display on the exterior of the mini-barbershop premises a sign containing the words "Barber Shop" or "Barber Salon" or any phrase containing the word "Barber".

(h) [~~(f)~~] Food or drink must be disposed of in a closed container and the shop shall be separated by a solid wall and have a separate entrance if located in the same building with a restaurant or food preparation area. This rule will not apply to a licensed barbershop or specialty shop in a department store when the sale of food and drink is not immediately adjacent to the shop.

(i) [~~(g)~~] A shop shall provide for the use of individuals who work in the shop at least one sink, wash basin, or hand sanitizer for every three chairs or stations.

(j) [~~(h)~~] Only a permitted barber school, barbershop, mini-barbershop, dual shop, mini-dual shop, mobile shop or specialty shop, or a licensed barber may advertise as a "Barber."

(k) [~~(i)~~] A shop is responsible for maintaining all common areas and for compliance with the health and safety standards of this chapter.

(l) [~~(j)~~] Alterations to the shop's floor plan must be in compliance with the requirements of the Act and this chapter.

(m) [~~(k)~~] A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

(n) [~~(l)~~] Shops may establish rules of operation and conduct, which may include rules relating to clothing which do not conflict with this chapter.

(o) [~~(m)~~] Shops shall notify the department in writing of any name change of the shop within thirty days of the change.

(p) [~~(n)~~] Shops shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(q) [~~(o)~~] Hair weaving specialty shops shall provide the following equipment for each licensee present and providing services:

(1) one work station;

(2) one styling chair;

(3) a sufficient amount of shampoo bowls for licensees providing hair weaving services; and

(4) one chair dryer/handheld dryer for each three licensees providing hair weaving services.

(r) [~~(p)~~] Hair braiding specialty shops shall provide the following equipment for each licensee present and providing services:

(1) one work station; and

(2) one styling chair.

(s) [~~(q)~~] Manicure specialty shops shall provide the following equipment for each licensee present and providing services;

(1) one manicure table with light;

(2) one manicure stool; and

(3) one professional client chair for each manicure station.

(t) [~~(r)~~] Dual shops shall:

(1) comply with all requirements of the Act and this chapter applicable to barbershops;

(2) comply with all requirements of Texas Occupations Code, Chapter 1602 and 16 TAC Chapter 83 applicable to beauty salons; and

(3) if the shop does not currently have employed or have a contract with at least one licensed barber (or cosmetologist) the owner must immediately display a prominent sign at the entrance and exit of the shop indicating that no barber (or cosmetologist) is available; and:

(4) if the shop has neither employed nor contracted with at least one licensed barber (or cosmetologist) for a period of 45 days or more the owner shall;

(A) not place any new advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and

(B) remove or obscure any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

(u) Mini-barbershops must comply with all requirements of the Act and this chapter applicable to mini-barbershops and Texas Occupations Code §1603.207.

(v) Mini-dual shops must:

(1) comply with all requirements of the Act and this chapter applicable to barbershops; and

(2) comply with all requirements of Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 applicable to beauty shops; and

(3) comply with all the requirements for dual shops listed under subsection (t).

(w) [~~(s)~~] A person holding a barber shop, mini-barbershop, specialty shop, dual shop, mini-dual shop, or mobile shop license may not employ a person who is not otherwise licensed by the department to shampoo or condition a person's hair, unless the person holds an active student permit.

*§82.72. Responsibilities of Barber Schools.*

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

(g) Each barber school shall have:

(1) - (12) (No change.)

(13) If providing the hair braiding curriculum, the equipment listed in subsection (h)(1) - (11).

(h) Notwithstanding subsections (c) - (g), a barber school that offers only the hair braiding curriculum must have a clock and a fire extinguisher with current inspection report and must make the following equipment available in adequate number for student use:

(1) mannequin with sufficient hair, with table or attached to styling station;

(2) assortment of combs;

(3) brushes;

(4) yarn;

(5) artificial hair;

(6) scissors;

(7) butterfly clamps and small clips;

(8) hackle;

(9) chairs;

(10) spray bottle; and

(11) drawing board/card.

(i) [(h)] A student instructor may instruct theory only if assisted by a person holding a barber instructor's license.

(j) [(i)] A barber school shall submit each application for student permit in a manner prescribed by the department.

(k) [(j)] Students must have a permit to attend barber school and are authorized to only practice barbering in that school.

(l) [(k)] The school must attach a current student photograph to the school's portion of the permit and to the student's portion of the permit. No student permit is valid unless these photographs are attached.

(m) [(l)] Notwithstanding subsection (k) [(j)], a student may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

(n) [(m)] A barber school shall maintain one album displaying the school's portion of student permits, including affixed picture, of all enrolled students. The permits shall be in alphabetical order. No student may accrue hours for practical work or theory unless the student's permit is displayed in accordance with this subsection.

(o) [(n)] Each barber school approved by the department shall include in its instruction the curricula approved by the department.

(p) [(o)] No business other than the teaching and practicing of barbering can be operated on the premises of a barber school, with the exception of vending machines or retail products directly relating to hair care.

(q) A barber school offering distance education must:

(1) obtain department approval before offering a course;

(2) provide students with the educational materials necessary to fulfill course requirements; and

(3) comply with the curriculum requirements set forth in §82.120 by limiting distance education to the maximum number of theory hours designated for each course type.

(r) [(p)] Only a permitted barber school, barbershop, mini-barbershop, dual shop, mini-dual shop, mobile shop, or manicurist specialty shop or a licensed barber may advertise as a "Barber."

(s) [(q)] Schools may establish rules of operation and conduct, which may include rules relating to student clothing, that do not conflict with this chapter.

(t) [(r)] A student enrolled in a barber school must wear a clean uniform or smock during school hours.

(u) [(s)] Barber schools are responsible for compliance with the health and safety standards of this chapter.

(v) [(t)] Alterations to the school's floor plan must be in compliance with the requirements of the Act and this chapter.

(w) [(u)] Barber schools shall notify the department in writing of any name change of the school within thirty days of the change.

(x) [(v)] Barber schools shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(y) [(w)] At least one time per month, barber schools shall submit to the department an electronic record of each student's accrued hours, in a manner and format prescribed by the department. Delayed data submission(s) are permitted only upon department approval, and the department shall determine the period of time for which a school may delay the electronic submission of data on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(z) [(x)] A school shall maintain and have available for department and/or student inspection the monthly progress report required by Texas Occupations Code, §1601.561(a), documenting the daily attendance record of each student and number of credit hours earned. The school shall maintain the monthly progress report throughout the period of the student's enrollment and for 48 months after the student completes the curriculum, withdraws, or is terminated.

(aa) [(y)] A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

(bb) [(z)] A barber school must have at least one instructor for every 25 students on the school's premises.

(cc) [(aa)] A barber school must have at least one instructor for every three student instructors on the school's premises. A student instructor shall concentrate on developing teaching skills and may not be booked with customers.

(dd) A barber school must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum topic and that a licensed instructor is present during the guest presenter's classroom instruction.

(ee) [(bb)] A private barber school or post-secondary barber school may provide barber instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school barber program for purposes of the Act and department rules.

*§82.80. Fees.*

(a) Application Fees:

(1) - (7) (No change.)

(8) Mini-Barbershop Permit--$60

(9) [(8)] Specialty Shop Permit--$50

(10) [(9)] Booth Rental Permit--No fee

(11) [(10)] School Original Permit--$300

(12) [(11)] Dual Shop--$130

(13) Mini-Dual Shop Permit--$60

(14) [(12)] Mobile Shop--$60

(b) Renewal Fees:

(1) - (7) (No change.)

(8) Mini-Barbershop Permit--$60

(9) [(8)] Specialty Shop Permit--$50

(10) [(9)] Booth Rental Permit--$50 for permits expiring before February 1, 2014.[;] No fee for licenses expiring on or after February 1, 2014.

(11) [(10)] School Permit--$200

(12) [(11)] Dual Shop--$100

(13) Mini-Dual Shop Permit--$60

(14) [(12)] Mobile Shop--$60

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

*§82.120. Technical Requirements--Curricula.*

(a) - (l) (No change.)

(m) The curriculum for the hair braiding specialty instructor license consists of 50 hour as follows:
Figure: 16 TAC §82.120(m)

(n) [~~(m)~~] Field Trips

(1) Barber related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hour Class A Barber course;

(B) a maximum of 50 hours out of the 1,000 hour class A Barber course;

(C) a maximum of 30 hours for the Manicure course;

(D) a maximum of 20 hours for the Barber Technician course;

(E) a maximum of 45 hours for the Barber Technician/Manicurist course;

(F) a maximum of 30 hours for the Barber Technician/Hair Weaving course;

(G) a maximum of 20 hours for the Hair Weaving course;

(H) a maximum of 35 hours for the 750 hour Instructor course;

(I) a maximum of 25 hours for the 500 hour Instructor course; and

(J) a maximum of 15 hours for the Cosmetology Operator to Class A Barber course.

(3) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(4) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(5) No credit may be earned for travel.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401078
Brian Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

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# CHAPTER 83. COSMETOLOGISTS

## 16 TAC §§83.10, 83.22, 83.31, 83.52, 83.53, 83.71, 83.72, 83.80, 83.100, 83.101, 83.103, 83.109, 83.120

The Texas Department of Licensing and Regulation ("Department") proposes amendments to §§83.10, 83.22, 83.31, 83.52, 83.53, 83.71, 83.72, 83.80, 83.100, 83.101, 83.103, 83.109, and 83.120, regarding the Cosmetology program.

The proposed rules are necessary to implement House Bill 2095 (HB 2095), 83rd Legislature, Regular Session (2013), which amended Texas Occupations Code, Chapters 1601, 1602 and 1603. The proposed amendments are also in response to the Cosmetology Advisory Board's ("Board's") recommendations regarding changes to health and safety sanitation requirements.

The proposed amendments create mini-salons and mini-dual shops and include licensing requirements, responsibilities of licensees, license terms, license fees and renewal fees. The proposed amendments also establish requirements for cosmetology schools which choose to use distance education as an additional method for providing instruction to students; specify the terms under which guest presenters may provide limited instruction in cosmetology schools and require that schools using guest presenters ensure that presenters have the skills necessary to teach their area of expertise. The proposed rules also eliminate isopropyl and ethyl alcohol as department-approved chemical disinfectants.

Proposed amendments to §83.10 adds a definition for "distance education" to implement HB 2095 which provides beauty culture schools the option of expanding their teaching methods to include distance learning instruction through a variety of communication technologies. Proposed amendments to §83.10 also add definitions for "common area", "mini-salon", "mini-dual shop" and "mini-salon licensee" to implement HB 2095.

The proposed amendments to §83.22 list the eligibility requirements necessary to obtain a mini-salon license or mini-dual shop permit. Proposed amendments to §83.31 add mini-salon license and mini-dual shop permit to the license types that have a term of two years and proposed amendments to §83.52 and §83.53 add dual shop, mini-dual shop and mini-salon to the types of establishments that are included in periodic and risk-based inspections. Proposed amendments to §83.71(c) clarify that beauty salons, specialty salons and duals shops may lease space to independent contractors. Proposed amendments to §83.71 also add new subsection (d) to specify that beauty salons, specialty salons and dual shops may lease space to mini-salon licensees and mini-dual shop permittees.

The proposed amendments to §83.72 are to implement HB 2095 and establish responsibilities for beauty culture schools that choose to provide distance education and provide that distance education content be limited to instruction in theory. Proposed amendments to §83.80 set a $60 license fee and a $60 renewal fee for both the mini-salon license and the mini-dual shop permit.

Proposed amendments to §§83.100, 83.101, 83.103 and 83.109 eliminate all references to isopropyl and ethyl alcohol as chemicals that may be used as department-approved disinfectants. The proposed amendments are made to implement Board recommendations based upon the research of the Board's Health and Safety Work Group which shows that alcohol is not effective for use as a disinfectant.

Proposed amendments to §83.120 set out the technical requirements for distance education and specify that the maximum

number of theory hours that may be earned through distance education for each course may be no more than 25% of the total number of curriculum hours.

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

Mr. Kuntz has also determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be the enhanced flexibility that schools and students will gain along with commuting time saved by using distance education to earn theory curriculum hours; the health and safety sanitation standards established to protect public health will be increased because establishments and individuals will no longer use alcohol to disinfect implements and instead will be required to use more effective chemicals; and the licensing of mini-salons and mini-dual shops will provide licensees and permittees the ability to operate as salons with all the privileges and responsibilities of current salon licensees.

There will be no anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed because establishing licensing requirements for mini-salons and mini-dual shops are proposed to implement HB 2095, as are the guidelines for distance education which is an optional method for providing instruction.

In addition, because the definition of "guest presenter" is the current guideline used by cosmetology schools when bringing in guests to teach specific and limited topics, there will be no economic effect on schools who are required to comply with this proposed rule.

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

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

The amendments are proposed under Texas Occupations Code, Chapters 51, 1602 and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1602 and 1603. No other statutes, articles, or codes are affected by the proposal.

*§83.10. Definitions.*

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

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

(4) Booth rental license--A license issued or renewed to an applicant the same time the applicant is issued one of the following license types: operator, manicurist, esthetician, esthetician/manicurist, eyelash extension specialist, hair weaver, hair braider, wig specialist, instructor, or specialty instructor, which allows the holder to lease space on the premises of a beauty shop, specialty shop, mini-salon, [~~or~~] dual shop, or mini dual shop to engage in the practice of cosmetology as an independent contractor.

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

(7) Common Area--An area within a cosmetology establishment which contains equipment and facilities available for use by all persons who practice cosmetology on the premises under a license, certificate or permit issued under this chapter or Texas Occupations Code, Chapter 1603.

(8) [~~(7)~~] Cosmetology establishment--A beauty salon, specialty salon, mini-salon, dual shop, mini dual-shop, mobile shop, or beauty culture school, public or private, that is subject to regulation under the Act.

(9) Distance Education--A formal instructional process in which the student and teacher are separated by physical distance and a variety of communication technologies are used to deliver instruction in theory to the student. Courses taught by distance education do not satisfy the requirements of the practical portion of the course curriculum.

(10) [~~(8)~~] Dual Shop--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Texas Occupations Code, Chapter 1603.

(11) [~~(9)~~] Eyelash Extension Application--The process of applying and removing a semi-permanent, thread-like, natural or synthetic single fiber to an eyelash, including cleansing of the eye area and lashes prior to applying and after removing extensions.

(12) [~~(10)~~] Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1602.002(a)(12).

(13) [~~(11)~~] Esthetician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1602.002(a)(6) - (9) and (12). The term esthetician in this chapter includes the term facialist.

(14) [~~(12)~~] Esthetician/Manicurist--An esthetician/manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(6) - (12).

(15) Guest Presenter--A person who possesses subject matter knowledge in specific curriculum topics and who has the teaching ability necessary to impart the information to cosmetology students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom session in order for students to earn hours.

(16) [~~(13)~~] Hair braider--A person who holds a hair braiding specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2).

(17) [~~(14)~~] Hair weaver--A person who holds a hair weaving specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2), (3), and (13).

(18) [~~(15)~~] Instructor--An individual authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(19) [~~(16)~~] Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(20) [~~(17)~~] License--A department-issued permit, certificate, approval, registration, or other similar permission required under Texas Occupations Code, Chapter 1601, 1602, or 1603 [~~by law~~].

(21) [~~(18)~~] License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(22) [~~(19)~~] Manicurist--A manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(10) and (11).

(23) Mini-Salon--A cosmetology establishment in which a person practices cosmetology under a license, certificate or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(24) Mini-Dual Shop--A shop owned, operated, or managed by a person meeting the requirements of both a mini-barbershop and mini-beauty shop license under Texas Occupations Code §1603.207.

(25) Mini-Salon Licensee--A person or entity that holds a license for a mini-salon or mini-dual shop. The mini-salon licensee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603, and 16 TAC Chapters 82 and 83 for the mini-salon or mini-dual shop.

(26) [~~(20)~~] Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(27) [~~(21)~~] Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(28) [~~(22)~~] Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(29) [~~(23)~~] Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(30) [~~(24)~~] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(31) [~~(25)~~] Safety Razor--A razor that is fitted with a guard close to the cutting edge of the razor that is intended to prevent the razor from cutting too deeply and reduces the risk and incidence of accidental cuts.

(32) [~~(26)~~] Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in Texas Occupations Code §1602.002(a)(3), relating to shampooing and conditioning a person's hair.

(33) [~~(27)~~] Specialty Instructor--An individual authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(7), (9), (10) and/or (12).

(34) [~~(28)~~] Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(2), (4), (7), (9), (10), (12), or (13) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(35) [~~(29)~~] Student Permit--A permit issued by the department to a student enrolled in cosmetology school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1602 and 1603.

(36) [~~(30)~~] Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, thread or other material.

(37) [~~(31)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(38) [~~(32)~~] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

(39) [~~(33)~~] Wig Specialist--A person who holds a wig specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(4).

*§83.22. License Requirements--Beauty Salons, Specialty Salons, Mini-Salons, Dual Shops, Mini-Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors).*

(a) To be eligible for a beauty salon, specialty salon, dual shop, mobile shop, or booth rental license, an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act and this chapter;

(3) submit a completed application on a department-approved form; and

(4) pay the fee required under §83.80. [~~; and~~]

[~~(5) for a booth rental license, hold an active department-issued cosmetology license.~~]

(b) To be eligible for a mini-salon or mini-dual shop license on or after September 1, 2014, an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act and this chapter;

(3) submit a completed application on a department-approved form; and

(4) pay the fee required under §83.80.

(c) [~~(b)~~] In addition to the requirements of subsection (a), an applicant for a dual shop [~~a dual shop license applicant~~] must also comply with [~~the requirements to the Act, this chapter,~~] Texas Occupations Code, Chapters [~~Chapter~~] 1601, 1602, and 1603 and 16 TAC Chapters [~~Chapter~~] 82 and 83 for obtaining a beauty salon license and a barbershop permit.

(d) In addition to the requirements of subsection (b), an applicant for a mini-dual shop must also comply with Texas Occupations Code, Chapters 1601, 1602, and 1603 and 16 TAC Chapters 82 and 83 for obtaining a beauty salon license and a barbershop permit.

(e) [~~(c)~~] In addition to the requirements of subsection (a), a mobile shop license applicant must:

(1) provide a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use;

(2) provide a permanent mailing address where correspondence from the department may be received; and

(3) verify that the mobile shop complies with the requirements of the Act and this chapter.

(f) [~~(d)~~] To be eligible for a temporary beauty salon, specialty salon, or dual shop license, an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act, this chapter and if applicable, Texas Occupations Code, Chapter 1601 and 16 TAC Chapter 82;

(3) submit a completed application on a department-approved form;

(4) pay the fee required under §83.80; and

(5) hold an active department-issued cosmetology operator license, specialty license, or certificate.

(g) [~~(e)~~] A temporary license may not be issued for more than one physical address.

(h) [~~(f)~~] A temporary license expires on the 60th day after the date the license is issued and may not be renewed.

(i) [~~(g)~~] An applicant who is issued a license under subsection (f) [~~(d)~~] is not eligible for another temporary license until one year after the date the previous license was issued.

*§83.31. Licenses--License Terms.*

(a) The following licenses have a term of two (2) years:

(1) - (7) (No change.)

(8) dual shop license; [~~and~~]

(9) mini-salon license;

(10) mini-dual shop permit; and

(11) [~~(9)~~] mobile shop license.

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

*§83.52. Periodic Inspections.*

(a) Each beauty salon, [~~or~~] specialty salon, dual shop, mini-salon, or mini-dual shop shall be inspected at least once every two years. Each beauty culture school shall be inspected at least twice per year.

(b) The beauty salon, [~~or~~] specialty salon, or dual shop owner, manager, or their representative must, upon request, make available to the department representative [~~inspector~~] the list required by §83.71(c) of all independent contractors and all mini-salon licensees or mini-dual shop permittees who work in the salon or shop.

(c) - (e) (No change.)

*§83.53. Risk-based Inspections.*

(a) (No change.)

(b) Cosmetology establishments subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:
Figure: 16 TAC §83.53(b)

(c) At the time of inspection of a beauty salon, [~~or~~] specialty salon, or dual shop, the owner, manager, or their representative must, upon request, make available to the department representative [~~inspector,~~] the list required by §83.71(c) of all independent contractors who work in the shop and the list required by §83.71(d) of all mini-salon licensees and mini-dual shop permittees.

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

*§83.71. Responsibilities of Beauty Salons, Mini-Salons, Specialty Salons, Dual Shops, Mini-Dual Shops and Booth Rentals.*

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

(c) Beauty salons, specialty salons, and dual shops [~~Salons~~] may lease space to an independent contractor who holds a booth rental (independent contractor) license. The lessor to an independent contractor must maintain a list of all renters that includes the name of renter and the cosmetology license number of the renter. The lessor must supply the department representative [~~inspector~~] with a list of renters upon request.

(d) Beauty salons, specialty salons, and dual shops may lease space to mini-salon licensees or mini-dual shop permittees. The lessor must maintain a list of all mini-salon or mini-dual shop license numbers and expiration dates and must provide the list to a department representative upon request.

(e) Mini-salon licensees and mini-dual shop permittees must maintain the name, license number, and license expiration date of each person working in the mini-salon or mini-dual shop.

(f) Cosmetology establishments that lease space to mini-salon licensees or mini-dual shop permittees must maintain all common areas.

(g) [~~(d)~~] A person holding a beauty, specialty or mini-salon license or a [~~shop,~~] dual or mini-dual shop permit, [~~or specialty shop license~~] may not employ a person who is not otherwise licensed by the department to shampoo or condition a person's hair, unless the person holds an active shampoo apprentice permit or student permit.

(h) [~~(e)~~] Each salon shall comply with the following requirements:

(1) a sink with hot and cold running water;

(2) an identifiable sign with the salon's name;

(3) a suitable receptacle for used towels/linen;

(4) one wet disinfectant soaking container;

(5) a clean, dry, debris-free storage area;

(6) a minimum of one covered trash container; and

(7) if providing manicure or pedicure nail services, an autoclave, dry heat sterilizer or ultraviolet sanitizer.

(i) [~~(f)~~] In addition to the requirements of subsection (h): [~~(e)~~]

(1) beauty salons and mini-salons shall provide the following equipment for each licensee present and providing services:

(A) one working station;

(B) one styling chair; and

(C) a sufficient amount of shampoo bowls.

(2) manicure salons shall provide the following equipment for each licensee present and providing services:

(A) one manicure table with light;

(B) one manicure stool; and

(C) one professional client chair for each manicure station.

(3) esthetician salons shall provide the following equipment for each licensee present and providing services:

(A) one facial bed or chair; and

(B) one mirror.

(4) combination esthetician/manicure salons shall provide the following equipment:

(A) the requirements for manicure salon; and

(B) the requirements for esthetician salon.

(5) eyelash extension salons shall provide the following equipment for each licensee present and providing services:

(A) one facial bed or massage table that allows the consumer to lie completely flat;

(B) one lamp; and

(C) one stool or chair.

(6) wig salons shall provide the following equipment for each licensee present and providing services:

(A) one mannequin table, station, or styling bar to accommodate a minimum of 10 hairpieces;

(B) one wig dryer; and

(C) two canvas wig blocks.

(7) hair weaving salons shall provide the following equipment for each licensee present and providing services:

(A) one work station;

(B) one styling chair; and

(C) a sufficient amount of shampoo bowls for licensees providing hair weaving services.

(8) hair braiding salons shall provide the following equipment for each licensee present and providing services:

(A) one work station; and

(B) one styling chair.

(9) Dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons;

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and Chapter 82 of this title applicable to barbershops;

(C) if the shop does not currently have employed or have a contract with at least one licensed barber or one licensed cosmetologist, the owner must immediately display a prominent sign at the entrance and exit of the shop indicating that no barber or no cosmetologist is available; and

(D) if the shop has neither employed nor contracted with at least one licensed barber or cosmetologist for a period of 45 days or more the owner shall:

*(i)* not place any new advertisement or display any sign or symbol indicating that the shop offers barbering or cosmetology services; and

*(ii)* remove or obscure any existing sign or symbol indicating that the shop offers barbering or cosmetology services.

(10) Mini-dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons; and

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barbershops.

(j) [~~(g)~~] All booth rental [~~(independent contractor)~~] licensees acting as independent contractors must have the following items:

(1) one wet disinfectant soaking container;

(2) a clean, dry, debris-free storage area;

(3) a suitable receptacle for used towels/linen; and

(4) a current law and rules book.

(k) [~~(h)~~] In addition to the requirements in subsection (j) [~~(g)~~], booth rental [~~(independent contractor)~~] licensees acting as independent contractors must have the following items.

(1) If practicing in a beauty salon, one work station and one styling chair.

(2) If practicing in an esthetician salon, one facial bed or chair and one mirror, wall hung or hand held.

(3) If practicing in a manicure salon, one manicure table with a light, one manicure stool, and one chair, professional in appearance.

(4) If practicing in an eyelash extension salon, one facial bed or massage table that allows the consumer to lie completely flat, one stool or chair and one lamp.

(l) [~~(i)~~] Booth rental [~~(independent contractor)~~] licensees acting as independent contractors must comply with all state and federal laws relating to independent contractors.

~~[(j) A booth rental (independent contractor) licensee may provide the cosmetology service(s) authorized by the independent contractor's cosmetology license.]~~

(m) [~~(k)~~] Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

*§83.72. Responsibilities of Beauty Culture Schools.*

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

(g) Schools offering distance education must:

(1) obtain department approval before offering a course;

(2) provide students with the educational materials necessary to fulfill course requirements; and

(3) comply with the curriculum requirements in §83.120(d) by limiting distance education to instruction in theory.

(h) [~~(g)~~] Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits shall be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

(i) [~~(h)~~] Schools may use a time clock to track student hours and maintain a daily record of attendance or schools may use credit hours.

(j) [~~(i)~~] Schools using time clocks shall post a sign at the time clock that states the following department requirements:

(1) Each student must personally clock in/out for himself/herself.

(2) No credit shall be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.

(3) If a student is in or out of the facility for lunch, he/she must clock out.

(4) Students leaving the facility for any reason, including smoking breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of a licensed instructor.

(k) [~~(j)~~] Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents however only school owners and school designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(l) [~~(k)~~] A school must properly account for the credit hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit that is not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum, withdraws, or is terminated:

(1) daily record of attendance;

(2) the following documents if a time clock is used:

(A) time clock record(s);

(B) time clock failure and repair record(s); and

(C) field trip records in accordance with §83.120(e)(5) [~~§83.120(d)(5)~~];

(3) all other relevant documents that account for a student's credit under this chapter.

(m) [~~(l)~~] Schools using time clocks shall, at least one time per month submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours shall include all hours accrued at the school. Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(n) [~~(m)~~] Schools using credit hours shall, at the end of the course or module or if the student drops or withdraws, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(o) [~~(n)~~] Schools changing from clock hours to credit hours shall submit to the department their curriculum for approval before making the change.

(p) [~~(o)~~] Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend a cosmetology curriculum for 30 days.

(q) [~~(p)~~] Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

(r) [~~(q)~~] All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula required under §83.120.

(s) [~~(r)~~] A private cosmetology school or post-secondary school may provide cosmetology instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department rules.

(t) [~~(s)~~] Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(u) Schools must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum topic and that a licensed instructor is present during the guest presenter's classroom teaching.

(v) [~~(t)~~] Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct a minimum of ten students enrolled at the school:

(1) if using a time clock to track student hours, one day/date formatted computer time clock;

(2) desks and chairs or table space for each student in attendance;

(3) medical dictionary;

(4) audio/visual equipment;

(5) a dispensary containing a sink with hot and cold running water and space for storage and dispensing of supplies and equipment;

(6) a suitable receptacle for used towels/linens;

(7) 2 covered trash cans in lab area; and

(8) one large wet disinfectant soaking container.

(9) If offering the operator curriculum the following equipment must be available in adequate number for student use:

(A) shampoo bowl and shampoo chair;

(B) heat processor or hand-held hair dryer and heat cap or therapeutic light;

(C) cold wave rods;

(D) thermal iron (electric or non-electric);

(E) styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic);

(F) mannequin with sufficient hair, with table or attached to styling station;

(G) professional hand clippers;

(H) professional hand held dryer;

(I) manicure table and stool;

(J) facial chair or bed;

(K) lighted magnifying glass;

(L) dry sanitizer; and

(M) wet sanitizer.

(10) If offering the esthetician curriculum the following equipment must be available in adequate number for student use:

(A) facial chair;

(B) lighted magnifying glass;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer machine;

(F) brush machine for cleaning;

(G) vacuum machine;

(H) high frequency machine for disinfection, product penetration, stimulation;

(I) galvanic machine for eliminating encrustations, product penetration;

(J) paraffin bath and paraffin wax;

(K) facial bed;

(L) mannequin head; and

(M) wet sanitizer.

(11) If offering the manicure curriculum the following equipment must be available in adequate number for student use:

(A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer;

(B) complete manicure table with light;

(C) client chair;

(D) student stool or chair;

(E) whirlpool foot spa or foot basin;

(F) electric nail file;

(G) UV light curing system;

(H) paraffin bath and paraffin wax; and

(I) air brush system.

(12) If offering the esthetician/manicure curriculum, the equipment required for the esthetician curriculum as listed in paragraph (10); and the equipment required for the manicure curriculum as listed in paragraph (11); including a wax warmer and paraffin warmer for each service, in adequate number for student use.

(13) If offering the eyelash extension curriculum; the following equipment must be available in adequate number for student use:

(A) facial bed or massage table that allows the consumer to lie completely flat;

(B) stool or chair;

(C) lamp;

(D) mannequin head;

(E) wet sanitizer; and

(F) dry sanitizer.

(w) [~~(u)~~] Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

*§83.80. Fees.*

(a) Application fees.

(1) - (7) (No change.)

(8) Mini-Salon License--$60

(9) [~~(8)~~] Booth Rental (Independent Contractor) License--No fee

(10) [~~(9)~~] Beauty Culture School--$300

(11) [~~(10)~~] Dual Shop--$130

(12) Mini-Dual Shop Permit--$60

(13) [~~(11)~~] Mobile Shop--$106

(14) [~~(12)~~] Temporary Beauty Salon, Specialty Salon, or Dual Shop License--$20

(b) Renewal fees.

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

(7) Mini-Salon--$60

(8) Mini-Dual Shop--$60

(9) [~~(7)~~] Booth Rental (Independent Contractor) License--$67 for licenses expiring before February 1,[~~-~~] 2014; No fee for licenses expiring on or after February 1, 2014.

(10) [~~(8)~~] Beauty Culture School--$200

(11) [~~(9)~~] Dual Shop--$100

(12) [~~(10)~~] Mobile Shop--$69

(c) - (l) (No change.)

*§83.100. Health and Safety Definitions.*

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

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

(4) Disinfectant--In this chapter, one of the following department-approved chemicals:

(A) an EPA-registered bactericidal, fungicidal, and virucidal disinfectant used in accordance with the manufacturer's instructions; or

(B) a chlorine bleach solution used in accordance with this chapter.[~~; or~~]

[~~(C) an Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90%.~~]

(5) EPA-registered bactericidal, fungicidal, and virucidal disinfectant--When used according to manufacturer's instructions, a chemical that is a low-level disinfectant used to destroy bacteria and to disinfect implements and non-porous surfaces.

[~~(6) Isopropyl or Ethyl alcohol--Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90% are chemicals that are a low-level disinfectant used to destroy bacteria and to disinfect implements.~~]

(6) [~~(7)~~] Multi-use items--Items constructed of hard materials with smooth surfaces such as metal, glass, or plastic typically for use on more than one client. The term includes but is not limited to

such items as clippers, scissors, combs, nippers, tweezers, and some nails files.

(7) [~~(8)~~] Single-use items--Porous items made or constructed of cloth, wood, or other absorbent materials having rough surfaces usually intended for single use including but not limited to such items as tissues, orangewood sticks, cotton balls, thread, surgical tape, extension pads, some buffer blocks, and gauze.

(8) [~~(9)~~] Sterilize or sterilization--To eliminate all forms of bacteria or other microorganisms by use of an autoclave or dry heat sterilizer.

(9) [~~(10)~~] Sanitize or sanitization--To reduce the number of microorganisms to a safe level by use of an ultraviolet sanitizer.

*§83.101. Health and Safety Standards--Department-Approved Disinfectants.*

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

~~[(c) Isopropyl or Ethyl alcohols shall be used as follows:]~~

~~[(1) Isopropyl alcohol at a concentration of at least 70% and ethyl alcohol at a concentration of at least 90% are low-level disinfectants.]~~

~~[(2) Alcohol shall not be used to clean and disinfect blood or body fluid.]~~

~~[(3) All alcohol shall be kept in a covered container. Alcohol deteriorates in some plasties, metals and rubber items.]~~

~~[(4) Alcohol may affect the long-term use of scissors and other sharp objects.]~~

~~[(5) The department recommends leaving items in alcohol in accordance with the manufacturer's recommendation for effective disinfection. When using alcohol on surfaces other than non-porous materials, the time of contact shall be between 1 to 3 minutes after proper cleaning that removed all visible debris.]~~

~~[(6) Alcohol may be sprayed onto porous or absorbent surfaces after cleaning, with contact time on the surface of the item for at least 1 minute, provided the porous items have not contacted broken or unhealthy skin or nails.]~~

*§83.103. Health and Safety Standards--Hair Cutting, Styling, Shaving, and Treatment Services.*

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

(c) After each client, the following implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, [~~or isopropyl alcohol, ethyl alcohol,~~] or a high-level disinfectant chlorine bleach solution. Equipment, implements, tools and materials to be cleaned and disinfected include but are not limited to combs and picks, haircutting shears, thinning shears/texturizers, safety razors, edgers, guards and perm rods.

(d) At the end of each day of use, the above items, along with any other tools, such as sectioning clips, brushes, comb and picks shall be cleaned by manually scrubbing with soap and water or adequate methods, and then disinfected by one of the following methods:

(1) Complete immersion in an EPA-registered bactericidal, fungicidal, and virucidal disinfectant in accordance with manufacturer's instructions; or[~~,~~]

~~[(2) Complete immersion in isopropyl alcohol or ethyl alcohol;]~~

(2) [~~(3)~~] Complete immersion in a high-level disinfectant chlorine bleach solution.

*§83.109. Health and Safety Standards--Wig and Hairpiece Services.*

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

(c) After each client, the following implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, [~~or isopropyl alcohol, ethyl alcohol,~~] or a high-level chlorine bleach solution. Equipment, implements, tools and materials to be cleaned and disinfected include but are not limited to combs and picks, haircutting shears, thinning shears/texturizers, razors, edgers, guards, perm rods and bowls or containers used to clean or color wigs or hairpieces.

(d) At the end of each day of use, the above items, along with any other tools, such as sectioning clips, brushes, comb and picks shall be cleaned by manually scrubbing with soap and water or adequate methods, and then disinfected by one of the following methods:

(1) Complete immersion in an EPA-registered bactericidal, fungicidal, and virucidal disinfectant in accordance with manufacturer's instructions; or[~~,~~]

~~[(2) Complete immersion in isopropyl alcohol or ethyl alcohol;]~~

(2) [~~(3)~~] Complete immersion in a high-level chlorine bleach solution.

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

*§83.120. Technical Requirements--Curriculum.*

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

(d) Distance Education.

(1) Schools offering distance education may not designate more than 25% of the total curriculum hours in each course as theory hours.

(2) A student may obtain the following distance education curriculum hours:

(A) a maximum of 375 hours out of the 1,500 hour operator course;

(B) a maximum of 250 hours out of the 1,000 hour operator course;

(C) a maximum of 75 hours out of the 300 hour class A barber to operator course;

(D) a maximum of 150 hours out of the 600 hour manicure course;

(E) a maximum of 186 hours out of the 750 hour esthetician course;

(F) a maximum of 300 hours out of the 1200 hour esthetician/manicurist course;

(G) a maximum of 80 hours out of the 320 hour eyelash extension course;

(H) a maximum of 75 hours out of the 300 hour hair-weaving course;

(I) a maximum of 186 hours out of the 750 hour instructor course; and

(J) a maximum of 125 hours out of the 500 hour instructor course.

(e) [~~(d)~~] Field Trips.

(1) Cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hours operator course;

(B) a maximum of 50 hours out of the 1,000 hours operator course;

(C) a maximum of 30 hours for the manicure course;

(D) a maximum of 30 hours for the esthetician course;

(E) a maximum of 60 hours for the esthetician/manicurist course;

(F) a maximum of 15 hours for the eyelash extension course;

(G) a maximum of 30 hours for students taking the 750 hour instructor course; and

(H) a maximum of 20 hours for students taking the 500 hour instructor course.

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior department approval is not required.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2014.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 463-8179

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

## CHAPTER 161. COMMISSIONER'S RULES CONCERNING ADVISORY COMMITTEES

### 19 TAC §161.1005

The Texas Education Agency proposes new §161.1005, concerning advisory committees. The proposed new section would reflect restrictions to service on agency assessment and accountability advisory committees made by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013.

HB 5, 83rd Texas Legislature, Regular Session, 2013, added new Texas Education Code (TEC), §39.038 and §39.039, to restrict certain appointments to agency assessment and accountability advisory committees. As clarified in the Texas House Committee on Public Education's December 6, 2013, letter of intent to the commissioner of education, the provisions of both the TEC, §39.038 and §39.039, are specific only to agency-developed assessments and accountability systems under the TEC, Chapter 39, Subchapter B, Assessment of Academic Skills.

HB 5, Section 40, adds the TEC, §39.038, and applies to those persons or entities reimbursed, retained, or employed to develop assessments required under the TEC, §39.023, by the state's contracted assessment instrument vendor. These persons or entities may not participate in a formal or informal advisory committee established by the commissioner or agency pertaining to the assessment or accountability system under the TEC, Chapter 39, Subchapter B.

HB 5, Section 41, adds the TEC, §39.039, and stipulates that a person who is an agent of an entity that is contracted to develop an assessment as required under the current TEC, §39.023, commits a Class B misdemeanor offense if the person participates in a formal or informal advisory committee established by the agency or State Board of Education (SBOE) regarding policies or implementation of the assessment and accountability provisions of the TEC, Chapter 39, Subchapter B.

Proposed new 19 TAC §161.1005, Assessment and Accountability Advisory Committees, would establish applicable definitions and provide parameters for serving on the Texas Technical Advisory Committee or any committee that advises the agency, commissioner of education, or SBOE regarding policies or implementation of requirements under the TEC, Chapter 39, Subchapter B, related to state accountability systems or the content or administration of an assessment instrument. The proposed new rule would also address prior and future relationships that an individual may have with an assessment instrument vendor as well as royalties or other compensation that may come due during the term of an appointment.

The proposed new section would have no procedural and reporting implications. The proposed new section would have no effect on the paperwork required and maintained by school districts.

Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new section.

Dr. Cloudt has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be to update the Texas Administrative Code to reflect changes made to the assessment program by HB 5, 83rd Texas Legislature, Regular Session, 2013. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

The public comment period on the proposal begins March 21, 2014, and ends April 21, 2014. Comments on the proposal may

be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 21, 2014.

The new section is proposed under the Texas Education Code (TEC), §39.038, and §39.039, as added by Sections 40 and 41, respectively, of House Bill 5, 83rd Texas Legislature, Regular Session, 2013 (and clarified by the December 6, 2013, letter of intent by the Texas House Committee on Public Education), which authorize the commissioner to adopt rules regarding restrictions on appointments to advisory committees and prohibition on political contribution or activity by certain contractors.

The new section implements the TEC, §39.038 and §39.039.

*§161.1005. Assessment and Accountability Advisory Committees.*

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

(1) Advisory committee--The Texas Technical Advisory Committee or any committee that advises the Texas Education Agency (TEA), the commissioner of education, or the State Board of Education regarding policies or implementation of requirements under the Texas Education Code (TEC), Chapter 39, Subchapter B, related to state accountability systems or the content or administration of an assessment instrument.

(2) Agent--Any person acting in a capacity that involves public representation of an entity, including an attorney, a lobbyist or public spokesperson, or a corporate officer. An employee, a contractor, or a consultant of an assessment instrument vendor is not an agent unless the duties of that relationship include public representation. Public representation does not include speaking at academic or similar conferences, publishing in academic or technical publications, serving as a fact witness or expert in litigation, or testifying in a legislative or rulemaking context if that testimony does not constitute lobbying.

(3) Assessment instrument vendor--An entity that by contract with the TEA develops or sells academic assessment instruments required to be administered under the TEC, §39.023 or §39.027, in Texas public schools serving prekindergarten through high school. Another state; an institution of higher education; or a school district, charter school, or other public school is not an assessment instrument vendor by virtue of developing, selling, or licensing assessment instruments if those instruments are not purchased by the TEA. An entity is not an assessment instrument vendor by virtue of offering psychological, physical, sight, hearing, or other assessments that are not directly measuring academic content.

(4) Retained or employed--Having formal employment, acting as an independent contractor, or consulting with an assessment instrument vendor for compensation if the duties of that relationship include working directly on an assessment instrument required under the TEC, §39.023 or §39.027. An individual is not retained or employed if the individual is compensated by an assessment instrument vendor for work that does not involve an assessment instrument required under the TEC, §39.023 or §39.027. An individual is not retained or employed by virtue of receiving reimbursement of expenses or for being reimbursed in accordance with an assessment contract if the TEA determines and requires the compensation under the contract.

(b) A person who is retained or employed by or who acts as an agent of an assessment instrument vendor or a person who is an agent of an assessment instrument vendor may not be appointed to or serve on an advisory committee under this section. A person must be eligible under this section at the time of appointment to an advisory committee and must notify the commissioner and resign from the committee immediately upon becoming ineligible.

(c) Nothing in this section shall be construed to disqualify an individual from appointment to an advisory committee based upon a relationship with an assessment instrument vendor prior to appointment to a committee. An advisory committee member may receive royalties or other compensation from an assessment instrument vendor that come due during the term of an appointment if the compensation was fully earned prior to appointment. An advisory committee member may not have or negotiate for any type of agreement for future employment or compensation with an assessment instrument vendor during the term of membership on the committee.

(d) An individual is not employed or retained by or acting as an agent of an assessment instrument vendor if the individual represents a membership organization that has an assessment instrument vendor as a member.

(e) Provisions of the TEC, §39.039, related to prohibitions on political contributions or activity by certain contractors are limited to agents or entities that have been contracted to develop or implement assessment instruments required under the TEC, §39.023 or §39.027.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2014.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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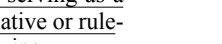

# PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

## CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

### 19 TAC §229.21

The State Board for Educator Certification (SBEC) proposes new §229.21, concerning the accountability system for educator preparation programs. The proposed new section would clarify the academic years for which the current passing standard on certification examinations applies and define when individual certification fields are subject to revocation. The proposed new section would also provide a backstop for ongoing discussion of a rewrite of 19 TAC Chapter 229, Accountability System for Educator Preparation Programs, being conducted in conjunction with the review of 19 TAC Chapter 227 and Chapter 228 required by House Bill 2012, 83rd Texas Legislature, Regular Session, 2013.

The Texas Education Code (TEC), §21.045, states that the board shall propose rules establishing standards to govern the

approval and continuing accountability of all educator preparation programs (EPPs).

Section 229.4, Determination of Accreditation Status, establishes the standards and performance criteria for the accreditation of EPPs, defines the varying accreditation statuses, and provides for various exceptions. Section 229.5, Accreditation Sanctions and Procedures, determines when sanctions may apply to an individual certification field.

Proposed new 19 TAC §229.21(a) would clarify the academic years for which the current passing standard on certification examinations applies for purposes of the EPP accountability system. Proposed new 19 TAC §229.21(b) would define when the clock starts for purposes of sanctions for individual certification fields.

Discussions and work are beginning on a rewrite of 19 TAC Chapter 229, Accountability System for Educator Preparation Programs. Proposed new 19 TAC §229.21 would also provide a temporary provision to ensure that a passing standard and a time frame for individual certification fields for purposes of EPP accountability is in place should a rewrite of 19 TAC Chapter 229 and its subsequent adoption be delayed.

The proposed new section would have no additional procedural or reporting implications. The proposed new section would have no additional locally maintained paperwork requirements.

Michele Moore, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed new section is in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed new section.

Ms. Moore has determined that for the first five-year period the proposed new section is in effect the public and student benefit anticipated as a result of the proposed new section would be an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved EPP. There are no additional costs to persons required to comply with the proposed new section.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-5337. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Michele Moore, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The new section is proposed under the Texas Education Code (TEC), §21.045(a), which authorizes the State Board for Educator Certification (SBEC) to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); performance based on the appraisal system for beginning teachers adopted by the SBEC; achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and compliance with SBEC requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom; §21.045(b), which states that each educator preparation program shall submit specific performance data, information, and data elements as required by the SBEC for an annual performance report to ensure candidate access and equity; §21.045(c), which states that the SBEC shall propose rules establishing performance standards based on subsection (a) for the Accountability System for Educator Preparation for accrediting educator preparation programs; §21.0451, which states that the SBEC shall propose rules for the sanction of educator preparation programs that do not meet accountability standards and shall annually review the accreditation status of each educator preparation program. The costs of technical assistance required under subsection (a)(2)(A) or the costs associated with the appointment of a monitor under subsection (a)(2)(C) shall be paid by the sponsor of the educator preparation program; and §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an educator preparation program and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

The new section implements the TEC, §§21.045, 21.0451, and 21.0452.

*§229.21. Transitional Provisions.*

(a) The pass rate performance standard in §229.4(a)(1)(C) of this title (relating to Determination of Accreditation Status) and compliance rate in §229.4(a)(4)(C) of this title apply to the 2012-2013 academic year and subsequent academic years.

(b) For purposes of determining compliance with §229.5(b) of this title (relating to Accreditation Sanctions and Procedures), only performance of individual certification fields in the 2012-2013 academic year and subsequent academic years will be considered.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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# PART 9. TEXAS INNOVATIVE ADULT CAREER EDUCATION GRANT PROGRAM ADMINISTRATOR

## CHAPTER 400. GRANT ADMINISTRATION

**19 TAC §§400.1 - 400.7**

The Texas Innovative Adult Career Education Grant Program Administrator proposes new 19 TAC §§400.1 - 400.7, concerning grant administration. House Bill 437 (83rd Legislature, Regular Session) created the Texas Innovative Adult Career Education Grant Program, and Austin Community College has been appointed as the administrator of the program. Education Code, §136.007, requires that the program administrator adopt rules in order to administer the program.

Catherine Brown Fryer, counsel for Austin Community College, has determined that for the first five-year period these rules are in effect, there will be no fiscal impact for state or local government.

Ms. Fryer has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcement of the rules will be to provide state funds in support of programs that prepare low-income students to enter careers in high-demand, high-wage occupations. There will be no cost to individuals or small businesses as a result of the rules.

Comments on the proposed new rules may be submitted to Ben Ferrell, Executive Vice President, Finance and Administration, Austin Community College, 9191 Tuscany Way, Austin, Texas 78754. The deadline for all comments is 30 days after publication in the *Texas Register.*

The Texas Innovative Adult Career Education Grant Program Administrator proposes the new sections pursuant to Education Code, Chapter 136.

This proposal does not affect any other statutes, articles, or codes.

*§400.1. Definitions.*

(a) "Program Advisory Board" means the Program Advisory Board established by the Grant Administrator to provide input and recommendations for the awarding of grants under the Program.

(b) "Grant Administrator" means the governing board of the junior college district designated by the Texas Higher Education Coordinating Board to be the grant administrator of the Program.

(c) "Nonprofit Organization" means an organization exempt from federal income taxation under §501(a), Internal Revenue Code of 1986, as an organization described by §501(c)(3) of that Code.

(d) "Nonprofit Workforce Intermediary and Job Training Organization" means a Nonprofit Organization that engages in comprehensive long-term job training in partnership with a Public Junior College, Public State College, or Public Technical Institute and provides labor market intermediary services to participant students.

(e) "Program" means the Texas Innovative Adult Career Education (ACE) Program established under Chapter 136 of the Texas Education Code (Chapter 136).

(f) "Public Junior College," "Public State College," and "Public Technical Institute" have the meanings assigned by §61.003 of the Texas Education Code.

*§400.2. Program Advisory Board.*

(a) The Program Advisory Board shall provide oversight to ensure that the Grant Administrator:

(1) establishes and adheres to an appropriate system that provides acceptable standards for ensuring accountability in the awarding and monitoring of grants;

(2) enters into a written grant agreement or contract with each grantee that establishes clear goals and obligations in unambiguous terms;

(3) acts with due diligence to monitor the implementation of a grant agreement, including carrying out appropriate monitoring activities including reviews at reasonable intervals; and

(4) takes prompt and appropriate corrective action on becoming aware of any evidence of a violation by a grantee of Chapter 136 or of the rules adopted in this chapter.

(b) The Program Advisory Board shall meet as needed to review received grant applications and make recommendations to the Grant Administrator regarding awarding grants under Chapter 136 and the rules of this chapter.

*§400.3. Purpose of the Grant.*

The Grant Administrator may award grants to eligible Nonprofit Workforce Intermediary and Job Training Organizations to prepare low-income students to enter careers in high-demand, high-wage occupations. Grant funds may be used to develop, support, or expand such programs.

*§400.4. Eligibility.*

To be eligible to receive funding under the Adult Career Education (ACE) Grant Program an organization must:

(1) be a Nonprofit Organization;

(2) be a Nonprofit Workforce Intermediary and Job Training Organization;

(3) provide eligible low-income students, in partnership with Public Junior Colleges, Public State Colleges, or Public Technical Institutes:

(A) job training; and

(B) a continuum of services designed to move a program participant from application to employment, and to include: outreach, assessment, case management, support services, and career placement;

(4) be governed by a board or other governing structure that includes recognized leaders of broad-based community organizations and executive-level or managerial-level members of the local business community;

(5) demonstrate that the organization's program has achieved or will achieve the following measures of success among program participants:

(A) above average completion of developmental education among participating public junior college, public state college, or public technical institute students;

(B) above average persistence rates among participating public junior college, public state colleges, or public technical institute students;

(C) above average certificate or degree completion rates by participating students within a three-year period compared to demographically comparable public junior college, public state college, and public technical institute students;

(D) entry into careers with significantly higher earnings for program participants than previously achieved; and

(6) provide matching funds in accordance with general guidelines.

*§400.5. General Guidelines.*

(a) Funds awarded through the Adult Career Education (ACE) Grant Program are to be used as necessary to develop, support, or expand the workforce intermediary's normal programmatic operations, and at the same expense rates or charges allocated to other participants in the intermediary's normal program.

(b) Funds awarded through the ACE Grant Program shall be expended for authorized activities and may not be used for the purpose of funding political, lobby, or religious activities such as sectarian worship, instruction, or proselytization. This limitation, however, shall not be interpreted to prohibit Grantee from subcontracting for goods or services with any religious institution or entity.

(c) Applicants should be thorough in describing how grant funds will be administered and monitored.

(d) Grant awards may be awarded in installments as designated by the Grant Administrator.

(e) The Grant Administrator has complete discretion in determining whether all amounts will be awarded.

(f) Organizations must provide at least a 50% funding match, which may be obtained from any source available to the organization, including but not limited to in-kind contributions, community or foundation grants, individual contributions, federal or local governmental agency funds. The Grant Administrator may require organizations to demonstrate compliance with matching requirements to receive additional installments awarded under the grant. The minimum 50% funding match is specified in order to leverage state funds with funds from other sources obtained by workforce intermediary organizations.

(g) Indirect costs are assumed to be included in the normal programmatic costs and will not be provided separately. Such costs should be allocated at the same rate per participant as any other program participant. Variations may be considered overcharges upon program audit.

(h) Records must be maintained in an orderly manner to facilitate review and audit by the Grant Administrator's staff or its designee.

(i) Failure to achieve measures of success as described could result in early termination of the grant or affect future awards.

(j) Failure to sufficiently and accurately account for all grant expenditures and matching funds, or providing false or misleading information, will result in early termination of the grant or affect future awards.

(k) The Grant Administrator may request additional information at any time prior to awarding a grant in order to effectively evaluate any application.

(l) The Grant Administrator, or its designee, may audit the grant recipient's records at any time.

(m) Applications must be completed, including all attachments, and submitted by the deadline to be considered. All questions on the application must be completed. Supplemental materials may be submitted, but will not be accepted in lieu of responses to the individual questions on the application.

(n) In awarding grants under the Program, the Grant Administrator will take into consideration the recommendations of the Program Advisory Board.

(o) Applications must be submitted to the Grant Administrator on a form provided by the Grant Administrator.

*§400.6. Evaluation.*

(a) Applications for grant funding through the Adult Career Education (ACE) Grant Program will be evaluated based on the criteria established by the Grant Administrator. This includes demonstrating to the satisfaction of the Program Advisory Board that the organization's program has achieved or will achieve the following key measures:

(1) above average completion of developmental education among participating Public Junior College, Public State College, or Public Technical Institute students;

(2) above average persistence rates among participating Public Junior College, Public State Colleges, or Public Technical Institute students;

(3) above average certificate or degree completion rates by participating students within a three-year period compared to demographically comparable Public Junior College, Public State College, and Public Technical Institute students; and

(4) entry into careers with significantly higher earnings for program participants than previously achieved.

(b) For the purpose of this application, organizations should use the Community College Performance data published by the Texas Higher Education Coordinating Board (THECB), *Statewide--Community Colleges,* as a baseline for comparison purposes. Program results *must* be demonstrated by comparing the program's actual or projected measures to the most recent success measures published by the THECB.

(c) Applicants should be thorough in describing how grant funds will be administered and monitored. Applicants will be evaluated, in part, on the delivery of program services of the following types:

(1) outreach;

(2) assessment;

(3) case management;

(4) support services;

(5) developmental education;

(6) job training; and

(7) career placement services.

*§400.7. Reporting Requirements.*

(a) Reporting for the Adult Career Education (ACE) Grant Program is intended to demonstrate to the Texas Legislature and others how the funds were used, resulting in success rates achieved by Nonprofit Workforce Intermediary and Job Training organizations as compared to the most recent student success measures.

(b) The grant recipient must provide grant activity reports each semester after receiving the initial funds disbursement from the Grant Administrator. Reports are due 30 days after each semester end based on the state's fiscal year beginning September 1 and ending August 31, until all grant funds have been expended.

(c) Grant activity reports shall contain data to include unduplicated headcount of participants whose funding is partially provided by ACE grant funds as they progress through the program.

(d) Reporting will also require participant demographic data to include elements of race/ethnicity and gender as defined by Texas Higher Education Coordinating Board (THECB). Baseline categories will be used to demonstrate the effect of program participation which pertain to achievement gaps, and of interest to the State.

(e) The categories of race/ethnicity used by the THECB are White, African American, Hispanic, Asian, Native American, International, and Other (Unknown).

(f) Reporting requirements are subject to change. The Grant Administrator may request additional information at any time.

(g) The time frame of these ACE grant funds may not align with a full cycle of participation in a grant recipient's program (up to three years) that may be required for a participant to progress from developmental courses to a high paying workforce degree. To address this alignment issue, reporting may include total program results regardless of funding source in order to demonstrate overall success rates of the grant recipient's workforce intermediary program in each service and results category.

(h) The Grant Administrator may engage an audit firm to perform ACE grant compliance audits on the premises of grant recipients. Such audits will be conducted with respect to compliance with grant requirements, and accounting controls and procedures related to how grant funds were used.

(i) Grant recipients must comply with all reporting requirements. Failure to do so may result in termination of the grant award and the entity being ineligible for future ACE grants.

(j) The Grant Administrator, or its designee, may audit the grant recipient's records at any time.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401086
Ben Ferrell
Vice President, Finance and Administration, Austin Community College
Texas Innovative Adult Career Education Grant Program Administrator
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 472-8021

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# TITLE 22. EXAMINING BOARDS

## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 271. EXAMINATIONS

**22 TAC §271.2**

The Texas Optometry Board proposes to amend §271.2 to clarify the procedure for submitting required fingerprints when making an application for license, to clarify the form of remittance required with the application submission, and to clarify the deadlines to apply for reexamination and the deadlines to submit all the documents required for licensure.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the Board will be able to accurately and efficiently process applications for license and systematically close applications not in compliance with the rule.

It is anticipated that there will be no economic costs for applicants for license, the persons required to comply with the rule, since new requirements are not being imposed in the application process.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a microbusiness. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rule.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.252, and 351.254. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.252 and §351.254 as setting the requirements for the application and license, including the Board's authority to designate documents as necessary for a completed application.

*§271.2. Applications.*

(a) (No change.)

(b) Such application shall contain references as to good moral character from at least two licensed optometrists in good standing in the state of licensure and who are actively engaged in the practice of optometry. In the event this is not possible, affidavits from two persons not related to the applicant or to each other, who have known the applicant for at least five years, attesting to the good moral character of the applicant, will be acceptable. The applicant shall report all felony and misdemeanor criminal convictions, including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt or revocation of parole, probation or court ordered supervision on the application. Failure of an applicant to report every criminal conviction is deceit, dishonesty and misrepresentation in seeking admission to practice and authorizes the board to take disciplinary action under §351.501 of the Act. An applicant is not required to report a Class C Misdemeanor traffic violation. The applicant shall furnish any document relating to the criminal conviction as requested by the Board. The applicant shall also provide a complete criminal history by submitting fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority. [~~submit completed Federal Bureau of Investigation (FBI) fingerprint cards provided by the Board so the Board may obtain a criminal history record.~~]

(c) - (e) (No change.)

(f) Applications submitted by graduates of an approved college of optometry must contain a certified copy of the optometry school transcript. A license will not be issued until the applicant has submitted certified copies of the transcript of record from preoptometry and optometry colleges attended by the applicant, which certified transcript of record shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant. All required documents, including transcripts, license verifications, birth certificates, and criminal histories [~~transcripts~~] must be received by [~~submitted to~~] the executive director prior to the date which is one year after successful passage of the board's jurisprudence examination; otherwise, the applicant must reapply and take and pass the board's jurisprudence examination.

(g) The completed application and examination fee must be filed with the executive director not later than 45 days prior to the date of the examination. [~~In the event an applicant intends to retake the examination, the fee therefore and the notice of this intention to retake said examination must be in the executive director's office 30 days prior to the date of the examination.~~]

(h) The fee for taking the [~~initial~~] examination shall be $150. The fee must be submitted in the form of a money order or cashier's check. [~~Each applicant shall also submit an additional fee to the Board in the amount charged by the Texas Department of Public Safety for providing the criminal history record.~~]

(i) Any applicant who is refused a license because of failure to pass the [~~first~~] examination shall be permitted to take a second examination without resubmitting an application, provided: [~~on the payment of $150, provided the second examination is taken within a period of one year.~~]

(1) the applicant submits a payment of $150,

(2) the second examination is taken within a period of one year from the date the examination was first taken, and

(3) a written request to take the second examination and the required fee is received by the executive director at least 30 days prior to the date of the examination requested.

(j) If an applicant is refused a license because of failure to pass the second examination, the applicant must reapply and take and pass the board's jurisprudence examination.

(k) [~~(i)~~] [~~Any applicant required to take the examination any subsequent times after the second examination shall pay a fee of $150 to the board.~~] No application fee for examination will be returned to any applicant after the application has been accepted [~~approved~~] by the board, because of the decision of the applicant not to stand for the scheduled examination or failure for any reason to take the examination.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400964
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 305-8502

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# PART 15. TEXAS STATE BOARD OF PHARMACY

## CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

## SUBCHAPTER C. DISCIPLINARY GUIDELINES

### 22 TAC §281.64

The Texas State Board of Pharmacy proposes amendments to §281.64, concerning Sanctions for Criminal Offenses. The proposed amendments to §281.64, if adopted, update the sanctions for offenses involving drugs and alcohol to be in line with the DSM5 guidelines.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has also determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure appropriate disciplinary sanctions for individuals with offenses involving drugs and alcohol.

Written comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., April 30, 2014.

The amendments are proposed under §551.002 and §554.051, of the Texas Pharmacy Act (Chapters 551 - 566, 568, and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566, 568, and 569, Texas Occupations Code.

*§281.64. Sanctions for Criminal Offenses.*

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

(c) The board has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in §281.63(g) of this title (relating to Considerations for Criminal Offenses) and necessitate the disciplinary action listed in paragraphs (1) - (3) of this subsection. In regard to the crimes enumerated in this rule, the board has weighed the factors, which are required to be considered from §281.63(g) of this title, in a light most favorable to the individual, and even if these factors were present, the board has concluded that the following sanctions apply to individuals with the criminal offenses as described in paragraphs (1) - (3) of this subsection:

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

(3) Misdemeanor offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

*(i)* Offenses involving manufacture, delivery, or possession with intent to deliver:

*(I)* Currently on probation--denial or revocation;

*(II)* 0-10 years since date of disposition--30- to 180-day suspension followed by 5 years probation;

*(III)* 11-20 years since date of disposition--1 year probation;

*(ii)* Offenses involving possession of drugs, fraudulent prescriptions, or theft of drugs:

*(I)* Pharmacists:

(-a-) 0-5 years since date of disposition--5 years probation;

(-b-) 6-10 years since date of disposition--3 years probation;

*(II)* Pharmacy Technicians and Pharmacy Technician Trainees:

(-a-) 0-5 years since date of disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--5 years probation;

(-b-) 0-5 years since date of disposition and determined not to be in violation of §568.003(a)(5) or (9) of the Act [~~have a drug or alcohol dependency~~]--1 year probation;

(-c-) 6-10 years since date of disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--3 years probation;

*(III)* If 0-5 years since date of disposition, and the offense did not involve only personal use of the drugs and/or chemical impairment, an additional 30- to 90-day suspension will be imposed preceding the probation for the offenses in this clause;

(B) Intoxication and alcoholic beverage offenses as defined in the Texas Penal Code, if two such offenses involving intoxication due to ingestion of alcohol occurred in the previous five [~~ten~~] years or if one such offense involving intoxication due to ingestion of controlled substances or dangerous drugs occurred in the previous five [~~ten~~] years:

*(i)* Pharmacists:

*[~~(I)~~]* 0-5 years since date of disposition and offense determined to be in violation of §565.001(a)(4) or (7) of the Act--5 years probation;

*[~~(II)~~* ~~6-10 years since date of disposition and offense determined to be in violation of §565.001(a)(4) or (7) of the Act--3 years probation;~~]

*(ii)* Pharmacy Technicians and Pharmacy Technician Trainees: 0-5 years since date of disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--5 years probation;

(C) Other misdemeanor offenses involving moral turpitude: 0-5 years since date of disposition--reprimand.

(d) When an individual has multiple criminal offenses or other violations, the board shall consider imposing additional more severe types of disciplinary sanctions, as deemed necessary.

(e) An individual who suffers from an impairment as described by §565.001(a)(4) or (7) or §568.003(a)(5) or (9), may provide mitigating information including treatment, counseling, and monitoring in order to mitigate the sanctions imposed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2014.

TRD-201401052
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 305-8073

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# PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

## CHAPTER 461. GENERAL RULINGS

### 22 TAC §461.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.5, Contents of License. The proposed amendment would delete the requirement that an academic degree be listed on the annual renewal permit. This amendment is necessary to reduce the workload on staff and reduce the potential for error when issuing annual renewal permits. The listing of degrees on the annual renewal permit is not necessary because the license issued to a licensee will continue to contain the highest relevant academic degree held at the time of licensure, and the license itself represents that the licensee has met the Board's licensing standards which set forth minimum educational requirements. Thus, the degree possessed by each licensee is implied by virtue of our licensing requirements, and the public is accordingly apprised of this fact.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on individuals or small businesses.

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

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

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

*§461.5. Contents of License.*

The license will state the licensee's name, license number, and highest relevant academic degree held at the time of licensure. The annual renewal permit issued to a licensee will state the licensee's name and license number, but will not reflect any academic degree. [~~and the designation of the highest relevant academic degree held at the time of licensure.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400968
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 305-7706

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# CHAPTER 463. APPLICATIONS AND EXAMINATIONS

## 22 TAC §463.15

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.15, Oral Examination. The proposal would amend the rule to reflect the areas of psychology that are tested in the Oral Examination.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on individuals or small businesses.

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

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

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

*§463.15. Oral Examination.*

(a) Application Requirements. An application for the Oral Examination includes an application form, current passport picture of the applicant and required fee.

(b) Eligibility. To be eligible for licensure as a psychologist, all provisionally licensed psychologists shall be required to take and pass the Oral Examination administered by the Board. Only provisionally licensed psychologists may apply to take the Oral Examination.

(c) Waivers from the Oral Examination. The Board shall waive the Oral Examination for the following:

(1) Persons who have been actively licensed for the independent practice of psychology at the doctoral level in another state for at least the five years immediately preceding application for licensure as a psychologist and who have no disciplinary action from any health licensing board provided that documentation of this status is provided directly to the Board from the other health licensing board(s);

(2) Persons who were required to take an Oral Examination in order to provide independent practice of psychology at the doctoral level and to obtain licensure as a licensed psychologist in another state provided that confirmation of passage of that exam is provided to the Board from the other state;

(3) Specialists of the American Board of Professional Psychology; and

(4) Persons who qualify for licensure under reciprocity.

(d) A candidate for the Oral Examination must demonstrate sufficient entry-level knowledge of the practice of psychology to pass the examination based on the following standards:

(1) A candidate must have a total score of 64 or above from each of the two examiners to pass the examination.

(2) Scores are based on the demonstrated abilities of the candidate in nine content areas with a possible score in each content score of 9 points for a well articulated verbal answer, 8 points for a good or passing answer, 3 points for a weak, vague or incomplete answer, and minus 10 points for an answer that is substantially incomplete or incorrect.

(3) The nine content areas are as follows:

(A) Identifies the problems (e.g. initial hypotheses, differential diagnoses[~~, etc.~~]);

(B) Identifies a specific and plausible strategy for gathering further data to refine the problem definition (e.g. psychometrics, observation data collection[~~, etc.~~]);

(C) Develops a realistic intervention or action plan on the basis of the initial formulation;

(D) Recognizes and can formulate an effective response to crises;

(E) Attends to cultural and diversity issues;

(F) Demonstrates awareness of professional limitations;

(G) Can recognize and apply laws which are relevant to the case;

(H) Can recognize and apply professional standards that are relevant; and

(I) Can recognize and apply ethical standards or ethical reasoning pertinent to the case.

(4) Each candidate is presented with a vignette, which is representative of a situation commonly encountered in the area of testing. Candidates are required to articulate a case formulation according to a standard or model that is generally recognized in their area of testing. Candidates are required to respond to questions associated with each vignette.

(5) Areas of psychology in which a candidate may choose to be tested are: clinical, counseling, school, neuropsychological, child clinical and industrial/organizational. [~~and industrial and organizational.~~]

(e) Each candidate receives an informational brochure prior to the Oral Examination.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400969

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 305-7706

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# PART 23. TEXAS REAL ESTATE COMMISSION

## CHAPTER 535. GENERAL PROVISIONS
## SUBCHAPTER F. PRE-LICENSE EDUCATION AND EXAMINATION

**22 TAC §535.62, §535.64**

The Texas Real Estate Commission (TREC) proposes amendments to §535.62, concerning Acceptable Courses of Study; and §535.64, concerning Obtaining Approval to Offer a Course. The proposed amendments are recommended by the Educations Standards Advisory Committee (ESAC), a committee formed, in part, to review and recommend revisions to existing core course curricula and TREC rules addressing school, course and instructor approval.

The proposed amendments to §535.62 add Real Estate Finance as new subsection (f), which is a 30 hour core course with specific topics, subtopics, and units, with mandated time periods in which instructors must teach each topic or subtopic. The addition of subsection (f) requires the re-lettering of the remaining subsections in the rule.

The proposed amendments to §535.64 add new subsection (h)(5) to adopt by reference a form to be used by schools in requesting approval to offer the new Real Estate Finance course.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is an anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is an anticipated economic cost to persons who are required to comply with the proposed amendments. The additional costs would apply to schools that seek re-approval for an alternative delivery course in that the school would need to submit such course for recertification by a distance learning certification center as part of the TREC re-approval process.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be an improved Real Estate Finance core course curriculum and better educated applicants resulting in improved protection for consumers of real estate services.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the TREC to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by this proposal.

*§535.62. Acceptable Courses of Study.*

(a) Acceptable core real estate courses are those courses prescribed by §1101.003 of the Act and the following courses.

(1) Promulgated Contract Forms (or equivalent), which shall include but is not limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, Commission [~~commission~~] rules governing use of forms and case studies involving use of forms.

(2) (No change.)

(b) Applicants must submit evidence of course completion, such as transcripts or course completion certificates, unless the provider has provided or will provide course completion documentation to the Commission [~~commission~~]. The Commission [~~commission~~] may require an applicant to furnish supporting materials such as course outlines, syllabi and course descriptions. The Commission [~~commission~~] may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the Commission [~~commission~~] shall accept core real estate courses or real estate related courses submitted by an applicant for a broker or salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the Commission [~~commission~~] or by the real estate regulatory agency of another state;

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

(c) - (e) (No change.)

(f) An applicant may obtain credit for completing an approved 30 hour Real Estate Finance core course described by this subsection. Real Estate Finance shall contain the following subtopics, the units of which are outlined in the REF-0, Core Real Estate Course Approval Form, Real Estate Finance adopted by reference in §535.64(h)(5) of this title.

(1) The Nature and Cycle of Real Estate Finance - 105 minutes;

(2) Money and the Monetary System - 100 minutes;

(3) Additional Government Influence - 200 minutes;

(4) The Secondary Mortgage Market - 95 minutes;

(5) Sources of Funds - 110 minutes;

(6) Instruments of Real Estate Finance - 170 minutes;

(7) Loan Types, Terms and Issues - 200 minutes;

(8) Government Loans - 215 minutes;

(9) Lender Loan Processes - 220 minutes; and

(10) Defaults and Foreclosures - 85 minutes.

(g) [~~(f)~~] The Commission [~~commission~~] shall grant classroom credit for qualifying courses as follows.

(1) 15 hours of classroom credit will be granted for one semester hour.

(2) 10 hours of classroom credit will be granted for one quarter hour.

(3) 10 hours of classroom credit will be granted for one qualifying continuing education unit.

(h) [~~(g)~~] A core real estate course must meet each of the following requirements to be accepted for core credit.

(1) The course contained the content required by §1101.003 of the Act or this section.

(2) The daily course presentation did not exceed ten hours.

(3) The course was of broader applicability than just techniques or procedures utilized by a particular brokerage or organization.

(4) The course was not awarded credit by an accredited college or university based on life experience or solely by examination.

(i) [~~(h)~~] A classroom course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(2) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable Commission [~~commission~~] rule.

(3) Successful completion of a final examination or other form of final assessment of the student was a requirement for receiving credit from the provider.

(j) [~~(i)~~] A correspondence course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered by or in association with an accredited college or university, and students receiving credit for the course were required to pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination was graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the Commission [~~commission~~] that the examinee is the same person who seeks course credit.

(2) If a correspondence course was offered by a school in association with an accredited college or university, the school has certified to the Commission [~~commission~~] that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the Commission [~~commission~~] that the course was offered in compliance with the college or university's curriculum accreditation standards.

(k) [~~(j)~~] A course offered by an alternative delivery method must meet the following additional requirements to be accepted for core credit:

(1) The course was certified by a distance learning certification center that is acceptable to the Commission [~~commission~~];

(2) An approved instructor or the provider's coordinator/director graded the written course work; and

(3) The provider:

(A) ensured that a qualified person was available to answer students' questions or provide assistance as necessary;

(B) certified students as successfully completing the course only if the student:

*(i)* completed all instructional modules required to demonstrate mastery of the material;

*(ii)* attended any hours of live instruction and/or testing required for a given course; and

*(iii)* passed either:

*(I)* a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the Commission [~~commission~~] and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

*(II)* an examination by use of a computer under conditions that satisfy the Commission [~~commission~~] that the examinee is the same person who seeks credit.

(l) [~~(k)~~] After twelve months, or fifteen months for alternative delivery courses, from the effective date of a Commission [~~commission~~] action dividing a core course curriculum into subtopics, a core real estate course, including an advanced or tiered course, which was previously approved by the Commission [~~commission~~] may not be accepted for core course credit unless the course has been revised to meet the new requirements.

(m) [~~(l)~~] A previously approved core course that is not revised to meet the new curriculum requirements may nevertheless be accepted for elective core credit provided it does not violate §535.54(c) of this title (relating to General Provisions Regarding Education and Experience Requirements for a License).

*§535.64. Obtaining Approval to Offer a Course.*

(a) (No change.)

(b) A school shall submit an instructor's manual for each proposed course. The Commission [~~commission~~] may require a copy of the course materials and instructor's manual to be submitted for each previously approved course a school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the Commission [~~commission~~] and shall use all materials required in the original or revised course. Each manual must comply with Instructor Manual Guidelines approved by the Commission [~~commission~~].

(c) The Commission [~~commission~~] is not required to approve a course sooner than 30 days after the filing of an application for course approval.

(d) - (e) (No change.)

(f) A course approval expires four years from the date of approval. A course that has been approved by the Commission [~~commission~~] may be offered by the original applicant until the expiration date, except that courses approved prior to January 1, 2011 expire December 31, 2015. For a course approved after January 1, 2011 and subsequently revised and approved as required by this section, a school may no longer offer the prior version of the course for core or related credit. If any school other than the original applicant obtains approval from the Commission [~~commission~~] to offer the same course, the expiration date remains unchanged.

(g) (No change.)

(h) The Texas Real Estate Commission adopts by reference the following forms, which are published by and available from the Texas

Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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

(5) REF-0, Real Estate Finance approved by the Texas Real Estate Commission in 2014 for use in obtaining approval to offer a Real Estate Finance course.

(i) (No change.)

(j) A core course submitted to the Commission [~~commission~~] for approval must comply with any rule or form adopted by reference which divides selected core course topics into subtopics and units, and must devote the assigned amount of time to each topic or subtopic.

(k) If a form has been adopted by the Commission [~~commission~~] for that purpose, a school applying for approval or revision of a core course shall use the form to indicate the inclusive page numbers where the course materials address each topic or subtopic as required by this subchapter.

(l) If the Commission [~~commission~~] adopts a form that divides topic areas into subtopics and units for a core course required by the Act, a school must revise and supplement a previously approved course no later than 12 months after the effective date of the form adoption. Alternative delivery courses that must be recertified by a distance learning certification center acceptable to the Commission [~~commission~~] must be revised, supplemented, and recertified no later than 15 months after the effective date of the form adoption. A school must provide proof to the Commission [~~commission~~] of the revisions to the course using the form adopted by the Commission [~~commission~~]. A school may not offer a previously approved course for core credit more than 12 months, or 15 months for alternative delivery courses, after the Commission [~~commission~~] has divided topic areas into subtopics unless the Commission [~~commission~~] has approved the revisions required by this subsection.

(m) A school seeking approval of revisions to a previously approved core course pursuant to subsection (l) of this section must pay the fee required by §535.101(b)(13) of this title. If the school paid a fee for the previous approval, it shall receive a prorated credit for the unexpired time remaining on the approval. The Commission [~~commission~~] shall calculate the unexpired credit by dividing the fee paid by 48 months and multiplying the monthly prorated fee times the number of full months remaining between the date of approval and the expiration date of the prior version. A revised course approved under subsection (l) of this section expires four years from the date of approval.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2014.

TRD-201400985
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 936-3092

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 416. MENTAL HEALTH COMMUNITY-BASED SERVICES SUBCHAPTER C. JAIL-BASED COMPETENCY RESTORATION PROGRAM

**25 TAC §§416.76 - 416.93**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§416.76 - 416.93, concerning the standards for a Jail-based Competency Restoration Program.

BACKGROUND AND PURPOSE

The new rules are necessary to comply with Senate Bill (SB) 1475, 83rd Legislative Session, Regular Session, 2013, which amended the Code of Criminal Procedure, Article 46B.73 by adding subsection (e) and new Article 46B.090. The new statute requires that the department contract with an entity to provide jail-based competency restoration services under a pilot program for two years for people with a mental health or a co-occurring psychiatric and substance use disorder, including competency education for adult men or women found incompetent to stand trial.

SECTION BY SECTION SUMMARY

Section 416.76 describes the purpose of the subchapter which is to outline standards and requirements for operating jail-based competency restoration services.

Section 416.77 sets forth the subchapter's application to providers of jail-based competency restoration services.

Section 416.78 sets forth the definitions that are used in the subchapter. Definitions that are proposed include the terms "Co-occurring psychiatric and substance use disorder (COPSD)," "Community provider," "Competency restoration," "Competency restoration training module or training module," "DSHS," "DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist," "Incompetent to stand trial (IST)," "Inpatient forensic facility," "Jail-based competency restoration," "Legally authorized representative (LAR)," "Licensed practitioner of the healing arts (LPHA)," "Local behavioral health authority (LBHA)," "Local mental health authority (LMHA)," "Managed care organization (MCO)," "Mental illness," "Peer Provider," "Provider," "Qualified mental health professional-community services (QMHP-CS)," "Sub-contractor," and "Texas Commission on Jail Standards."

Section 416.79 sets forth the requirements for eligibility criteria to participate in the jail-based competency restoration program.

Section 416.80 sets forth standards for operating a program.

Section 416.81 sets forth the requirements for program admission, assessment, and reassessment.

Section 416.82 sets forth the requirements for written policies and procedures for the program.

Section 416.83 sets forth the requirements for staff member training for the program.

Section 416.84 sets forth the requirements for responsibilities of the LMHA, LBHA or MCO in screening, continuity of care planning, and data reporting of services provided to participants in the program.

Section 416.85 sets forth the requirements of treatment planning for participants in the program.

Section 416.86 sets forth the requirements for program staffing of the program.

Section 416.87 sets forth the requirements for rights afforded to participants in the program.

Section 416.88 sets forth the requirements for competency restoration services provided in the program.

Section 416.89 sets forth the requirements for using a DSHS-approved competency restoration module for the program.

Section 416.90 sets forth the requirements for coordination of transitional services for participants' post-treatment in the program.

Section 416.91 sets forth the requirements for participants' discharge planning post-treatment.

Section 416.92 sets forth the requirements for compliance with statutes, rules, and other documents related to providing jail-based competency restoration services.

Section 416.93 sets forth the requirements for collecting and reporting outcome measures associated with the program.

FISCAL NOTE

Mike Maples, Assistant Commissioner for the Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules may have direct application to a private provider, an LMHA, an LBHA or an MCO, none of which meet the definition of small or micro-business under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mr. Maples has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to provide the contractor of jail-based competency restoration with standards for delivering competency restoration services in a jail setting. These services will: reduce the number of maximum security and non-maximum security defendants on the state mental health program clearinghouse waiting list determined to be IST due to mental illness and/or COPSD; provide a cost-effective alternative to restoration in a state hospital; and reduce the demand for forensic state hospital bed days in the area served by the pilot.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Janet Fletcher, Adult Mental Health Program Services, Department of State Health Services, Mail Code 2091, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 206-5081 or by email to MHSArules@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new sections are authorized by Texas Code of Criminal Procedure, Title 1, Articles 46B.073 and Subchapter D, 46B.090; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Government Code, §531.0055; and Health and Safety Code, §534.053, §534.058, and §1001.075.

*§416.76. Purpose.*

The purpose of this subchapter is to provide standards, which are consistent with the state mental health facility standards for competency restoration, for the Jail-based Competency Restoration Program (program), as required by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090, through Acts of the 83rd Texas Legislature, Regular Session, as Senate Bill 1475. The program shall include mental health and co-occurring psychiatric and substance use disorder (COPSD) treatment services, as well as competency education in the jail for adult men or women found incompetent to stand trial (IST), under Texas Code of Criminal Procedure, Chapter 46B.

*§416.77. Application.*

This subchapter applies to potential and current providers of jail-based competency restoration services authorized by Texas Code of Criminal Procedure, Chapter 46B, including local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and managed care organizations (MCOs).

*§416.78. Definitions.*

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

(1) Co-occurring psychiatric and substance disorder (COPSD)--The co-occurring diagnoses of psychiatric and substance use disorders.

(2) Community provider--Any person or legal entity that contracts with the DSHS, an LMHA, LBHA, or MCO to provide mental health and substance disorder community services to individuals, including that part of an LMHA, LBHA or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

(3) Competency restoration--The treatment process for restoring one's ability to consult with his or her attorney with a reasonable degree of rational understanding, and a rational and factual understanding of the proceedings against them.

(4) Competency restoration training module or training module--The DSHS-approved training module to be used by staff members who provide competency education during competency restoration.

(5) DSHS--The Department of State Health Services.

(6) DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist--A forensic waiting list for persons committed to one of the state mental health hospitals under the Texas Code of Criminal Procedure, Chapter 46B as incompetent to stand trial (IST) or 46C not guilty by reason of insanity.

(7) Incompetent to stand trial (IST)--A person is incompetent to stand trial if the person does not have:

(A) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or

(B) a rational as well as factual understanding of the proceedings against the person.

(8) Inpatient forensic facility--An entity that provides inpatient forensic mental health treatment.

(9) Jail-based competency restoration--Competency restoration conducted in a county jail setting that is provided in a dedicated mental health unit.

(10) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, who may be a parent, guardian, or managing conservator of a minor, the guardian of an adult, or the legal representative of a deceased individual.

(11) Licensed practitioner of the healing arts (LPHA)--A staff member who is:

(A) a physician;

(B) a licensed professional counselor;

(C) a licensed clinical social worker (formally a licensed master social worker-advanced clinical practitioner) as determined by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505;

(D) a psychologist;

(E) an advanced practice nurse recognized by the Board of Nurse Examiners for the State of Texas as a clinical nurse specialist in psych/mental health or nurse practitioner in psych/mental health; or

(F) a licensed marriage and family therapist.

(12) Local behavioral health authority (LBHA)--An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356.

(13) Local mental health authority (LMHA)--An entity designated as the local mental authority by DSHS in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority pursuant to Texas Health and Safety Code, §533.0356.

(14) Managed care organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the DSHS.

(15) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder or dependency, intellectual or developmental disorder, or autism) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(16) Peer Provider--A staff member who:

(A) has received:

*(i)* a high school diploma; or

*(ii)* a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(17) Provider--A person or entity that contracts with the DSHS to provide jail-based competency restoration services.

(18) Qualified mental health professional-community services (QMHP-CS)--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is a registered nurse; or

(C) completes an alternative credentialing process identified by the DSHS.

(19) Sub-contractor--A person or entity that contracts with the provider of jail-based competency restoration services.

(20) Texas Commission on Jail Standards--The regulatory agency for all county jails and privately operated municipal jails in the state as established in 37 TAC Part 9.

*§416.79. Program Eligibility.*

(a) To be eligible to participate in the program, participants shall be adult males or females who are determined by the court to be incompetent to stand trial (IST) pursuant to Texas Code of Criminal Procedure, Article 46B.

(b) Participants must be screened for Outpatient Competency Restoration (OCR) by the LMHA, LBHA, or MCO and determined ineligible for OCR before being admitted into the program.

(c) Potential participants who are found to have an intellectual or developmental disability in the absence of any serious mental illness must be referred to the LMHA, LBHA, or MCO for a decision regarding the appropriate services for these individuals.

(d) Evaluation for eligibility shall also include assessment and testing to include participant's current psychological functioning, the likelihood of malingering, and the likeliness to restore to competency.

*§416.80. Program Standards.*

(a) The program shall meet the standards set forth in Texas Code of Criminal Procedure, Article 46B.090(f), as amended, and:

(1) upon operation of program services be certified by a nationwide nonprofit organization that accredits health care organizations and programs and maintain this accreditation while under contract with DSHS to provide competency restoration services under this subchapter;

(2) use a non-punitive behavior management program; and

(3) use a DSHS-approved protocol for preventing and managing aggressive behavior.

(b) The provider shall through contract obligate sub-contractors to comply with the applicable sections contained in this subchapter.

*§416.81. Admission, Assessment, and Reassessment.*

(a) Specific deficits in rational and factual understandings of legal proceedings and/or inability to consult with the person's lawyer with a reasonable degree of rational understanding that result in incompetence to stand trial, as detailed in Texas Code of Criminal Procedure, Chapter 46B, shall be assessed upon admission to the program. These specific deficits, as appropriate, shall be listed individually in the treatment plan and targeted specifically in the participant's treatment. The treatment team shall work to identify participant strengths which may assist the participant in overcoming barriers to achieving a factual and rational understanding of legal proceedings and their ability to consult with the person's lawyer with a reasonable degree of rational understanding.

(b) A participant is reassessed at minimum every two weeks or as agreed to by the court to determine whether the participant is competent.

*§416.82. Written Policies and Procedures.*

The provider shall develop and implement written policies and procedures that:

(1) describe the eligibility, intake and assessment, and treatment planning processes and address coordination and continuity of care planning with the LMHA, LBHA, or MCO, beginning at admission. Any admission to the program requires the order of the court with jurisdiction over the potential participant and a physician's order, as well as cooperation and close coordination with the LMHA, LBHA, or MCO;

(2) assess participants for suicidality and homicidality and address any facility-based issues as well as address the degree of suicidality and homicidality by developing an individualized suicide and homicide prevention plan;

(3) outline the staff members' ability to monitor and report to the court a participant's restoration to competency status and readiness for return to court as specified in Texas Code of Criminal Procedure, Article 46.B.079;

(4) by the 21st day, if it is determined that a participant is not likely to be restored by the 60th day, then the participant shall be added to the DSHS Statewide Forensic Clearinghouse Waitlist;

(5) track the maximum length of stay for participants based on criminal charges. The expiration date of the competency restoration commitment shall be forwarded to the clearinghouse waitlist in the event that the participant is transferred to a state mental health facility;

(6) address how staff members ensure the ongoing care, treatment, and overall therapeutic environment during evenings and weekends including, but not limited to behavioral and physical health crisis consistent with §412.321(a) and (e) of this title (relating to Crisis Services);

(7) address how a participant's competency is maintained after restoration and before adjudication or transfer to a forensic hospital or discharge to the community. If a person is deemed not likely to restore and is awaiting transfer to a state mental health facility, then treatment in the program (except for competency education) shall continue until the transfer is complete; and

(8) if a participant is restored to competency he or she shall be evaluated by jail staff members to determine appropriate placement in another section of the jail pending disposition of the criminal charges.

*§416.83. Staff Member Training.*

(a) The provider shall recruit, train, and maintain qualified staff members, with documented competency in accordance with Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services) and shall also comply with the following:

(1) §412.314(e) of this title (relating to Access to Mental Health Community Services);

(2) §412.315 of this title (relating to Medical Records System); and

(3) §412.316 of this title (relating to Competency and Credentialing).

(b) Before providing services, all staff members shall be trained and demonstrate competence in:

(1) Rights of Participants Receiving Jail-Based Competency Restoration Services, Exhibit A, in §416.87 of this title (relating to Participant's Rights);

(2) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Commission on Jail Standards; Department of Family and Protective Services, Adult Protective Services; or DSHS Office of Consumer Services and Rights Protection as set forth in applicable state laws and rules concerning abuse, neglect, and exploitation; and

(3) using the protocol for preventing and managing aggressive behavior.

*§416.84. LMHA, LBHA or MCO Responsibilities.*

The LMHA, LBHA or MCO is responsible for:

(1) screening participants who are determined by the court to be IST for OCR before their admission to the program;

(2) participating in continuity of care planning for participants; and

(3) reporting encounters with participants in the DSHS-approved clinical records management system (e.g., Clinical Management of Behavioral Health Symptoms).

*§416.85. Treatment Planning.*

Based on a comprehensive assessment, the provider shall complete the treatment plan within five business days of a participant's admission to the program. Treatment planning shall include the participant and any family members or other members of a participant's natural support system. The treatments shall address the following needs as applicable:

(1) trauma-informed care;

(2) physical health concerns/issues;

(3) medication and medication management;

(4) level of family and community support;

(5) mental health concerns or issues;

(6) intellectual and developmental disabilities;

(7) substance use disorder or COPSD concerns or issues; and

(8) discharge plans developed in conjunction with the participant, LAR, and LMHA, LBHA, or MCO, as appropriate, in the event that participant is released to the community upon restoration.

*§416.86. Program Staffing.*

(a) The program coordinator shall be a licensed practitioner of the healing arts (LPHA), who shall also act as a liaison between the program and the courts. A multidisciplinary treatment team (team) is used to provide clinical treatment that is directed toward the specific objective of restoring the participant's competency to stand trial and is similar to the clinical treatment provided as part of a competency restoration program at a state mental health facility. The team shall include a psychiatrist, a registered nurse, a psychologist, and an LPHA each of whom must be licensed by his or her respective Texas licensing board. The provider is encouraged to employ peer specialists in addition to the staff members required in subsection (b) of this section.

(b) Staff members shall be on-site 24 hours per day, seven days per week, which is consistent with a state mental health facility setting.

(c) Staff members shall be assigned to participants at an average ratio over the three shifts of not lower than 1 staff member to 3.7 participants.

(1) Day shift staffing shall include a psychiatrist, a registered nurse, a half-time psychologist, an LPHA, and three psychiatric nursing assistants (PNA) or qualified mental health professionals--community services (QMHP-CSs). Two specially trained county jail security staff will be present as well, in accordance with rules of the Texas Commission on Jail Standards, 37 TAC Part 9.

(2) Evening shift staffing shall include a registered nurse and four PNAs or QMHP-CSs. A psychiatrist shall be available on call. Consistent with jail standards, two specially trained county jail security staff shall be present as well.

(3) Night shift staffing shall include a registered nurse and three PNAs or QMHP-CSs. A psychiatrist shall be available on call. Consistent with jail standards, two specially trained county jail security staff shall be present as well.

*§416.87. Participant's Rights.*

Although program participants are incarcerated while receiving program services, their rights are paramount. The provider shall comply with the Rights of Participants Receiving Jail-based Competency Restoration Services, unless otherwise limited by the rules of the Texas Commission on Jail Standards. The Rights of Participants Receiving Jail-based Competency Restoration Services, Exhibit A, can be obtained by written request addressed to The Department of State Health Services, Mental Health and Substance Abuse Services, TAC rules, P.O. Box 149347, Mail Code 2018-552, Austin, Texas 78714-9347, or by visiting http://www.dshs.state.tx.us/mhsa-rights/.

*§416.88. Competency Restoration Services.*

(a) Competency restoration services shall include the treatment of the underlying mental illness by a psychiatrist, and the provision of education, rehabilitative skills training, case management, and counseling as clinically indicated for competency restoration.

(b) Staff members shall provide weekly treatment hours consistent with the treatment hours provided as part of a competency restoration program at a state mental health facility, including but not limited to 15 hours weekly, of rehabilitative services, skills training, substance use disorder treatment and counseling.

(c) The provider shall deliver competency restoration services that provide a full array of mental health and COPSD treatment services that are effective, responsive, individualized, culturally competent, trauma informed, and person-centered. Services shall include, but are not limited to:

(1) psychiatric evaluation;

(2) medications;

(3) nursing services;

(4) general medical care;

(5) psychoactive medication, including court-ordered medication;

(6) rehabilitative services, including skills training or psychosocial rehabilitation provided in accordance with the Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services);

(7) legal education related to competency; and

(8) peer specialist services, if available.

(d) The provider shall, when necessary, seek a court order for compelled medication in accordance with the Texas Health and Safety Code, §574.206 and Texas Code of Criminal Procedure, Chapter 46B, if participants refuses to give informed consent with regard to mental health treatment and psychoactive medication issues.

*§416.89. Competency Restoration Module.*

(a) The provider shall use a DSHS-approved competency training module to provide legal education for each participant.

(b) Each participant shall be educated in multiple learning formats by multiple staff members, including but not limited to: discussion, reading, video and experiential methods such as role-playing, or mock trial. Participants with accommodation needs shall receive adapted materials and approach as needed.

*§416.90. Transition Services.*

While waiting for his or her case to be resolved, staff members shall provide transition services that encourage timely resolution of participant's legal issues in an effort to minimize the length of time a participant is incarcerated. Transition services shall be provided in a mental health unit, if a participant is:

(1) restored to competency;

(2) deemed not likely to restore and waiting for an inpatient forensic hospital bed; or

(3) deemed not likely to restore and awaiting return to the community.

*§416.91. Discharge Planning.*

(a) Upon discharge or transfer of a participant, the participant's medical record shall identify the services provided, diagnoses, treatment plan, medication and medication allergies and/or other known precautions.

(b) A reasonable and appropriate discharge plan developed in accordance with Chapter 412, Subchapter D of this title (relating to Mental Health Services--Admission, Continuity, and Discharge), shall be jointly developed by the staff members, the participant, the LAR if available, the courts, the LMHA, LBHA, or MCO, state mental health facility, or other inpatient forensic facility. If applicable, discharge planning shall include, at a minimum, the following activities.

(1) If a participant is restored to competency and he or she is returning to the community or other provider (including jail), the provider shall:

(A) deliver counseling to prepare the participant and LAR, if any, for care after discharge or transfer;

(B) identify and recommend the clinical services and supports needed by the participant after discharge to the community or other provider, including jail;

(C) identify a community provider in collaboration with the participant and LAR to determine where the participant will be referred for any services or supports after discharge or transfer;

(D) prepare and forward to the LMHA, LBHA, MCO, or other provider (including jail) a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title; and

(E) provide seven days of psychoactive medication if a participant is being discharged to the community.

(2) If a participant is not restored to competency and is transferring to a state mental health facility or other inpatient forensic facility, the provider shall:

(A) notify the DSHS staff member responsible for maintaining the clearinghouse waitlist within 24 hours;

(B) deliver counseling to prepare the participant and LAR, if any, for care after transfer;

(C) identify and recommend the clinical services and supports needed by the participant after transfer; and

(D) prepare and forward to the state mental health facility or other inpatient forensic facility a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title.

(c) The psychiatrist for the provider shall conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection. The provider shall notify the court immediately if a participant is deemed not likely to be restored to competency within the 60 day period.

(d) If the psychiatrist for the provider determines that a participant ordered to participate in the program has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed:

(1) not likely to restore within the next five days, a staff member shall:

(A) add the participant's name to the DSHS staff member who maintains the clearinghouse waitlist within 24 hours of the psychiatrist's determination;

(B) within 48 hours of the psychiatrist's determination send via fax, or, send electronically to the clearinghouse all medical and legal records required by the staff member who maintains the clearinghouse waitlist; and

(C) ensure that a certificate of medical examination is provided to the court that complies with Texas Health and Safety Code, §574.011, and is consistent with the report deeming the participant not likely to restore; or

(2) likely to restore within the next five days, the participant may remain in the program until the 70th day.

(e) If the psychiatrist for the provider determines that a participant has not restored to competency by the 70th day, a staff member shall:

(1) contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(2) send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(3) ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours.

*§416.92. Compliance with Statutes, Rules, and Other Documents.*

(a) The provider shall comply with the following:

(1) Texas Code of Criminal Procedure, Chapter 46B;

(2) Texas Health and Safety Code, §574.001;

(3) 25 Texas Administrative Code Part 1:

(A) Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);

(B) Chapter 411, Subchapter N (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));

(C) Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services);

(D) Chapter 414, Subchapter K (relating to Criminal History and Registry Clearances);

(E) Chapter 415, Subchapter A (relating to Prescribing of Psychoactive Medication);

(F) Chapter 415, Subchapter F (relating to Interventions in Mental Health Programs); and

(G) Chapter 417, Subchapter K (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities);

(4) 37 TAC Part 9 (relating to Texas Commission on Jail Standards); and

(5) Rights of Participants Receiving Jail-based Competency Restoration Services, Exhibit A, in §416.87 of this title (relating to Participant's Rights).

(b) Concerning confidentiality, the provider shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws, including, but not limited to:

(1) 42 Code of Federal Regulations (CFR) Part 2 and Part 51, Subpart D;

(2) 45 CFR Parts 160 and 164, and §1386.22;

(3) Texas Health and Safety Code, Chapter 81, Subchapter F;

(4) Texas Health and Safety Code, Chapter 241, Subchapter G;

(5) Texas Health and Safety Code, Chapters 181, 595, and 611; and §§533.009, 533.035(a), 572.004, 576.005, 576.0055, 576.007, 595.005(c), and 614.017;

(6) Texas Government Code, Chapters 552 and 559, and §531.042;

(7) Texas Human Resources Code, Chapter 48;

(8) Texas Occupations Code, Chapter 159; and

(9) Texas Business and Commerce Code, §521.053.

*§416.93. Outcome Measures.*

The following measures shall be used to determine if a participant's outcomes justify continuing the program. The provider shall collect data on the following:

(1) participant outcomes:

(A) the number of participants on felony charges;

(B) the number of participants on misdemeanor charges;

(C) the average number of days for a participant to be restored to competency;

(D) the number of participants for whom an extension was sought;

(E) the number of participants who were restored to competency;

(F) the average length of time between determination of non-restorability and transfer to a state mental health facility; and

(G) the percentage of participants:

*(i)* who are restored to competency in 70 days or less; and

*(ii)* who are restored to competency and avoid re-arrest for six months following discharge to the community;

(H) the number of jail inmates found IST who were screened out of or deemed inappropriate for the program and the reason why; and

(I) the number of participants who were not restored and who were transferred to a state mental health facility.

(2) administrative outcomes:

(A) the costs associated with operating the program relative to an OCR program or hospitalization in a state mental health facility; and

(B) the number of confirmed cases of abuse, neglect, and exploitation, rights violations, use of restraint and seclusion, injury, and deaths.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2014.

TRD-201401071
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 776-6972

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 345. JUVENILE JUSTICE PROFESSIONAL CODE OF ETHICS FOR CERTIFIED OFFICERS

The Texas Juvenile Justice Department (TJJD) proposes amendments to §§345.100, 345.110, 345.200, 345.300, and 345.310, concerning Juvenile Justice Professional Code of Ethics for Certified Officers.

The proposed amendment to §345.100 will add "youth activities supervisor" to the definition of juvenile justice professional and will make minor terminology updates and grammatical revisions.

Proposed amendments to §§345.110, 345.200, 345.300, and 345.310 will make minor terminology updates and grammatical revisions.

RULE REVIEW

Simultaneously with these proposed rulemaking actions, TJJD also publishes this notice of intent to review all rules in Chapter 345 as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

Brett Bray, General Counsel, has determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of administering the sections

will be minimum ethical guidelines for all individuals working with juveniles in job positions that require TJJD certification and ethical guidelines for those individuals that are clear and reflect current practices.

Mr. Meyer has determined there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENT

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

## SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

**37 TAC §345.100, §345.110**

STATUTORY AUTHORITY

The amended sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for personnel and staffing necessary to provide adequate and effective probation services and reasonable rules that provide minimum standards for non-secure correctional facilities.

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

*§345.100. Definitions.*

The following terms, as used in this chapter, [~~Terms used in this chapter shall~~] have the following meanings unless otherwise expressly defined within the chapter.

[~~(1) Commission--The Texas Juvenile Probation Commission.~~]

(1) [~~(2)~~] Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(2) [~~(3)~~] Juvenile Justice Facility ("facility")--

(A) A facility including the facility's premises and all affiliated sites, whether contiguous or detached that:[~~, including its premises and all affiliated sites, whether contiguous or detached,~~]

*(i)* serves juveniles under juvenile court jurisdiction; and

*(ii)* is operated:

*(I)* wholly or partly by or under the authority of the governing board or[~~,~~] juvenile board; or

*(II)* by a private vendor under a contract with the governing board, juvenile board, or governmental unit [~~that serves juveniles under juvenile court jurisdiction~~].

(B) The term includes, but is not limited to:

*(i)* [~~(A)~~] [~~A~~] public or private juvenile pre-adjudication secure detention facilities, as defined in §344.100 of this title, including short-term detention facilities (i.e., holdovers) as defined in §351.1 of this title [~~facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with Texas Family Code §51.12~~];

*(ii)* [~~(B)~~] [~~A~~] public or private juvenile post-adjudication secure correctional facilities as defined in §344.100 of this title [~~facility required to be certified in accordance with Texas Family Code §51.125, except for a facility operated solely for children committed to the Texas Youth Commission~~]; and

*(iii)* [~~(C)~~] [~~A~~] public or private non-secure correctional facilities as defined in §355.100 of this title [~~juvenile post-adjudication residential treatment facility housing juveniles under juvenile court jurisdiction~~].

(3) [~~(4)~~] Juvenile Justice Professional--A person who is:

(A) certified by TJJD as a juvenile probation officer, youth activities supervisor, or juvenile supervision officer; or [~~and who is~~]

(B) employed by a juvenile probation department, juvenile justice program, or a juvenile justice facility as a juvenile probation officer, youth activities supervisor, or juvenile supervision officer.

(4) [~~(5)~~] Juvenile Justice Program ("program")--Has the meaning assigned by §344.100 of this title. [~~A program or department operated wholly or partly by the governing board, juvenile board or by a private vendor under a contract with the governing board, or juvenile board that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction. The term includes a juvenile justice alternative education program and a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board jurisdiction and a juvenile probation department.~~]

(5) [~~(6)~~] Juvenile Probation Department ("department")--Has the meaning assigned by §344.100 of this title. [~~All physical offices and premises utilized by a county or district level governmental unit established under the authority of a juvenile board(s) to facilitate execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 141 of the Texas Human Resources Code.~~]

(6) TJJD--The Texas Juvenile Justice Department.

*§345.110. Applicability.*

(a) Unless otherwise noted, this code of ethics applies to all juvenile justice professionals. [~~persons certified as juvenile probation officers or juvenile supervision officers (hereafter referred to as "juvenile justice professionals") employed by a juvenile probation department, juvenile justice program or juvenile justice facility.~~]

(b) The code of ethics is intended to ensure that juvenile justice professionals adhere to the level of professionalism required by TJJD [~~the Commission~~] as the licensing agency issuing the certification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401097
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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## SUBCHAPTER B. POLICY AND PROCEDURE

**37 TAC §345.200**

STATUTORY AUTHORITY

The amended section is proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for personnel and staffing necessary to provide adequate and effective probation services and reasonable rules that provide minimum standards for non-secure correctional facilities.

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

*§345.200. Policy and Procedure.*

Juvenile probation departments, juvenile justice programs, and juvenile justice facilities must adopt and implement [~~shall have~~] written policies and procedures to ensure that all [~~for reporting violations of the~~] code of ethics violations are reported to:

(1) the administration of the juvenile probation department, juvenile justice program, [~~programs~~] or juvenile justice facility; and [~~the Commission.~~]

(2) TJJD.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

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Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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## SUBCHAPTER C. CODE OF ETHICS

### 37 TAC §345.300, §345.310

STATUTORY AUTHORITY

The amended sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for personnel and staffing necessary to provide adequate and effective probation services and reasonable rules that provide minimum standards for non-secure correctional facilities.

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

*§345.300. Adherence and Reporting Violations.*

(a) To ensure the safety, protection, and welfare of the juveniles and families served by the juvenile justice system, juvenile justice professionals must [~~shall~~] adhere to the code of ethics set forth in this chapter.

(b) Juvenile justice professionals must [~~shall~~] report to the appropriate authorities and/or entities any unethical behavior or violations of the code of ethics.

*§345.310. Code of Ethics.*

[~~(a) Juvenile justice professionals found to be in violation of the provisions of this subsection shall be subject to disciplinary action including, but not limited to, suspension, revocation or denial of the professional certification issued under the authority of the Commission.~~]

(a) [~~(b)~~] The people of Texas expect juvenile justice professionals to exhibit [~~unfailing~~] honesty and respect for the dignity and individuality of human beings and display a commitment to professional and compassionate service.

(b) As described by §344.810 and §349.307 of this title, TJJD may take disciplinary action against the certification or deny certification of a juvenile justice professional who is found by TJJD to have violated the code of ethics.

(c) Juvenile justice professionals must adhere [~~The Commission subscribes~~] to the following code of ethics principles:

(1) Juvenile justice professionals must [~~shall~~]:

(A) abide by all federal laws, federal guidelines and rules, state laws, and TJJD [~~Commission~~] administrative rules;

(B) respect the authority and follow the directives of the juvenile court and governing juvenile board;

(C) respect and protect the legal rights of all juveniles [~~children~~] and their parents and/or guardians;

(D) serve each child with concern for the child's welfare and with no expectation of personal gain;

(E) respect the significance of all elements of the justice and human services systems and cultivate [~~a~~] professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from the effects of juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all information that could contribute to sound decisions affecting a child or [~~the~~] public safety;

(H) report without reservation any corrupt or unethical behavior that could affect a juvenile or the integrity of the juvenile justice system;

(I) maintain the integrity and confidentiality of juvenile information, [~~and~~] not seek more information than needed to perform their duties, and not [~~nor~~] reveal information to any person who does not have authorized access to the information for a proper, professional use; and

[~~(J) perform all duties impartially and without regard to race, ethnicity, gender, disability, national origin, religion, sexual orientation, political belief or socioeconomic status; and~~]

(J) [~~(K)~~] treat all juveniles and their families with courtesy, consideration, and dignity.

(2) Juvenile justice professionals must [~~shall~~] not:

(A) use their official position to secure privileges or advantages;

(B) permit personal interest to impair the impartial and objective exercise of professional responsibilities [~~objectivity that must be maintained to impartially execute their official duties~~];

(C) accept gifts, [~~presents,~~] favors, or other advantages that could give the appearance of impropriety or impair the impartial and objective exercise of professional responsibilities;

(D) maintain or give the appearance of maintaining an inappropriate relationship with a juvenile, including, but not limited to, [~~residing in a facility or under the jurisdiction of the juvenile court that includes, but is not limited to,~~] bribery or[~~;~~] solicitation or acceptance of gifts, favors, or services from juveniles or their families;

(E) discriminate against any employee, juvenile, parent, or guardian on the basis of race, ethnicity, gender, disability, na-

tional origin, religion, sexual orientation, political belief, or socioeconomic status;

(F) [engage in behaviors that] misuse government property or resources[,] or [that] use [the] personal property [effects] or funds belonging to a juvenile;

(G) be designated as a perpetrator in an [a Commission] abuse, exploitation, and neglect investigation conducted by TJJD under Chapter 350 of this title and [the authority of] Texas Family Code Chapter 261 [and Chapter 350 of this title];

(H) interfere with or hinder any abuse, exploitation, and neglect investigation, including a criminal investigation conducted by law enforcement or an investigation conducted under Chapter 350 and Chapter 358 of this title or [pursuant to] Texas Family Code Chapter 261 [or Chapter 350 and Chapter 358 of this title];

(I) deliver into or remove from the grounds of a juvenile facility, program, or department any item of contraband or possess or control any item of contraband beyond the time period required to immediately report and deliver the [such] item to the proper authority within the facility, program or department;

(J) use violence or [utilize] unnecessary force [or violence] and must [shall only] use only the amount and type of force reasonably necessary and appropriate when justified to ensure the security of juveniles or of[,] the facility, program, or department; or

(K) falsify or make material omissions [entries] to governmental records.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401099
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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## CHAPTER 359. MEMORANDUMS OF UNDERSTANDING

### 37 TAC §359.100, §359.151

The Texas Juvenile Justice Department (TJJD) proposes amendments to §359.100 and §359.151, concerning Memorandums of Understanding.

The proposed amendments make minor terminology updates and grammatical revisions to both sections.

Additionally, proposed amendments to §359.100 include retitling the section as "Memorandum of Understanding Between the Texas Juvenile Justice Department and the Texas Commission on Law Enforcement" to reflect the current names of these organizations.

RULE REVIEW

Simultaneously with this proposed rulemaking action, TJJD also publishes this notice of intent to review all rules in Chapter 359 as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

Mr. Meyer also has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be rules that accurately reflect current agency names and current statutory references.

Mr. Meyer also has determined there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENT

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended sections are proposed under Texas Occupations Code §1701.259, which requires TJJD and the Texas Commission on Law Enforcement to adopt by rule a memorandum of understanding that establishes a training program in the use of firearms by juvenile probation officers, and Texas Human Resources Code §244.0106, which requires TJJD and the Texas Health and Human Services Commission to jointly adopt rules to ensure that a child for whom the Department of Family and Protective Services has been appointed managing conservator receives appropriate services while the child is committed to TJJD or released under supervision by TJJD.

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

*§359.100. Memorandum of Understanding Between the Texas Juvenile Justice Department [Probation Commission] and the Texas Commission on Law Enforcement [Officer Standards and Education].*

[(a)] The Texas Juvenile Justice Department (TJJD) [Probation Commission (Commission)] adopts by reference the attached memorandum of understanding (MOU) between TJJD and the Texas Commission on Law Enforcement [Officer Standards and Education]. The MOU contains the agreement required by Texas Occupations Code §1701.259 [, Chapter 1701, §1701.258,] to establish the [respective] responsibilities of these agencies in developing a basic training program in the use of firearms by juvenile probation officers and in fulfilling related statutory mandates.
Figure: 37 TAC §359.100

[(b) The MOU is adopted by rule in this section.]

[(c) The effective date of the MOU, with respect to the Commission, is January 1, 2010.]
[Figure: 37 TAC §359.100(c)]

*§359.151. Memorandum of Understanding Concerning Interagency Cooperation for Continuity of Youth Care.*

(a) The Texas Juvenile Justice Department (TJJD) [~~Youth Commission (TYC)~~] adopts by reference a memorandum of understanding (MOU) entered into by TJJD [~~TYC~~] and the Texas Department of Family and Protective Services (DFPS). The MOU contains the agreement required by Texas Human Resources Code §244.0106 [~~§61.0767~~] to provide coordinated and appropriate services to youth who are in the conservatorship of DFPS and who are committed to TJJD [~~TYC~~] or released under supervision by TJJD [~~TYC~~].

(b) The MOU is adopted by rule in 40 TAC §702.425.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401100
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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# CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
## SUBCHAPTER C. PROGRAM SERVICES
## DIVISION 1. BASIC SERVICES

### 37 TAC §380.9121

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.9121, relating to Moral Values, Worship, and Religious Education.

The amended section will establish that TJJD attempts to verify the religious preference of each youth under 18 years of age with his/her parent or guardian. If the parent or guardian disagrees with the youth's religious preference, TJJD honors the preference of the parent or guardian. If, after due diligence, TJJD cannot contact the parent or guardian, TJJD honors the preference of the youth.

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended section will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the sections.

Teresa Stroud, Senior Director of State Programs and Facilities, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the protection of religious and parental rights.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

The amended section is proposed under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions, and Family Code §151.001, which establishes a parent's right and duty to direct the moral and religious training of his/her child.

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

*§380.9121. Moral Values, Worship, and Religious Education.*

(a) Purpose. The purpose of this rule is to provide [~~establish guidelines for providing~~] youth with the opportunity to participate in worship and religious education and [~~encouragement~~] to develop and internalize a set of personal moral and spiritual values.

(b) General Provisions.

(1) The Texas Juvenile Justice Department (TJJD) determines the religious preference of each youth admitted to TJJD. If a youth is under age 18, TJJD contacts the youth's parent/guardian to verify the youth's religious preference. If there is a disagreement regarding the religious preference for a youth under age 18, the religious preference will be established by the parent/guardian. If TJJD is unable to contact the parent/guardian after due diligence, TJJD will honor the youth's requested religious preference.

(2) [~~(b)~~] TJJD provides [~~Texas Youth Commission (TYC) shall provide~~] youth the opportunity to participate in religious education programs, [~~and~~] services, and counseling [~~for youth~~].

(3) [~~(c)~~] Participation in religious education programs, services, and counseling is [~~shall be~~] voluntary.

(4) [~~(d)~~] Arbitrary and discriminatory restrictions of religious freedoms are prohibited.

(5) [~~(e)~~] High restriction and medium restriction facilities operated by or under contract with TJJD must [~~Halfway house and contract residential programs shall~~] provide for reasonable access to religious education programs, services, and counseling[~~, and other such resources in the community~~].

(6) [~~(f)~~] [~~Youth will be given the opportunity to participate in religious programs and services.~~] Participation in religious education programs, services, and counseling may [~~shall~~] be limited only when documentation indicates a threat to the safety of persons involved or the activity disrupts order in the facility.

(7) [~~(g)~~] Youth in TJJD-operated [~~TYC operated~~] facilities may request that a specific religious practice or item be made available to him/her [~~him or her~~]. The [~~A youth's~~] request is subject to an assessment, accommodation, and approval process.

(8) [~~(h)~~] TJJD provides [~~TYC shall provide~~] access to personal [~~adult~~] clergy for a youth's faith group in accordance with §380.9317 of this title.

(9) [~~(i)~~] TJJD encourages [~~TYC shall encourage~~] the participation of volunteer religious groups and individuals in its religious services and programs.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401093

Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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## SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

### 37 TAC §380.9312

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.9312, relating to Visitation.

This section establishes who may visit youth in TJJD facilities, the process for registering as a visitor, and how visitation is scheduled and conducted.

SECTION-BY-SECTION SUMMARY

Proposed new subsection (b)(2)(C) clarifies that §380.9312 does not apply to volunteers when they visit youth as part of their specific volunteer assignment.

Proposed amended subsection (c)(2)(F) adds individuals with outstanding felony or misdemeanor warrants to the list of people who are not eligible to visit youth in residential facilities operated by TJJD.

Proposed amended subsection (c)(2)(G) eliminates the automatic disqualification of prospective visitors who are not immediate family members and who have felony convictions within the past 10 years. TJJD staff will now decide to allow or deny visitation.

Proposed amended subsection (d)(4)(B) allows TJJD to retain criminal history information for a person whose visitation is denied or restricted because of his/her criminal history until the youth the person seeks to visit is released. This change is proposed pursuant to House Bill 2733 (83rd Legislature, regular session).

Proposed new subsection (e)(2)(E) specifies that a person with the following criminal history may be denied visitation: deferred adjudication or juvenile adjudication for a felony in the last 10 years; current probation or parole; or conviction, deferred adjudication, or juvenile adjudication for a jailable misdemeanor within the past five years.

Proposed new subsection (e)(3) specifies that for persons who may be denied visitation based on their criminal history, TJJD will consider the nature and extent of the criminal record and the time elapsed since the criminal activity when deciding whether to deny visitation.

Proposed new subsection (e)(4) prohibits TJJD from denying visitation for an immediate family member based solely on the person's criminal history. This change is proposed pursuant to House Bill 2733 (83rd Legislature, regular session).

Proposed new subsection (e)(5) specifies that only the division director over residential services or his/her designee may deny visitation.

Proposed new subsection (p) allows TJJD's executive director to make exceptions to this rule on a case-by-case basis.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended section will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the section.

PUBLIC BENEFIT/COSTS

Teresa Stroud, Senior Director of State Programs and Facilities, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be enhanced communication between TJJD youth and their parents/guardians, immediate family members, and other positive individuals in their lives. Other benefits include complying with statutes and protecting TJJD youth, TJJD staff, and visitors.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

PUBLIC COMMENT

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions.

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

*§380.9312. Visitation.*

(a) Purpose. The purpose of this rule is to promote and foster communication and contact between Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] youth and their parents/guardians, immediate family members, and other positive individuals in their lives.

(b) Applicability.

(1) This rule applies to all residential facilities operated by TJJD [~~TYC~~].

(2) This rule does not apply to visits from:

(A) attorneys (see §380.9311 of this title); [~~attorneys, pursuant to §93.11 of this title; or~~]

(B) personal clergy (see §380.9317 of this title); or [~~ministers, pastors, or religious counselors, pursuant to §93.17 of this title.~~]

(C) registered volunteers who are visiting a youth as part of their specific volunteer assignment (see §385.8145 and §385.8181 of this title).

(c) Definitions. As used in this rule, the following terms [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Immediate Family Member--parent (including step-parent), legal guardian, sibling (including step-sibling), child, spouse, aunt, uncle, or grandparent of a youth in TJJD [~~TYC~~] custody.

(2) Non-Eligible Visitor--includes only the following individuals:

(A) a former or current TJJD [~~TYC~~] youth, except if a former TJJD [~~TYC~~] youth is an immediate family member;

(B) a parent whose parental rights have been terminated by a court, if [~~and~~] the youth the parent is seeking to visit is under age 18;

(C) any person [~~individual~~] who is restricted from contact with a TJJD [~~TYC~~] youth by a valid court order;

(D) any former or current TJJD [~~TYC~~] employee, unless the former or current TJJD [~~TYC~~] employee is an immediate family member of the youth, is otherwise authorized to visit the youth, or is approved by the chief local administrator (CLA);

(E) any person [~~individual~~] who is not an immediate family member and who is under age 18, unless approved by the CLA; [~~and~~]

(F) any person with an outstanding warrant for a felony or misdemeanor offense; or

(G) [~~(F)~~] any person [~~individual~~] who is not an immediate family member and who [~~has a felony conviction within the last ten years or~~] is required to register as a sex offender, unless authorization for the visitation is obtained from the executive director or his/her designee.

(d) General Provisions. [~~Approval to Visit.~~]

(1) All TJJD [~~TYC~~] youth, regardless of program placement, are [~~shall be~~] allowed to receive visitors.

(2) Except for parents and guardians who wish to visit a youth during the youth's initial placement at the orientation and assessment facility, only persons [~~individuals~~] whose names are on a youth's approved visitor list are [~~will be~~] permitted to visit that youth.

(3) A person [~~An individual~~] wishing to be placed on a youth's approved visitor list must submit a completed visitor application and obtain prior approval to visit with the youth.

(4) TJJD conducts [~~TYC may conduct~~] background and [~~public~~] criminal history checks [~~and/or require written authorization to conduct full criminal history checks~~] prior to placing a person [~~an individual~~] on the youth's approved visitor list.

(A) TJJD will not release or disclose confidential [~~Confidential~~] criminal history record information [~~shall not be released or disclosed~~] except on court order or with the consent of the person [~~individual~~] who is the subject of the criminal history record information.

(B) Criminal records obtained under [~~pursuant to~~] this rule will be destroyed after completion of the visitation approval decision. However, if visitation is denied or limited based in part on a review of criminal history, TJJD will retain the criminal history record information of the person for whom access is denied or limited until the youth the person is seeking to visit is released from TJJD.

~~[(5) TYC may deny placing an individual's name on a youth's approved visitor list only if:]~~

~~[(A) the individual is a non-eligible visitor; or]~~

~~[(B) the visitor has been denied visitation pursuant to subsection (f)(7) of this section.]~~

(5) [~~(6)~~] An approved visitor under the age of 18 must be accompanied by:

(A) his/her parent or guardian; or

(B) if the visitor is the child of a TJJD [~~TYC~~] youth, an approved visitor who is age 18 or older.

(e) Denial of Visitation.

(1) TJJD may deny placing a person's name on a youth's approved visitor list only if:

(A) the person is a non-eligible visitor; or

(B) TJJD has denied visitation for any of the reasons listed in paragraph (2) of this subsection.

(2) TJJD may deny visitation if:

(A) evidence exists that the person has:

*(i)* passed contraband to a youth or staff member that constitutes a violation of law or creates a safety or security risk;

*(ii)* aided a youth in an escape or attempted escape;

*(iii)* provided false information or failed to provide accurate information to staff with regard to visitation;

*(iv)* engaged in disruption of visitation similar to examples listed in subsection (h) of this section. The severity of the incident is a factor in determining the length of time visitation may be denied;

(B) the person was victimized by the youth and the manager of clinical services has determined that visitation would be harmful to the person;

(C) there is reasonable cause to believe the person would pose a risk to the safety or security of the facility or interfere with a youth's treatment, rehabilitation, or successful reestablishment in the community;

(D) the person is required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; or

(E) the person has the following criminal history:

*(i)* a conviction, deferred adjudication, or juvenile adjudication for a felony within the past ten years;

*(ii)* current probation or parole; or

*(iii)* a conviction, deferred adjudication, or juvenile adjudication for a jailable misdemeanor within the past five years.

(3) To determine whether to approve or deny visitation based on criminal history, TJJD takes into consideration the nature and extent of the criminal record and the time elapsed since the criminal activity.

(4) TJJD will not deny visitation for an immediate family member of a TJJD youth based solely on a review of criminal history record information.

(5) Only the division director over residential services or his/her designee may deny visitation.

(6) If TJJD denies placing a person's name on a youth's approved visitor list, TJJD will provide written notice to the person and the youth. The notice will include the reason for the denial and an explanation of the right to file a grievance to appeal the decision.

(f) [~~(e)~~] Visitation Scheduling.

(1) Visitation Days. Visitation days are, at a minimum, each Saturday and Sunday and major holidays. [~~Additional visitation days may be provided, as designated by the CLA or designee.~~]

(2) Visitation Hours. The facility [~~facility/program~~] must provide two eight-hour [~~8-hour~~] visitation days per week. The facility [~~facility/program~~] may provide extended visitation hours, as designated by the CLA or designee.

(3) Length of Visitation.

(A) [~~For~~] Youth Not Assigned to the Security Unit. Visitation for youth not assigned to the security unit is [~~will be~~] at least two hours per each visitation, if behavior permits.

(B) [~~For~~] Youth Assigned to the Security Unit. Visitation for youth assigned to the security unit is [~~will be~~] at least one hour per each visitation, if behavior permits.

(4) Number of Visitors. There is no limit to the number of visitors per visitation. However, a youth will only be allowed two [~~(2)~~] face-to-face contact visitors at any one time during each visitation, unless the CLA or designee grants an increase in the number of face-to-face contact visitors for the visitation period.

(g) [~~(f)~~] Conditions of Visitation.

(1) Location.

(A) Adequate space is [~~shall be~~] provided for visitation. Outdoor visitation may be allowed if safety and weather permit.

(B) Visitation for youth housed in a security unit [~~during visitation hours~~] will occur in the security unit. For visitation in a security unit, the CLA or designee may limit approved visitors to parents/guardians and grandparents.

(2) Private Parental Visitation. Parents [~~shall~~] have the right to private, in-person communication with their child for reasonable periods of time. The time, place, and conditions of the private, in-person communication may [~~only~~] be regulated only to prevent disruption of scheduled activities and to maintain the safety and security of the facility [~~facility/program~~].

(A) Private, in-person communication means [a] communication between a parent and his/her child in a location where conversation cannot be overheard by staff.

(B) Parents desiring to have a private, in-person communication with their child are expected to make the request at least 24 hours before the visitation. Requests not made within 24 hours are [~~should be~~] accommodated if possible.

(3) Special Visitation. Special visitation is provided at times that may vary from the regular visitation schedule to accommodate visitors with special circumstances including, but not limited to:

(A) long-distance travel requirements;

(B) parent work schedules that preclude visiting during normal hours; or

(C) bereavement.

(4) Contact Visitation. Visitors are [~~will be~~] allowed to hug the youth at the beginning and end of the visit.

(5) Dress Code. Visitors must abide by the following dress code:

(A) no shorts (exception will be made for youth under age 13);

(B) no open-toed shoes;

(C) no miniskirts [~~mini skirts~~], see-through or sleeveless clothing, tops that expose the midriff, or any other clothing for youth age 13 or older which is determined by staff to be too revealing, too short, or otherwise inappropriate;

(D) suggestive, offensive, or derogatory body art must be covered (to the extent practical); and

(E) no clothing depicting drugs, sex, gang culture, obscene language, or disrespect to other persons or ethnicities.

(h) [~~(6)~~] Removal From Visitation. [~~Disruption During Visitation and Removal.~~]

(1) [~~(A)~~] TJJD will require the visitor to leave the facility and/or notify local law enforcement if: [~~The CLA or designee or the director of security may deny visitation if:~~]

(A) [~~(i)~~] the [a] visitor appears to be under the influence of drugs or alcohol;

(B) [~~(ii)~~] the [a] visitor refuses to cooperate;

(C) [~~(iii)~~] the [a] visitor creates a disturbance;

(D) [~~(iv)~~] the [a] visitor is hostile to the point of disruption; or

(E) [~~(v)~~] evidence exists that the [a] visitor has passed contraband to a youth or staff member or aided a youth in an escape or attempted escape.

(2) [~~(B)~~] [~~The CLA or designee or the director of security may determine the appropriate action to be taken including asking the visitor to leave the facility/program or notifying local law enforcement.~~] If local law enforcement is notified, any further action will be at the discretion of the local law enforcement.

[~~(7) Denial of Future Visitation for Visitors.~~]

[~~(A) The CLA or designee may deny visitation if:~~]

~~*(i)* evidence exists that a visitor has:~~]

~~*(I)* passed contraband to a youth or staff member that constitutes a violation of law or creates a safety or security risk;~~]

~~*(II)* aided a youth in an escape or attempted escape;~~]

~~*(III)* provided false information or failed to provide accurate information to staff with regard to visitation;~~]

~~*(IV)* engaged in disruption of visitation similar to examples listed in paragraph (6) of this subsection. The severity of the incident is a factor in determining the length of time visitation may be denied; or~~]

~~*(ii)* the visitor is a victim of the youth and the manager of clinical services has determined that visitation would be harmful to the visitor; or~~]

~~*(iii)* based on reasonable cause to believe, the visitor would pose a risk to the safety or security of the facility or interfere with a youth's treatment, rehabilitation, or successful reestablishment in the community.~~]

[~~(B) If the CLA or designee denies visitation, written notice will be provided to the visitor and the youth. The notice will include the reason for the denial of visitation and an explanation of the right to file a grievance to appeal the denial of visitation.~~]

(i) [~~(8)~~] Denial of Visitation for TJJD [~~TYC~~] Youth. Youth may be denied a scheduled visit if there is a compelling risk to the safety of other youth or visitors or the security of the facility, including circumstances in which the youth is:

(1) [~~(A)~~] out of control and it is unsafe to allow visitation;

(2) [~~(B)~~] assaultive or threatens to engage in assaultive conduct during visitation; or

(3) [~~(C)~~] engaging in misconduct during visitation.

(j) [~~(9)~~] Denial of Visitation for TJJD [~~TYC~~] Facility or Housing Unit.

(1) [~~(A)~~] If a dorm is on shut-down, youth will be allowed visitation unless youth individually meet criteria for denial of visitation.

(2) [~~(B)~~] Denial of visitation for an entire housing unit or facility due to unrest or any other extraordinary situation must be approved by the division director over residential facilities or his/her designee.

(k) [~~(10)~~] Refusal of Visitation. Youth may refuse to receive visitors.

(l) [~~(11)~~] Staff Availability During Visitation. Staff members must [~~The facility/program staff are required to~~] be available to answer visitors' questions and address concerns during visitation hours.

(m) [~~(12)~~] Publication of Visitation Rules. The facility must [~~facility/program staff are required to~~] post the visitation rules in English and Spanish on a central bulletin board[~~,~~] and assist other non-English speaking individuals to understand posted rules, as needed. The visitation rules must [~~shall~~]:

(1) [~~(A)~~] address all pertinent issues including, but not limited to, visitation days and hours, required [~~positive~~] identification, visitor dress code, prohibited contraband, items authorized in visitation area, and expected demeanor of visitors; and

(2) [~~(B)~~] be sent with the admission letter to each youth's parents or legal guardian.

(n) [~~(g)~~] Review Process.

(1) Visitation Grievances. Grievances by immediate family members or youth with regard to visitation are filed under §380.9331 [~~pursuant to §93.31~~] of this title.

(2) Public Complaints. Complaints by members of the public with regard to visitation are filed under §385.8111 [~~pursuant to §81.11~~] of this title.

(o) [~~(h)~~] Check-In Process.

(1) Registration. [~~Register.~~] All visitors must register upon entry to a facility. [~~facility/program. The facility/program staff must document all visitations through the computerized visitor tracking and reporting system.~~]

(2) Identification.

(A) Adult visitors must produce valid picture identification for themselves and accompanying visitors [~~visitor(s)~~] age 13 or older. Acceptable picture identification includes:

*(i)* valid state driver's license;

*(ii)* state-issued identification card;

*(iii)* current military identification;

*(iv)* school-issued identification card;

*(v)* other official picture identification; or

*(vi)* a TJJD [~~TYC~~] volunteer identification badge.

(B) Visitors age 13 or older will be issued a temporary identification badge.

(3) Prohibited Items. Items brought onto agency property may be limited and regulated by TJJD [~~TYC~~]. For a list of prohibited items, see §380.9710 [~~§97.10~~] of this title. Visitors are [~~will be~~] allowed to bring in the items listed in this paragraph, unless the control center posts a list of items otherwise allowed in a visitor's possession while on facility grounds. The additional items must be approved by the CLA. Visitors are [~~will be~~] allowed to bring:

(A) identification; [~~Identification.~~]

(B) [~~Visitors with infants will be allowed to bring~~] a bottle and diaper-changing items (for visitors with infants); and[~~.~~]

(C) up to ten dollars in coins, if vending machines are available. [~~If vending machines are available, a maximum of ten dollars in coins for the vending machines.~~] Youth are not permitted to handle the money.

(4) Search.

(A) All individuals, vehicles, and items entering the facility [~~facility/program~~] are subject to search. For more information regarding entry searches, see §380.9710 [~~§97.10~~] of this title.

(B) Parking lots are subject to inspection by TJJD's [~~TYC's~~] canine (K-9) teams. Law [~~and law~~] enforcement may be notified when necessary. See §380.9713 [~~§97.13~~] of this title for more information regarding [~~parking lot~~] inspections of parking lots.

(C) In facilities equipped with metal detectors, visitors must declare at the control center all metal items on their person and must successfully pass through the metal detector. Visitors refusing or failing to pass successfully through a metal detector will be denied access.

(D) Visitors' refusal to submit to a search of their person or personal property may be considered legitimate grounds for denying access to the facility [~~facility/program~~].

(p) Individual Exceptions. The executive director may make exceptions to the provisions of this rule on a case-by-case basis.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401095
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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**37 TAC §380.9317**

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.9317, relating to Access to Personal Minister, Pastor, or Religious Counselor.

The amended section will be retitled as "Visitation with Personal Clergy" to more accurately reflect the content of the section, and a definition for personal clergy will be added. The amended section will require TJJD to verify a clergy member's religious affiliation and relationship to a youth in TJJD custody before approving the clergy member to visit. Clarification will be added to reflect

that space provided for clergy visitation will allow for confidential communication. The amended section will also establish that the parent or guardian of a youth under age 18 may prohibit a visit between his/her child and a clergy member.

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended section will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the sections.

Teresa Stroud, Senior Director of State Programs and Facilities, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the protection of religious and parental rights.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

The amended section is proposed under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions, and Family Code §151.001, which establishes a parent's right and duty to direct the moral and religious training of his/her child.

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

*§380.9317. Visitation with Personal Clergy [Access to Personal Minister, Pastor, or Religious Counselor].*

(a) Purpose. The purpose of this rule [policy] is to provide [for] youth with privileged access to their personal clergy [ministers, pastors or religious counselors through visitation].

(b) Visitation.

(1) A personal clergy member [minister, pastor, or religious counselor] is someone from a recognized faith group who has an established, professional relationship with a youth and/or the youth's family prior to the youth's admission to TJJD. [whose personal relationship with the youth or his/her legal guardian is that of a minister, pastor, or religious counselor.]

(2) TJJD approves [Staff will verify] the clergy member's registration to visit after his/her religious affiliation and relationship to the youth are verified [prior to visit].

(3) Youth may [shall be allowed to] receive visits from their personal clergy member [ministers, pastors, or religious counselors] any day of the week after reasonable arrangements have been made [at any time between 8 a.m. and 5 p.m. and after 5 p.m. if reasonable arrangements can be made].

(4) TJJD provides adequate space and supervision [Space will be provided] for the visit. TJJD ensures the space allows the youth to have confidential conversation with his/her personal clergy, but correctional staff maintain line-of-sight supervision.

(5) The personal clergy member is only [visitor will only be] allowed to visit the youth with whom he/she has an established professional [a personal] relationship.

[(6) Staff may place limits on length of time allowed for visits and frequency of visits based on facility's program and schedule of activities for the youth.]

(6) [(7)] A youth [Youth] may decline a visit with a personal clergy member [minister, pastor, or religious counselor]. The parent/guardian of a youth under age 18 may prohibit a visit between his/her child and a personal clergy member.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401094
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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## 37 TAC §380.9333

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.9333, relating to Alleged Abuse, Neglect, and Exploitation.

This section addresses administrative investigations of alleged abuse, neglect, and exploitation occurring in facilities operated or contracted by TJJD.

The amended section will be retitled as "Investigation of Alleged Abuse, Neglect, and Exploitation" to more accurately reflect the content of the section.

SECTION-BY-SECTION SUMMARY

Proposed amended subsection (d)(2) revises the list of dispositions used to close a case by deleting "administratively closed" and "administratively confirmed" and by changing "not confirmed" to "unable to determine."

Proposed amended subsection (d)(10) revises the definition of "sexual conduct" to track relevant penal code offenses.

Proposed amended subsection (g)(1) clarifies that if an allegation meets the definition of abuse, neglect, or exploitation, there will always be an administrative investigation, in addition to any criminal investigation that may take place.

Proposed new subsection (l)(5) allows TJJD staff members involved in determining appropriate corrective actions to have access to the investigation report and related evidence.

Proposed subsection (l)(5) also allows accused TJJD employees to have access to the investigation report and related evidence to appeal the findings or to defend against discipline resulting from the findings. Information confidential by law must be redacted before delivering the materials to the employee. Names in the report must be redacted if they are not necessary for the fair resolution of contested facts.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended section will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the section.

PUBLIC BENEFIT AND COSTS

Lesly Jacobs, Deputy Director of the Administrative Investigations Division, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be enhanced protection of youth.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

PUBLIC COMMENT

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions, and under Family Code §261.409, which authorizes TJJD to adopt standards for investigating under §261.401 suspected child abuse, neglect, or exploitation in a facility under TJJD jurisdiction and compiling information on these investigations.

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

*§380.9333. Investigation of Alleged Abuse, Neglect, and Exploitation.*

(a) Purpose. This rule provides for the administrative investigation of allegations of abuse, neglect or exploitation in programs and facilities under Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] jurisdiction. This rule also provides standards for investigations and for the compilation of investigation information. The purpose of all provisions in this rule is the protection of youth.

(b) Applicability.

(1) This rule applies to administrative investigations involving abuse, neglect, or exploitation allegedly committed by employees, volunteers, or other individuals working in TJJD [~~all~~] programs or [~~and~~] facilities [~~under TYC jurisdiction~~] including institutions, halfway houses, contracted residential services, [~~and~~] parole services, and contract programs.

(2) [~~This rule applies only to administrative investigation of abuse, neglect, or exploitation conducted under Chapter 261 of the Family Code.~~] Except as specifically noted [~~herein~~], this rule does not apply to criminal investigations conducted by the TJJD [~~TYC~~] Office of Inspector General under Human Resources Code §242.102 [~~§61.0451~~].

(c) Additional References.

(1) See §380.9337 of this title for additional requirements regarding investigations of alleged sexual abuse.

[~~(3) See §93.31 of this title for procedures regarding the resolution of youth grievances.~~]

(2) [~~(4)~~] See §380.9353 [~~§93.53~~] of this title for information on [~~procedures regarding~~] appeals to the executive director [~~chief executive officer~~].

(d) [~~(c)~~] Definitions. As used in this rule, the following terms have the following meanings, unless the context clearly indicates otherwise. [~~Explanation of Terms Used.~~]

(1) Abuse--an intentional, knowing, or reckless act or omission that causes or may cause emotional harm or physical injury to, or the death of, a youth committed to the care and custody of TJJD.

(2) Case Closure Disposition--the finding made upon official closure of a case of alleged abuse, neglect, or exploitation. The following dispositions are [~~shall be~~] used for all allegations:

[~~(A) Administratively Closed--the circumstances, facts, and/or evidence show that there is no merit to the allegation, or that the likelihood of solving the case is so negligible that further investigation is not warranted. (However, if additional information is later received, the case may be re-opened for investigation).~~]

[~~(B) Administratively Confirmed--the circumstances, facts, and/or evidence are sufficient that no additional investigation is needed to confirm that the allegation or violation did occur.~~]

(A) [~~(C)~~] Confirmed--an investigation established that the allegation [~~is supported by a preponderance of evidence that the allegation~~] did occur.

(B) [~~(D)~~] Exonerated--an investigation established that the alleged incident occurred but was lawful and proper or was justified under existing conditions.

(C) [~~(E)~~] Unable to Determine [~~Not Confirmed~~]--an investigation resulted in insufficient evidence to prove or disprove the allegation(s) [~~allegations~~].

(D) [~~(F)~~] Unfounded--an investigation established that the allegation is false, not factual.

(3) Chief local administrator [~~(CLA)~~]--the person employed in a TJJD [~~TYC~~] facility or district office that is responsible for overseeing the operations of a facility, contract program, or parole services.

(4) Emotional harm--an impairment in the youth's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, regardless of whether [~~or not~~] evaluation or treatment is actually received. Sexual conduct in residential facilities is presumed to cause substantial emotional harm.

(5) Exploitation--the illegal or improper use of a youth or the resources of a youth committed to the care and custody of TJJD[~~,~~] for monetary or personal benefit, profit, or gain.

(6) Neglect--a negligent act or omission, including failure to comply with an individual treatment [~~case~~] plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a youth committed to the care and custody of TJJD.

[~~(7) Office of Inspector General (OIG)--a section of the agency with statutory authority to investigate crimes committed at a TYC facility, a residential facility operated under contract with TYC, by TYC employees, or individuals working under contract with TYC.~~]

(7) [~~(8)~~] Physical injury--an injury that normally requires examination or treatment by a trained health care professional, regardless of whether [~~or not~~] examination or treatment is actually received.

(8) [~~(9)~~] Preponderance of the evidence--a standard of proof meaning the greater weight and degree of credible evidence;

e.g., whether the credible evidence makes it more likely than not that abuse, neglect, or exploitation occurred.

(9) [~~(10)~~] Report--notification [~~a report~~] that alleged or suspected abuse, neglect, or exploitation of a child has occurred or may occur.

(10) [~~(11)~~] Sexual conduct--conduct that constitutes the offense of continuous sexual abuse of a child or children under Penal Code §21.02, indecency with a child under Penal Code §21.11, sexual assault under Penal Code §22.011, or aggravated sexual assault under Penal Code §22.021. [~~a lewd exhibition or a sexual contact with another person, including orifice penetration, fondling or sexual stimulation, whether or not the conduct is consensual.~~]

(e) [~~(d)~~] Reporting Requirements.

(1) Under state law, any [~~Any~~] person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation must [~~has an obligation under state law to~~] report the matter to a law enforcement agency or to the Department of Family and Protective Services (DFPS). The TJJD Office of Inspector General [~~OIG~~] is an appropriate law enforcement agency for reports of suspected abuse, neglect, or exploitation of youths subject to the jurisdiction of TJJD [~~the agency~~]. Any TJJD [~~TYC~~] employee, volunteer, or contractor working in a program [~~in programs~~] or facility operated by or under contract with TJJD [~~facilities under TYC jurisdiction~~] who has cause to believe a youth committed to the care and custody of TJJD [~~TYC~~] has been or may be adversely affected by abuse, neglect, or exploitation or receives such a report must immediately report the matter to law enforcement in accordance with the TJJD's [~~agency's~~] reporting policies and procedures.

(2) The person making a report must [~~will~~] provide as much detailed information as possible [~~regarding the circumstances of the report~~], including the identity of persons involved, the location and time of relevant events, and the identity of others who may provide further information.

(3) The requirement to report under this section applies without exception to a person whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, or a mental health professional.

(4) Except for investigation purposes, the identity of a person making a report is confidential.

(f) [~~(e)~~] Actions Taken upon Receipt of the Report. Upon receipt of a report of alleged abuse, neglect, or exploitation, TJJD [~~the chief local administrator will~~]:

(1) in coordination with the appropriate [~~TYC OIG and/or local~~] law enforcement entity, immediately takes [~~take~~] any action necessary to protect the youth and to preserve evidence that may be pertinent to an investigation of the matter;

(2) notifies [~~notify~~] the youth's parents or guardian of the report and notifies [~~notify~~] the youth if the report was made by a third party;

(3) determines [~~determine~~] whether [~~or not~~] the person accused of wrongdoing must be suspended, temporarily reassigned, or temporarily barred from assignment to TJJD [~~TYC~~] facilities pending the outcome of the investigation; and

(4) takes [~~take~~] any action necessary to ensure that the investigation or review is conducted with the full cooperation of staff and youth, that adequate resources are provided, and that the youth and witnesses are protected from retaliation or improper influence [~~regarding the subject of the report~~].

(g) [~~(f)~~] Assignment for Investigation.

(1) TJJD [~~The OIG will~~] promptly reviews [~~review~~] each report of alleged abuse, neglect, or exploitation. Each report is [~~will be~~] entered into a centralized database and assigned for an [~~official~~] administrative [~~and/or criminal~~] investigation if the allegation meets the definition of abuse, neglect, or exploitation. The report may also be assigned for criminal investigation.

(2) Whether to assign a report for criminal investigation by a peace officer from the Office of Inspector General [~~OIG~~] or appropriate [~~outside~~] law enforcement is [~~shall be~~] determined on a case-by-case basis considering all relevant factors, including the severity and immediacy of potential harm.

(3) A TJJD investigator must provide an initial response within 24 hours after TJJD receives the report if the [~~If a~~] report presents an immediate risk of physical or sexual abuse of a youth that could result in [~~the~~] death or serious harm to the youth[~~, the initial response by an OIG investigator will take place not later than 24 hours after the OIG is notified of the report~~].

(4) If deemed to be warranted by the chief inspector general or the executive director, [~~administrative head of the agency,~~] a report of abuse, neglect, or exploitation may be referred to appropriate outside law enforcement for investigation.

[~~(5) Regardless of whether the case is investigated administratively, criminally, or both, the OIG will provide a prompt and thorough administrative report in accordance with the provisions of this rule.~~]

(h) [~~(g)~~] Standards for Administrative Investigations.

(1) The administrative investigation must be prompt, thorough, and directed at resolving all the relevant issues raised by the report.

(2) [~~(1)~~] Only a person with qualified experience and training may [~~will~~] be assigned to conduct an administrative investigation of a report of abuse, neglect, or exploitation.

[~~(2) In the event the OIG or other law enforcement agency has assumed a criminal investigation of a report, a person who has been assigned to conduct an administrative investigation in this section will cooperate and assist with the law enforcement agency's criminal investigation and not take any action that might be detrimental to it.~~]

(3) All evidence that is relevant and reasonably available must [~~will~~] be gathered and preserved, including documents, physical evidence, witness interviews and statements, photographs, and security videos.

(4) For any report of alleged abuse, neglect, or exploitation, a preliminary investigation may be conducted to determine whether there is any evidence to corroborate the report or to provide cause to believe that any abuse, neglect, or exploitation has occurred. [~~In cases where no such evidence is found, the case will be administratively closed and/or referred to the appropriate TYC department for resolution.~~]

[~~(5) The administrative investigation will be prompt, thorough, and directed at resolving all the relevant issues raised by the report.~~]

(5) [~~(A)~~] For [~~With regard to~~] a report of alleged abuse, the investigator must [~~will~~] find whether the:

(A) [~~(i)~~] alleged act or failure to act occurred;

(B) [~~(ii)~~] act or failure to act caused emotional harm or physical injury to the youth; and

(C) [~~(iii)~~] person who took the action or who failed to act did so intentionally, knowingly, or recklessly.

(6) [~~(B)~~] For [~~With regard to~~] a report of alleged neglect, the investigator must [~~will~~] find:

(A) [~~(i)~~] whether there was substantial emotional harm or physical injury of the youth as alleged;

(B) [~~(ii)~~] the standard of care or duty expected under the circumstances that are alleged;

(C) [~~(iii)~~] whether the actions or failure to act under the circumstances violated the standard of care or duty; and

(D) [~~(iv)~~] whether the actions or failure to act caused the substantial emotional harm or physical injury of the youth.

(7) [~~(C)~~] For [~~With regard to~~] a report of alleged exploitation, the investigator must [~~will~~] find whether:

(A) [~~(i)~~] a youth or a youth's resources were used by the accused person in the manner alleged;

(B) [~~(ii)~~] the use was for monetary or personal benefit, profit, or gain; and

(C) [~~(iii)~~] the use was illegal or improper.

(8) [~~(6)~~] The investigator's findings must [~~will~~] be based on a preponderance of the evidence.

(9) [~~(7)~~] The investigator must [~~will~~] prepare a written investigative report of the findings, including a summary and analysis of the evidence relied upon in reaching the findings. Copies of relevant documents and photographs must [~~will~~] be attached to the investigative report.

(10) [~~(8)~~] The investigator may make findings on misconduct other than abuse, neglect, or exploitation if the misconduct [~~that~~] is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the respondent or other employees as to policy violations or other misconduct indicated by the evidence.

(i) [~~(h)~~] Administrative Investigation Report--Submission and Closure.

(1) The investigator must [~~will~~] submit a written investigative [~~investigation~~] report to his/her supervisor upon completion of the investigation.

(2) The investigator's supervisor must [~~will~~] indicate approval of the investigation findings by [~~officially~~] closing the investigative report and indicating the final case closure disposition. The supervisor or designee must then ensure [~~will then notify~~] the appropriate facility is notified of the findings.

(3) All [~~officially~~] closed investigative [~~investigation~~] reports must contain the signature of the supervisor who was responsible for making the final closure determination and the signature of the investigator who gathered the evidence in the case.

(4) In the event the investigator's supervisor disagrees with [~~any part of~~] the investigative report submitted by the investigator upon completion of the investigation, the investigative report must:

(A) include a statement by the supervisor that [~~which~~] describes the reasons for his/her disagreement;

(B) be forwarded to the division director or designee for resolution;

(C) include the signature of the division director or designee for official closure of the investigative report.

(j) [~~(i)~~] Actions in Response to a Closed Administrative Investigation Report.

(1) Upon receipt of a closed investigative [~~investigation~~] report, the chief local administrator must [~~will~~] review the investigative report and:

(A) notify the youth, the youth's parents or guardian, and the person accused of wrongdoing of the results of the investigation; [~~and~~]

(B) notify the youth and the youth's parents of the right to appeal the investigation findings or to file a complaint regarding the conduct of the investigation under §380.9353 [~~§93.53~~] of this title; and

(C) if the report is confirmed, take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances.

(2) If the allegation was reported by a health care professional who provides services to TJJD [~~TYC~~] youth through TJJD's [~~TYC's~~] contract health care provider(s), TJJD must, upon request, [~~the investigator's supervisor will~~] notify the health care professional in writing of the results of the investigation and the right to appeal the findings [~~of the investigation report~~] under §380.9353 [~~§93.53~~] of this title.

[~~(3) Periodic summary reports of complaints and appeals regarding investigations conducted under this rule, and the final decision regarding the complaints or appeals, will be provided to the TYC executive commissioner or governing Board for review.~~]

[~~(4) The TYC executive commissioner or governing Board will take whatever action is determined to be appropriate with regard to the complaint to ensure the investigations are conducted properly.~~]

[~~(5) Pursuant to Family Code §261.403(b), the TYC executive commissioner or governing Board will ensure there is a periodic internal audit of procedures related to administrative investigations of alleged abuse, neglect, and exploitation.~~]

(k) [~~(j)~~] Standards for Compiling Investigation Information [~~and Confidentiality of Reports~~].

(1) TJJD compiles [~~Accurate and timely investigation~~] information [~~will be compiled~~] related to the number and nature of reports filed, [~~and~~] case closure dispositions, the dates and locations of reported incidents, the average length of time required for investigations, and any [~~the identification of~~] significant trends. This information must [~~will~~] be compiled at least twice each year and be available for public inspection.

(2) Additional information including a summary of the findings and corrective actions taken with regard to all confirmed reports is [~~will be~~] prepared for periodic review and analysis by the TJJD [~~TYC~~] executive staff and the TJJD [~~TYC executive commissioner or~~] governing Board.

(3) Periodic summaries of complaints and appeals regarding investigations conducted under this rule and the final decisions regarding the complaints or appeals are provided to the TJJD governing board for review. The TJJD executive director or governing board will take whatever action is determined to be appropriate with regard to the complaint to ensure the investigations are conducted properly.

(l) Confidentiality of Reports and Investigation Information.

(1) [~~(3)~~] To the extent required by state or federal law, TJJD [~~TYC~~] will release to the public, upon request, a report of alleged or suspected abuse, neglect, or exploitation if:

(A) the report relates to a report of abuse, neglect, or exploitation involving a child committed to TJJD [~~TYC~~] during the period that the child is committed to TJJD [~~TYC~~]; and

(B) TJJD [~~TYC~~] is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(2) [~~(4)~~] Any information concerning a report of alleged or suspected abuse, neglect, or exploitation that is disclosed will be edited to protect the identity of:

(A) a child who is the subject of the report of alleged or suspected mistreatment;

(B) any other youth committed to the care and custody of TJJD [~~TYC~~] who is named in the report;

(C) the person who made the report; and

(D) any other person whose life or safety may be endangered by the disclosure.

(3) [~~(5)~~] Notwithstanding any other provision permitting the release of information, TJJD [~~TYC~~] will not disclose any record or information that [~~which~~], if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

(4) [~~(6)~~] An investigative report regarding an investigation of an allegation of abuse, neglect, or exploitation [~~A report~~] will be provided to:

(A) a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution, upon request;[.]

(B) [~~(7)~~] [~~A report will be provided to~~] a parent, managing conservator, or other legal representative of a youth, upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure; and[.]

(C) [~~(8)~~] [~~A report will be provided, upon request, to~~] the healthcare provider who reported an allegation. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

(5) An investigative report and evidence gathered in the course of an investigation may be provided to appropriate TJJD staff for the determination of corrective actions and to employees or former employees for use in an appeal of the investigation findings or to defend against a disciplinary action arising from the investigation findings.

(A) Investigative reports are confidential under Texas Family Code Chapter 261 and may be used by the employee only for the appeal of investigation findings or to defend against a disciplinary action arising from an investigation.

(B) Names of individuals contained in the investigative report or related evidence will be redacted if the names are not necessary for the fair resolution of contested facts. Any information that is confidential by law will be redacted prior to delivery to the respondent.

(m) Periodic Audit of Investigations. Pursuant to Family Code §261.403(b), the TJJD governing board ensures there is a periodic internal audit of procedures related to administrative investigations of alleged abuse, neglect, and exploitation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401096
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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# CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

## SUBCHAPTER A. CONTRACTS

### 37 TAC §§385.1101, 385.1105, 385.1109, 385.1111

The Texas Juvenile Justice Department (TJJD) proposes amendments to §§385.1101, 385.1105, 385.1109, and 385.1111, relating to Contracts.

Proposed amendments to §385.1101, concerning Contract Authority and Responsibilities, update statutory references and add minor clarifications.

Proposed amendments to §385.1109, concerning Protests, remove the requirement that the chief financial officer must consult with the Office of General Counsel before issuing a written response to a protest.

Additionally, minor terminology updates and grammatical revisions will be made throughout §§385.1101, 385.1105, 385.1109, and 385.1111.

RULE REVIEW

Simultaneously with this proposed rulemaking action, TJJD also publishes this notice of intent to review all rules in Chapter 385, Subchapter A, as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

Mr. Meyer has determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of administering the sections will be a streamlined contracting process and the availability of rules that reflect current statutory references.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENT

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended sections are proposed under the following statutes:

Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions;

Texas Government Code §2161.003, which requires state agencies to adopt the Comptroller's rules regarding historically underutilized businesses;

Texas Government Code §2260.052(c), which requires certain state agencies to develop rules governing the negotiation and mediation of claims of breach of contract;

Texas Government Code §2261.202, which requires certain state agencies to adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff; and

Texas Government Code §2155.076, which requires state agencies by rule to adopt protest procedures by rule for resolving vendor protests relating to purchasing issues.

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

*§385.1101. Contract Authority and Responsibilities.*

(a) Purpose. The purpose of this rule is to establish [~~the approval authority and~~] responsibilities for approving and executing contracts required by the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~].

(b) Applicability. This rule applies to all contracts entered into by TJJD [~~TYC~~].

(c) Definitions. As used in this chapter, the following terms [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Board--the governing board of TJJD [~~TYC~~].

(2) Contract--a written contract between TJJD [~~TYC~~] and another party, either public or private, [~~a contractor~~] for goods or services or for a project as defined by Texas Government Code §2166.001. As used in this chapter, "contract" includes the following: letters of agreement; interagency/interlocal agreements with other government entities; memorandums of understanding; and other agreements [~~documents~~] in which state funds or services are exchanged for the delivery of [~~other~~] goods or performance of services.

(d) Approval Authority.

(1) Board Approval. The executive director or his/her designee must [~~shall~~] present certain contracts to the board for approval, including but not limited to:

(A) any contract exceeding $500,000;

(B) any construction contract exceeding $300,000;

(C) any [~~construction contract~~] change order exceeding $150,000 for a construction contract;

(D) any contract for consultant services, as defined in Texas Government Code §2254.021, exceeding $15,000;

(E) any contract for architectural or engineering services;

(F) any contract for start-up residential operations; and

(G) any other contract [~~deemed~~] appropriate for board approval as determined by the executive director.

(2) Agency Approval.

(A) The board delegates authority to the executive director or his/her designee to approve all contracts not listed in paragraph (1) of this subsection.

(B) The board delegates authority to the executive director or his/her designee to approve a contract listed in paragraph (1) of this subsection that is executed in response to an emergency as defined in 34 TAC §20.32.

(3) Other Approvals.

(A) In accordance with Texas Government Code §321.020, all contracts involving the expenditure of funds for outside audit services require approval of the Texas State Auditor's Office.

(B) In accordance with Texas Government Code §402.0212, all contracts involving the expenditure of funds for outside legal services require approval of the Office of the Attorney General [~~Attorney General's Office~~].

(e) Authority to Execute Contracts. The board delegates authority to the executive director to execute all contracts for TJJD [~~TYC~~]. This authority may be delegated by the executive director to another member of the executive management team [~~the deputy executive director or the chief financial officer~~].

(f) Annual Contract Plan.

(1) The executive director or his/her designee must [~~will~~] present to the board for its review an annual plan that outlines TJJD's [~~the agency's~~] anticipated contracting actions for the next fiscal year.

(2) As deemed necessary by the executive director or his/her designee, updates to the contract plan may [~~will~~] be provided to the board for review periodically throughout the fiscal year.

(g) Adoptions by Reference and Statutory Citations Relating [~~relating~~] to Contracting Responsibilities.

(1) Competitive Solicitations.

(A) TJJD [~~TYC~~] complies with Texas Government Code Chapters 2155 and 2156, relating to the competitive bidding process and types of solicitations used and Texas Government Code §2252.002, relating to awards of contracts to nonresident bidders [~~requests for proposals~~].

(B) TJJD [~~TYC~~] adopts by reference 34 TAC §20.391, relating to requests for offers.

(2) Historically Underutilized Businesses. TJJD [~~TYC~~] adopts by reference [~~rules relating to historically underutilized businesses set forth in~~] 34 TAC Chapter 20, Subchapter B, relating to historically underutilized businesses.

[~~(3) 1st Choice Recycled Content Product. TYC adopts by reference 34 TAC §20.135 relating to first choice recycled content products.~~]

(3) [~~(4)~~] Consulting [~~Consultant~~] Services.

(A) TJJD [~~TYC~~] complies with Texas Government Code Chapter 2254, Subchapter B, relating to [~~concerning~~] consulting services contracts.

(B) TJJD [~~TYC~~] adopts by reference 34 TAC §5.54, relating to consulting services contracts.

(4) [~~(5)~~] Professional Services. TJJD [~~TYC~~] complies with Texas Government Code Chapter 2254, Subchapter A, within the scope of the practice of accounting; architecture; landscape architecture; land surveying; medicine; optometry; [~~or~~] professional engineering; real estate appraising; professional nursing; or services provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; [~~or~~] a professional engineer; a state-certified or state-licensed real estate appraiser; or a registered nurse.

(5) [~~(6)~~] Construction Services. In awarding contracts for the construction of buildings and improvements, TJJD awards [~~TYC shall award~~] the contracts in accordance with Texas Government Code Chapter 2166, relating to building construction and acquisition.

(6) [~~(7)~~] Rate Setting. TJJD [~~TYC~~] complies with Texas Government Code §2261.151(a), relating to [~~concerning~~] payment and reimbursement methods and rates.

(7) [~~(8)~~] Exemptions from Competitive Bidding Process for Youth Services. In accordance with Texas Government Code Chapter 2155, Subchapter C, relating to certain exemptions from competitive bidding, TJJD [~~TYC~~] may purchase care and treatment services for youth committed to its care[~~,~~] at rates not to exceed any maximum provided by law, based on each provider's qualifications and demonstrated competence.

*§385.1105. Contract Monitoring.*

(a) Purpose. The purpose of this rule is to establish the contract monitoring roles and responsibilities of the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] staff, including the monitoring system used [~~by TYC~~] to ensure service providers' compliance with contract and service delivery requirements [~~by service providers~~].

(b) Applicability. This rule applies to all contracts between TJJD and public or private entities [~~with which TYC has a contract~~].

(c) General Provisions.

(1) TJJD [~~TYC will~~] periodically monitors [~~monitor~~] all public and private entities that [~~which~~] contract with TJJD [~~TYC~~].

(2) TJJD establishes [~~TYC will establish~~] a monitoring schedule based on a risk assessment methodology. Higher-risk contracts are [~~Higher risk contracts shall be~~] monitored more frequently and more comprehensively than lower-risk [~~lower risk~~] contracts.

(3) For residential program-related client services contracts, TJJD obtains and evaluates [~~TYC will obtain and evaluate~~] program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

(d) Contract Monitoring Roles and Responsibilities.

(1) The TJJD Internal Audit Department [~~TYC Internal Audit department~~] audits contracted services and monitoring oversight activities [~~oversight monitoring activity~~] in accordance with Texas Human Resources Code §203.013 [~~§61.0331~~] and based on the results of an [~~the~~] annual risk assessment conducted by the TJJD Internal Audit Department.

(2) The TJJD division responsible for monitoring and inspections conducts [~~Quality assurance staff will conduct~~] program reviews of all residential facilities and parole programs operated under contract with TJJD [~~TYC~~] to ensure operations comply with applicable statutes, rules, policies, and procedures[~~, and standards~~].

(3) Individual program areas within TJJD [~~will~~]:

(A) conduct [~~provide~~] day-to-day monitoring activities regarding financial and performance requirements;

(B) provide technical assistance to service providers; and

(C) initiate corrective action and/or sanctions for noncompliance when appropriate.

*§385.1109. Protests.*

(a) Purpose. The purpose of this rule is to establish the process for which actual or prospective bidders, offerors, or contractors may formally protest an action taken by the Texas Juvenile Justice Department (TJJD) during the contract process.

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

(1) Agency--TJJD [~~The Texas Youth Commission~~].

(2) Interested Parties [~~parties~~]--All vendors who have submitted bids or proposals for the provision of goods or services pursuant to a solicitation [~~contract~~] with TJJD [~~the Texas Youth Commission~~].

(c) General Provisions.

(1) Any actual or prospective bidder, offeror, or contractor who considers himself/herself to have been aggrieved in connection with the agency's solicitation, evaluation, or award of a contract may formally protest to the chief financial officer (CFO) or his/her designee [~~procurement director~~]. Such protests must be made in writing and received in the office of the CFO [~~procurement director~~] within 10 workdays [~~ten working days~~] after the protesting party knows, or should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of this subsection and subsection (d) of this section[~~,~~] and will be resolved through use of the procedures that are described in subsections (e) - (g) of this section. The protesting party must mail or deliver copies of the protest to the agency and other interested parties.

(2) In the event of a timely protest under this rule, the agency will not proceed further with the solicitation or award of the contract unless the CFO [~~deputy executive director~~], after consultation with appropriate staff, makes a written determination that the contract must be awarded without delay to protect the best interests of the agency.

(d) Protests. A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by the agency that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the agency and all other identifiable interested parties.

(e) Resolving Protests.

(1) The CFO or his/her designee [~~procurement director~~] may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the agency's general counsel or his/her designee. The CFO or his/her designee [~~procurement director~~] may solicit written responses to the protest from other interested parties.

(2) If the protest is not resolved by mutual agreement, the CFO issues [~~chief financial officer (CFO) will consult with the office of general counsel to issue~~] a written determination that resolves the protest.

(3) If the CFO or his/her designee[~~, after consultation with the office of general counsel,~~] determines that no violation of statutory or regulatory provisions has occurred, then he/she must [~~shall~~] inform the protesting party and any other interested parties by a letter that sets forth the reasons for the determination.

(4) If the CFO or his/her designee[~~, after consultation with the office of general counsel,~~] determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then he/she must [~~shall~~] inform the protesting party and any other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.

(5) If the CFO or his/her designee[~~, after consultation with the office of general counsel,~~] determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then he/she must [~~shall~~] inform the protesting party and any other interested parties of that determination by a letter that details the reasons for the determination. This letter may include an order that declares the contract void.

(f) Appealing a Protest.

(1) The protesting party may appeal a determination of a protest by the CFO or his/her designee to the general counsel or his/her designee. An appeal of the CFO's determination must be in writing and be received by the general counsel not later than 10 workdays [~~ten working days~~] after the date on which the CFO or his/her designee has sent written notice of his/her determination. The scope of the appeal will be limited to reviewing the determination of the CFO or his/her designee [~~review of the CFO's determination~~]. The protesting party must mail or deliver to the agency and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(2) The general counsel or his/her designee may refer the matter to the executive director for consideration or may issue a written decision that resolves the protest.

(g) Referral of a Protest to the Executive Director. The following requirements [~~shall~~] apply to a protest that the general counsel or his/her designee refers to the executive director.

(1) The general counsel or his/her designee delivers [~~will deliver~~] copies of the appeal and any responses by interested parties to the executive director.

(2) The executive director may consider any documents that agency staff or interested parties have submitted.

~~[(3) The executive director will issue a written letter of determination of the appeal to the parties which shall be final.]~~

(3) [~~(A)~~] A protest or appeal that is not filed timely will not be considered unless good cause for delay is shown or the executive director determines that an appeal raises issues that are significant to agency procurement practices or procedures in general.

(4) [~~(B)~~] A written decision that either the executive director or the general counsel or his/her designee has issued is [~~shall be~~] the final administrative action of the agency.

(h) Documentation Requirements. The agency maintains [~~will maintain~~] all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the agency's retention schedule.

*§385.1111. Negotiation and Mediation of Contract Disputes.*

(a) Purpose. In accordance with Texas Government Code Chapter 2260, the purpose of this rule is to establish procedures for the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] and its contractors to engage in negotiation and/or mediation procedures to resolve certain disputes involving claims of breach of a written contract. These procedures are not intended to replace the process to resolve any disagreement concerning the contract in the ordinary course of contract administration under less formal procedures specified in the parties' contract.

(b) Applicability.

(1) This rule applies to TJJD [~~TYC~~] and its contractors, as defined in Texas Government Code §2260.001.

(2) This rule does not apply to:

(A) a claim for personal injury or wrongful death arising from a breach of contract;

(B) an action of TJJD [~~TYC~~] for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute;

(C) a contract action proposed or taken by TJJD [~~TYC~~] for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with [~~Chapter 2001 of the~~] Texas Government Code Chapter 2001;

(D) a contract that is solely and entirely funded by federal grant monies other than for a project defined in Texas Government Code §2166.001;

(E) a contract between TJJD [~~TYC~~] and the federal government or its agencies, another state, or another nation;

(F) a contract between TJJD [~~TYC~~] and another unit of state government;

(G) a contract between TJJD [~~TYC~~] and a local governmental body or a political subdivision of another state;

(H) a claim from a contractor's subcontractor, officer, employee, agent, or other persons furnishing goods or services to a contractor;

(I) a contract within the exclusive jurisdiction of state or local regulatory bodies; or

(J) a contract within the exclusive jurisdiction of federal courts or regulatory bodies.

(c) Sovereign Immunity.

(1) To the extent allowed by law, this [~~This~~] rule does not waive TJJD's [~~TYC's~~] sovereign immunity to suit or liability.

(2) The procedures contained in this rule are exclusive and required prerequisites to suit under Texas Civil Practice and Remedies Code[~~,~~] Chapter 107, and [~~the~~] Texas Government Code[~~,~~] Chapter 2260.

(d) Contract Claims.

(1) Notice of Claim of Breach of Contract.

(A) A contractor asserting a claim for breach of contract under Texas Government Code Chapter 2260 must [~~shall~~] file notice of the claim as provided by this subsection.

(B) The notice of claim must [~~shall~~]:

*(i)* be submitted no later than 180 days after the date of the event that the contractor asserts as the basis of the claim;

*(ii)* be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the individual stated in the contract or to the executive director if no individual is identified; [~~and~~]

*(iii)* state in detail:

*(I)* the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

*(II)* a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

*(III)* the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed; [~~and~~]

*(iv)* provide supporting documentation or other tangible evidence to facilitate TJJD's [~~TYC's~~] evaluation of the claim; and

*(v)* be signed by the contractor or the contractor's authorized representative.

(2) Counterclaim by TJJD [~~the Commission~~].

(A) In order to assert a counterclaim, TJJD must [~~TYC shall~~] file notice of the counterclaim not later than 60 days after the date of the contractor's notice of claim.

(B) The notice of counterclaim must [~~shall~~]:

*(i)* be submitted in writing;

*(ii)* be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the contractor or representative of the contractor; [~~and~~]

*(iii)* state in detail:

*(I)* the nature of the counterclaim;

*(II)* a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

*(III)* the legal theory supporting the counterclaim recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed; [~~and~~]

*(iv)* provide supporting documentation or other tangible evidence to facilitate the contractor's evaluation of TJJD's [~~TYC's~~] counterclaim; and

*(v)* be signed by the executive director or his/her designee.

(C) Nothing in this rule [~~herein~~] precludes TJJD [~~TYC~~] from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

(e) Negotiation.

(1) The parties may conduct negotiations of claims and counterclaims within a reasonable period of time as long as the negotiations start prior to the 120th day following the date TJJD [~~TYC~~] receives the contractor's notice of claim.

(2) The parties must [~~shall~~] complete the negotiations as provided by this rule as a prerequisite to a contractor's request for contested case hearing no later than 270 days after TJJD [~~TYC~~] receives the contractor's notice of claim unless the parties agree in writing to extend the time for negotiations.

(3) The parties may conduct negotiations with the assistance of one or more neutral third parties.

(4) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims, or positions.

(5) Material submitted pursuant to this subsection and claimed to be confidential by the contractor are [~~shall be~~] handled pursuant to the requirements of the Public Information Act.

(6) The agreement may resolve an entire claim or counterclaim or any designated and severable portion of a claim.

(7) The agreement must be in writing and signed by representatives of the contractor and TJJD [~~TYC~~] who have authority to bind each respective party.

(8) A partial settlement does not waive a party's rights under Texas Government Code Chapter 2260, to proceed on the parts of the claims or counterclaims that are not resolved.

(9) Unless the parties agree otherwise, each party is [~~shall be~~] responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees, and expert's fees.

(f) Mediation.

(1) The parties may agree to mediate the dispute at any time before the 120th day after TJJD [~~TYC~~] receives the contractor's notice of claim or before the expiration of any written extension agreed to by the parties.

(2) The parties may mediate the dispute even after the case has been referred to the State Office of Administrative Hearings (SOAH) for a contested case. [~~The~~] SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

(3) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code[~~,~~] Chapter 2009. For purposes of this rule, mediation is assigned the meaning set forth in the Texas Civil Practice and Remedies Code §154.023.

(4) To facilitate a meaningful opportunity for settlement, the parties must [~~shall~~], to the extent possible, select representatives who[~~:~~]

[~~(A)~~] are knowledgeable about the dispute and:[~~;~~]

(A) [~~(B)~~] who are in a position to reach agreement; or

(B) [~~(C)~~] who can credibly recommend approval of an agreement.

(5) Sources of mediators [~~shall~~] include governmental officers or employees who are qualified as mediators under [~~§154.052,~~] Texas Civil Practice and Remedies Code §154.052, private mediators, SOAH, the Center for Public Policy Dispute Resolution at the University of Texas School of Law, an alternative dispute resolution system

created under [~~Chapter 152,~~] Texas Civil Practice and Remedies Code Chapter 152, or another state or federal agency or through a pooling agreement with several state agencies.

(6) The confidentiality of a final settlement agreement to which TJJD [~~TYC~~] is a signatory that is reached as a result of the mediation is governed by Texas Government Code[~~,~~] Chapter 552.

(7) Each party is [~~shall be~~] responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself are [~~shall be~~] divided equally between the parties.

(g) Settlement Agreement.

(1) A settlement agreement reached as a result of negotiation or mediation that resolves an entire claim or counterclaim or any designated and severable portion of a claim or counterclaim must [~~shall~~] be in writing and signed by the representatives of the contractor and TJJD [~~TYC~~] who have authority to bind each respective party.

(2) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement must [~~shall~~] identify the issues that are not resolved.

(3) A partial settlement does not waive a contractor's rights under Texas [~~the~~] Government Code[~~,~~] Chapter 2260, as to the parts of the claim that are not resolved.

(h) Referral to the State Office of Administrative Hearings.

(1) The contractor may request a contested case hearing before [~~the~~] SOAH after the 270th day after TJJD [~~TYC~~] receives the contractor's notice of claim[~~,~~] or the expiration of any written extension.

(2) If a claim for breach of contract is not resolved in its entirety through negotiation or mediation in accordance with this rule on or before the 270th day after TJJD [~~TYC~~] receives notice of claim, or after the expiration of any written extension agreed to by the parties, the contractor may file a request with TJJD [~~TYC~~] for a contested case hearing before SOAH.

(3) A request for a contested case hearing must [~~shall~~] state the legal and factual basis for the claim, and must [~~shall~~] be delivered to the executive director of TJJD [~~TYC~~] or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to by the parties.

(4) TJJD forwards [~~TYC shall forward~~] the contractor's request for a contested case hearing to SOAH within a reasonable period of time, not to exceed 30 days after receipt of the request.

(5) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by TJJD [~~TYC~~] if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401101
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 490-7014

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter A, General Provisions, §815.1; and

Subchapter B, Benefits, Claims, and Appeals, §815.10.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of amending the Chapter 815, Unemployment Insurance (UI) rules, is to implement the requirements of Senate Bill (SB) 1537, passed by the 83rd Texas Legislature, Regular Session (2013), by providing clear guidelines for employers, their agents, and the Commission concerning what constitutes adequate notification to requests for information.

Texas, like many states, relieves an employer's unemployment account of charges that the state has determined were made improperly. However, Public Law 112-40 §252(a) added new §3303(f) to the Federal Unemployment Tax Act (FUTA), which provides that for a state law to meet the requirements of FUTA §3303(a)(1) and receive FUTA additional credit, the state cannot relieve an employer of benefit charges when the employer or its agent does both of the following:

--Was at fault for failing to respond timely or adequately to the state's request for information relating to a claim that was subsequently overpaid; and

--Has established a pattern of failing to respond timely or adequately to requests from the state agency for information relating to claims for unemployment benefits.

This prohibition applies if the employer has a pattern of failing to respond timely, failing to respond adequately, or failing to respond both timely and adequately.

In enacting these FUTA amendments, Congress anticipated that the prospect of benefit charging as a result of an employer's or agent's failure to comply with a state's notification requirements would reduce future improper payments by prompting more accurate and timely reporting on future claims for unemployment benefits.

To conform state law with the new FUTA requirements, the legislature passed SB 1537 related to required notices under the Texas Unemployment Compensation Act (TUCA), including employer liability arising from failure to provide adequate or timely notice. SB 1537 authorizes the Commission to adopt rules necessary to implement these new TUCA provisions.

The Commission recognizes its obligation under federal law to obtain relevant facts promptly--prior to a determination of an individual's right to benefits--that are reasonably sufficient to ensure the payment of unemployment benefits when due. The information obtained, and the resulting investigation made by the Agency, must be complete enough to provide a basis upon which the Commission may act with reasonable assurance that its decision is consistent with the unemployment compensation laws of this state. The Commission is also aware of its responsibility to take the initiative in the discovery of information; this responsibility may not be passed on to the claimant or the employer.

The legitimate intent of the federal and state law is to hold employers and their agents accountable if they do not put forth a reasonable effort to apprise the Commission of facts and evidence needed to determine a claimant's right to unemployment benefits. In support of that end, however, these proposed rules also recognize that:

--an adequate notification does not mean a perfect notification. It must be sufficient to raise allegations regarding a claimant's benefit rights supported by facts;

--a response is not inadequate simply because an examiner weighs it one way, and an employer later successfully persuades an appeal tribunal or the Commission to rule against the claimant; and

--an employer, or the employer's agent, may establish good cause for failing to provide adequate notice due to compelling circumstances beyond the employer's or agent's control.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§815.1. Definitions.

New §815.1(3) defines "adequate notification" as a notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

New §815.1(3)(A) specifies that notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.

New §815.1(3)(B) specifies that the employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.

New §815.1(3)(C) provides examples of adequate notification of adverse facts, which include, but are not limited to:

--(i) The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.

--(ii) The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

New §815.1(3)(D) states that a notification is not adequate if it provides only a general conclusion without substantiating facts. A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker's discharge, such as, but not limited to:

--(i) policies or procedures;

--(ii) warnings;

--(iii) performance reviews;

--(iv) attendance records;

--(v) complaints; and

--(vi) witness statements.

New §815.1(5) adds references to the Act, Chapters 208 and 212, to chargeback decisions or determinations that are appealable.

Certain paragraphs in this section have been renumbered to accommodate additions.

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

The Commission proposes the following amendments to Subchapter B:

§815.10. Appeals from Decisions on Chargebacks.

Section 815.10 adds §208.004(c) and §212.005(b) to appeals from decisions on chargebacks under the Act, which shall be to the appeal tribunals and to the Commission.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no additional requirements on small businesses.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative

impact upon employment conditions in the state as a result of the rules.

LaSha Lenzy, Director of the Unemployment Insurance Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be compliance with federal law, allowing Texas employers the FUTA additional credit.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on October 10, 2013. The Commission also conducted a conference call with Board executive directors and Board staff on October 11, 2013, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §815.1

The rule is proposed under Texas Labor Code §301.0015, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Title 4, Texas Labor Code.

The proposed rule affects Texas Labor Code, Title 4, Subtitle A, the Texas Unemployment Compensation Act.

*§815.1. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the statute or context in which the word or phrase is used clearly indicates otherwise.

(1) Act--The Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.

(2) Additional claim--A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have 14 days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(3) Adequate notification--A notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

(A) Notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.

(B) The employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.

(C) Examples of adequate notification of adverse facts include, but are not limited to, the following:

*(i)* The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.

*(ii)* The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

(D) A notification is not adequate if it provides only a general conclusion without substantiating facts. A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker's discharge, such as, but not limited to:

*(i)* policies or procedures;

*(ii)* warnings;

*(iii)* performance reviews;

*(iv)* attendance records;

*(v)* complaints; and

*(vi)* witness statements.

(4) [~~(3)~~] Agency--The unit of state government that is presided over by the Commission and under the direction of the executive director, which operates the integrated workforce development system and administers the unemployment compensation insurance program in this state as established under Texas Labor Code, Chapter 301. It may also be referred to as the Texas Workforce Commission.

(5) [~~(4)~~] Appeal--A submission by a party requesting the Agency or the Commission to review a determination or decision that is adverse to that party. The determination or decision must be appealable and pertain to entitlement to unemployment benefits; chargeback as provided in the Act, Chapter 204, Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax coverage or contributions or reimbursements. This definition does not grant rights to a party.

(6) [~~(5)~~] Base period with respect to an individual--The first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of the individual's benefit year, or any other alternate base period as allowed by the Act.

(7) [~~(6)~~] Benefit period--The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.

(8) [~~(7)~~] Benefit wage credits--Wages used to determine an individual's monetary eligibility for benefits. Benefit wage credits consist of those wages an individual received for employment from an employer during the individual's base period as well as any wages ordered to be paid to an individual by a final Commission order, pursuant to its authority under Texas Labor Code, Chapter 61. Benefit wage credits awarded by a final Commission order that were due to be paid to the individual by an employer during the individual's base period shall be credited to the quarter in which the wages were originally due to be paid.

(9) [~~(8)~~] Board--Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This

includes a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i) (also referred to as an LWDB).

(10) [~~(9)~~] Commission--The three-member body of governance composed of Governor-appointed members in which there is one representative of labor, one representative of employers, and one representative of the public as established in Texas Labor Code §301.002, which includes the three-member governing body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings involving unemployment insurance issues regarding tax coverage, contributions or reimbursements.

(11) [~~(10)~~] Day--A calendar day.

(12) [~~(11)~~] Landman--An individual who is qualified to do field work in the purchasing of right-of-way and leases of mineral interests, record searches, and related real property title determinations, and who is primarily engaged in performing the field work.

(13) [~~(12)~~] Person--May include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(14) [~~(13)~~] Reopened claim--The first claim filed following a break in claim series during a benefit year which was caused by other than intervening employment, i.e., illness, disqualification, unavailability, or failure to report for any reason other than job attachment. The reopened claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(15) [~~(14)~~] Week--A period of seven consecutive calendar days ending at midnight on Saturday.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2014.

TRD-201401038
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: April 20, 2014
For further information, please call: (512) 475-0829

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## SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

### 40 TAC §815.10

The rule is proposed under Texas Labor Code §301.0015, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Title 4, Texas Labor Code.

The proposed rule affects Texas Labor Code, Title 4, Subtitle A, the Texas Unemployment Compensation Act.

*§815.10. Appeals from Decisions on Chargebacks.*

Appeals from decisions on chargebacks under the Act, §§204.021 - 204.027, 208.004(c), and 212.005(b), shall be to the appeal tribunals and to the Commission within the time prescribed by the Act. These appeals shall be heard in accordance with the provisions of §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the extent that the referenced sections are clearly inapplicable.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2014.

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Laurie Biscoe
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Texas Workforce Commission
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For further information, please call: (512) 475-0829

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# WITHDRAWN RULES

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

## TITLE 1. ADMINISTRATION

## PART 10. DEPARTMENT OF INFORMATION RESOURCES

### CHAPTER 209. MINIMUM STANDARDS FOR MEETINGS HELD BY VIDEOCONFERENCE

### SUBCHAPTER A. DEFINITIONS

**1 TAC §209.1**

The Department of Information Resources withdraws the proposed amendment to §209.1 which appeared in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8329).

Filed with the Office of the Secretary of State on March 7, 2014.

TRD-201401064
Martin H. Zelinsky
General Counsel
Department of Information Resources
Effective date: March 7, 2014
For further information, please call: (512) 475-4700

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### SUBCHAPTER B. VIDEOCONFERENCES HELD BY AGENCIES AND OTHER GOVERNMENTAL BODIES, EXCLUDING INSTITUTIONS OF HIGHER EDUCATION

**1 TAC §209.11**

The Department of Information Resources withdraws the proposed amendment to §209.11 which appeared in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8329).

Filed with the Office of the Secretary of State on March 7, 2014.

TRD-201401065
Martin H. Zelinsky
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Department of Information Resources
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For further information, please call: (512) 475-4700

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### SUBCHAPTER C. VIDEOCONFERENCES HELD BY INSTITUTIONS OF HIGHER EDUCATION

**1 TAC §209.31**

The Department of Information Resources withdraws the proposed amendment to §209.31 which appeared in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8329).

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Martin H. Zelinsky
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## TITLE 16. ECONOMIC REGULATION

## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 72. PROFESSIONAL EMPLOYER ORGANIZATION

**16 TAC §72.72**

The Texas Department of Licensing and Regulation withdraws proposed new §72.72, which appeared in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6828).

Filed with the Office of the Secretary of State on March 5, 2014.

TRD-201401035
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 5, 2014
For further information, please call: (512) 463-8179

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## TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER S. MOTOR FUEL TAX

**34 TAC §3.448**

The Comptroller of Public Accounts withdraws the proposed amendment to §3.448 which appeared in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8786).

Filed with the Office of the Secretary of State on March 4, 2014.

TRD-201400986
Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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

# TITLE 1. ADMINISTRATION

## PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

### CHAPTER 165. RULES OF PROCEDURE FOR APPRAISAL REVIEW BOARD APPEALS

**1 TAC §§165.1, 165.3, 165.7, 165.9, 165.17, 165.19**

The State Office of Administrative Hearings (SOAH) adopts amendments to §165.1, concerning Purpose and Scope; §165.3, concerning Definitions; §165.7, concerning Board Orders that may be Appealed; §165.9, concerning Notice of Appeal by Property Owner; §165.17, concerning Prehearing Orders; and §165.19, concerning Venue. The amendments are adopted without changes to the proposed text as published in the January 3, 2014, issue of the *Texas Register* (39 TexReg 7) and will not be republished.

The adopted amendments consist of eliminating the pilot program and making the appeal process permanent and available statewide. Pursuant to House Bill (HB 316), the process has been expanded statewide to include all counties and the type of Appraisal Review Board orders that may be appealed has been expanded to include minerals. Other adopted amendments are intended to correct clerical errors in the rules.

Specifically, the amendment to §165.1 substitutes the term "rules" for the term "regulations." The amendment to §165.3 revises the definition of the word "Board" to apply to all appraisal review boards. The amendments to §165.7 eliminate the references to the various time periods that applied to the original six counties and additional five counties that were eligible to participate in the pilot program, and they extend the determinations that may be appealed to include minerals. The amendment to §165.9 deletes the reference to subsection (e) of that section. The amendment to §165.17 corrects the reference from §165.10 to §165.9(a)(2). The amendments to §165.19 change the venue of the hearings to the municipalities expressly set out in HB 316.

No comments regarding the amendments were received during the 30-day comment period.

The amendments are adopted under Government Code, Chapter 2003, §2003.050 and §2003.903, which authorize SOAH to establish procedural rules for its hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The amendments affect the Government Code, Chapters 2001 and 2003, and Tax Code, Chapter 41.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2014.

TRD-201401067
Thomas H. Walston
General Counsel
State Office of Administrative Hearings
Effective date: March 27, 2014
Proposal publication date: January 3, 2014
For further information, please call: (512) 475-4931

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**1 TAC §165.13**

The State Office of Administrative Hearings (SOAH) adopts the repeal of §165.13. The repeal is adopted without changes to the proposal as published in the January 3, 2014, issue of the *Texas Register* (39 TexReg 8) and will not be republished.

The repeal of this section will serve to remove a rule no longer necessary in the Appraisal Review Board Appeal process.

No comments regarding the proposed repeal were received during the 30-day comment period.

The repeal is adopted under Government Code, Chapter 2003, §2003.050 and §2003.903, which authorize SOAH to establish procedural rules for its hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The repeal affects the Government Code, Chapters 2001 and 2003, and Tax Code, Chapter 41.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Thomas H. Walston
General Counsel
State Office of Administrative Hearings
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Proposal publication date: January 3, 2014
For further information, please call: (512) 475-4931

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# PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.502, concerning Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; and §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs, without changes to the proposed text as published in the January 3, 2014, issue of the *Texas Register* (39 TexReg 9). The text of the rules will not be republished.

Background and Justification

These rules establish the reimbursement methodologies for services common to multiple Home and Community-Based Services waiver programs and for the Community Living Assistance and Support Services (CLASS), the Home and Community-based Services (HCS) and the Texas Home Living waiver programs administered by the Department of Aging and Disability Services. HHSC, under its authority and responsibility to administer and implement rates, is adopting amendments to these rules to add reimbursement methodologies for cognitive rehabilitative therapy.

These amendments are adopted to add a rehabilitative services reimbursement methodology for cognitive rehabilitation therapy as a service in the CLASS and HCS programs. The Legislature provided funding of these services in the 83rd Legislative Session (Senate Bill 1, 83rd Legislature, Regular Session, 2013).

Comments

The 30-day comment period ended February 2, 2014. During this period, HHSC received no comments.

## SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

### 1 TAC §355.502, §355.505

Statutory Authority

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401076

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 1, 2014

Proposal publication date: January 3, 2014

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

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## SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

### 1 TAC §355.723

Statutory Authority

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201401075

Jack Stick

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Effective date: April 1, 2014

Proposal publication date: January 3, 2014

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## SUBCHAPTER J. PURCHASED HEALTH SERVICES

## DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

### 1 TAC §355.8548

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8548, concerning certain Medicaid fee-for-service (FFS) pharmacy provider types that are enrolled in a federal drug pricing discount program, with changes to the proposed text as published in the January 3, 2014, issue of the *Texas Register* (39 TexReg 16). The text of the rule will be republished.

Background and Justification

HHSC adopts amendments to the rule that describe the reimbursement methodology for claims for drugs provided by an entity participating in the drug-pricing program established under Section 340B of the federal Public Health Act (42 U.S.C. §256b). Under Section 340B, the federal Health Resources and Services Administration (HRSA) has established a drug-pricing program under which a participating manufacturer of certain outpatient drugs agrees to charge a health-care provider covered by Section 340B - such as a Medicare/Medicaid Disproportionate Share Hospital, a children's hospital, a government institution, a nursing home, or a safety net provider - no more than an HRSA-approved 340B price for drugs covered by the 340B Program. A health-care provider enrolled in the 340B Program has access to a national program that allows it to negotiate a purchase price of drugs below the 340B price. Thus, participating health care providers, as well as insurers and Medicaid programs, share in the savings generated by the 340B Program.

Until 2000, the federal HRSA - the agency that administers the 340B Program - required an entity participating in the 340B Program to submit its actual acquisition cost on Medicaid claims for pharmacy services. In 2000, HRSA issued guidance that allowed each state to determine what was submitted on pharmacy claims and the method of reimbursement. In 2012, HRSA issued guidance reiterating the 2000 guidance and requiring each state to include in its state plan a written policy providing for reimbursing an entity participating in the 340B Program. Although HRSA provided these options, Texas continued to reimburse an eligible health care entity participating in the 340B Program (a "covered entity") on the basis of the actual acquisition cost.

Use of the actual acquisition cost has proven problematic, however. Health-care providers participating in the 340B Program, specifically hospitals with outpatient pharmacies, have expressed difficulty with being able to provide HHSC with actual acquisition cost for 340B claims. Additionally, Medicaid managed care organizations (MCOs) have expressed concern over how to reimburse an in-network entity that purchased drugs through this federal drug discount program.

HHSC believes the amended rule will alleviate these concerns. The adopted rule will discontinue the methodology that requires a covered entity to submit its actual acquisition cost, replacing it with a reimbursement methodology that is based upon the drug ingredient costs for pharmacies enrolled in the Section 340B drug-pricing program using HHSC's best estimate of the 340B Program price. The adopted methodology will not affect the dispensing fee methodology, which is set in accordance with 1 TAC §355.8551 (relating to Dispensing Fee).

HHSC will submit a corresponding state plan amendment to the Centers for Medicare and Medicaid with a new drug ingredient reimbursement methodology for 340B entities.

Comments

The 30-day comment period ended on February 2, 2014. Additionally, on January 29, 2014, HHSC held a public hearing to receive comments on the proposed rule. HHSC received comments from the Pharmaceutical Research and Manufacturers of America (PhRMA), Biotechnology Industry Organization (BIO), Teaching Hospitals of Texas (THOT), and Cigna Healthspring. None of these commenters were explicitly for or against the proposed rule. HHSC also received comments from JPS Health Network, which were not favorable to the proposed amendments. Summaries of each comment and HHSC's responses follow.

Shared savings

Comment: Commenters requested that HHSC include language in the rule that requires the use of a shared savings model that, in the commenters' view, would allow safety net providers to retain cost savings resulting from the 340B Program. In the commenters' opinion, the proposed reimbursement model shifts the cost savings from the safety net providers and pharmacies to managed care pharmacy benefit managers and Medicaid.

Response: HHSC acknowledges the comment but did not change the rule to require the use of a shared savings model. The reimbursement methodology HHSC adopts here is within its discretion, and HRSA does not require the use of a shared savings model. The proposed methodology, which is HHSC's best estimate of the 340B ceiling price, gives providers the opportunity to achieve savings. The 340B ceiling price is set by the federal government, and 340B covered entities have the opportunity to buy at or below that price.

Double discounting

Comment: Several commenters focused on the problem of double discounting. As one commenter described it, Section 340B of the federal Public Health Act (42 U.S.C. §256b) provides that a manufacturer may not be billed for a Medicaid rebate on a drug it sold at a discounted price under the 340B Program. HRSA has established the Medicaid Exclusion File to ensure that the double discount ban is followed. *See* 42 U.S.C. §256b(a)(5)(A)(i), (ii). If a covered entity chooses to provide its Medicaid patients with drugs purchased through the 340B Program ("carves in" 340B drugs), it must so inform HRSA, which reflects the use of 340B Program drugs in the Exclusion File. Claims for drugs listed in the Exclusion File are then excluded from rebate invoices sent to drug manufacturers.

The system is not perfect, however, according to the commenters. One commenter cited a report issued by the federal Department of Health and Human Services Office of Inspector General and suggested that the Exclusion File is not always reliable. Another referred to the complexity of the 340B system, which increases the risk of double discounting.

The commenters thus requested that HHSC consider evaluating and adopting a system that allows a pharmacy to identify, or "flag," claims filled with 340B drugs to payers. The flagging could occur prior to dispensing the drug or retroactively after the claim has been billed and paid. Commenters seemed to advocate the adoption of a system that would flag claims for 340B drugs retroactively.

Response: HHSC acknowledges the comment but did not change the rule in response. HHSC currently requires 340B covered entities to submit claims in compliance with the National Council for Prescription Drug Programs (NCPDP) standard for 340B claims. This rule does not address the type of system that pharmacies must use to submit claims to HHSC, however, and so the comments are beyond the scope of this rule.

Comment: A commenter requested that HHSC issue regulations that specifically address how HHSC will ensure that the state can identify 340B claims if providers fail to correctly report claims filled with 340B stock.

Response: HHSC acknowledges the comment but did not change the rule in response. The comment is outside the scope of the rule.

Comment: A commenter requested that HHSC require 340B covered entities to employ the industry standard, under which providers add a certain modifier on the claim, in addition to the NDC, to their claims to identify physician-administered 340B products.

Response: HHSC acknowledges the comment but did not change the rule in response. The comment is outside the scope of the rule.

Comment: A commenter requested that HHSC clarify how to identify 340B claims submitted by pharmacies at point of sale.

Response: HHSC acknowledges the comment but did not change the rule in response. The comment is outside the scope of the proposed rule.

Reimbursement methodology

Comment: Commenters requested that HHSC include more detail in the rule about how HHSC will reimburse covered entities for 340B drugs, indicating that it is unclear how HHSC intends to estimate the 340B price and that there is a potential that the adopted methodology will far exceed the actual 340B ceiling prices obtained by the covered entities.

Response: HHSC disagrees with the comment and did not revise the rule in response. HHSC has developed its 340B reimbursement methodology by deriving the 340B ceiling price and approximating those prices relative to publicly available, national benchmark prices.

Comment: One commenter suggested in particular that, to describe the methodology more specifically, HHSC should include the source and frequency of the pricing data that HHSC will use to calculate the rates.

Response: HHSC agrees with the comment and has revised subsection (c) of the adopted rule to specify the sources and frequency of the pricing data that HHSC will use to calculate the rates.

Comment: A commenter requested HHSC to revise the rule to state that covered entities would be paid the lesser of: (1) the 340B drug actual acquisition cost, as reflected on the invoice, plus a dispensing fee - as HHSC requires under the rule that existed prior to the adoption of these amendments; or (2) Texas maximum allowable cost (TMAC) plus a dispensing fee. The commenter stated that the 340B actual acquisition cost methodology is the only way for Texas to accurately determine the 340B prices and ensure that drug discounts are passed on to the state. The commenter stated that requiring covered entities to be paid the lesser of the 340B actual acquisition cost or the TMAC will ensure that TMAC will not be used if it is the higher price.

Response: HHSC agrees that the rule should expressly provide for the reimbursement of the lesser of two costs and has changed the rule language accordingly. By contrast, HHSC disagrees with the recommendation to require covered entities to be reimbursed based on the 340B drug actual acquisition cost. In HHSC's experience, entities that have participated in the 340B Program have had difficulty providing HHSC with actual acquisition cost for 340B claims.

Comment: A commenter requested that HHSC clarify the rule to require that subsection (c), which sets out the reimbursement methodology for 340B covered outpatient drugs, applies only when a covered entity elects to use a 340B drug for a Medicaid patient and not mandate that a covered entity use 340B drugs for its Medicaid patients.

Response: HHSC agrees and has changed subsection (c) of the rule to clarify that HHSC uses the reimbursement methodology only for 340B drugs purchased through the 340B Program.

Miscellaneous

Comment: A commenter stated that the calculation of a dispensing fee is an important part of the methodology and should be tied to the current Cost of Dispensing Survey that HHSC recently sent to pharmacy providers. The commenter requested that HHSC define an evaluation timeline or set of conditions to make sure dispensing fees remain fiscally relevant.

Response: HHSC acknowledges the comment but did not change the rule in response. Dispensing fees are calculated in accordance with 1 TAC §355.8551. Thus, the comment is outside the scope of the proposed rule.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021(a) and (c) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b)(2) and (d)(1), which allow HHSC to provide for the payment of claims in accordance with methodologies prescribed by HHSC rules; and Texas Human Resources Code §32.0462(a), which provides for the adoption of reimbursement methodology for prescription drugs.

*§355.8548. 340B Covered Entities.*

(a) Scope. This section applies to each manufacturer of outpatient drugs that has executed an agreement with the Secretary of the United States Department of Health and Human Services under Section 340B of the Public Health Service Act (42 U.S.C. §256b).

(b) Definitions. For purposes of this section, the following terms are defined as follows:

(1) 340B covered entity--A health-care organization enrolled in the 340B Program.

(2) 340B covered outpatient drug--A drug eligible for purchase through the 340B Program, as defined in 42 C.F.R. §10.20 and §10.21.

(3) 340B price--The maximum price that the United States Health Resources and Services Administration will allow a drug manufacturer to charge a 340B covered entity for a 340B covered outpatient drug purchased through the 340B program. The 340B price is also known as the "ceiling price."

(4) 340B program--A drug-pricing program established under Section 340B of the Public Health Service Act (42 U.S.C. §256b) under which a manufacturer of covered outpatient drugs agrees that it will not charge a 340B covered entity more than the 340B price for a 340B covered outpatient drug.

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

(c) Reimbursement methodology. HHSC reimburses a 340B covered entity for a 340B covered outpatient drug purchased through the 340B program and dispensed to a patient of a 340B covered entity based on the lower of HHSC's estimate of the 340B price or the maximum allowable cost in accordance with §355.8545 of this division (relating to Texas Maximum Allowable Cost) plus a dispensing fee assigned by HHSC in accordance with §355.8551 of this division (relating to Dispensing Fee). HHSC establishes the estimate of the 340B

price using market or government sources, which include, but are not limited to:

(1) Reported manufacturer pricing;

(2) Weekly data from national drug pricing publishers; and

(3) Quarterly data from the Centers for Medicare and Medicaid Services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201401059
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: January 3, 2014
For further information, please call: (512) 424-6900

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# TITLE 13. CULTURAL RESOURCES

## PART 8. TEXAS FILM COMMISSION

### CHAPTER 123. MEDIA PRODUCTION DEVELOPMENT ZONES

**13 TAC §§123.1 - 123.10**

The Texas Film Commission (TFC) adopts new 13 TAC Chapter 123, §§123.1 - 123.10, regarding Media Production Development Zones (MPDZs). TFC adopts §123.1 and §123.2 without changes to the proposed text as published in the January 31, 2014, issue of the *Texas Register* (39 TexReg 460). TFC adopts §§123.3 - 123.10 with changes to the proposed text as published.

The changes: (1) remove the quotation marks around the acronyms used in §§123.3 - 123.6 and §§123.8 - 123.10 to ensure uniform use throughout the chapter; (2) add the word "the" in §123.5(b)(1) and (2) to correct typographical errors; and (3) add the word "independent" to §123.7(a) to clarify that the required economic impact analysis must be conducted by an "independent" economic expert, which is the original intent of this subsection.

The purpose of the new rules is to provide the process for property owners to request a sales, excise and use tax exemption under the Media Production Development Zone Act. The adopted rules provide: applicable definitions, a process whereby a written request may be made, the required contents of the request, for submission and review of the request to and by a local government body, and for review by the TFC of an exemption application made by a local government on behalf of a requestor.

No comments were received regarding the addition of these new rules.

The new rules are adopted pursuant to the Texas Government Code, §485A.052, which directs the TFC to develop rules necessary to implement the Media Production Development Zone Act.

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

*§123.3. Request for MPDZ Exemption.*

(a) A Requestor who desires a MPDZ Exemption shall submit a written request to the Nominating Body having jurisdiction over the proposed media production location.

(b) A completed request shall include:

(1) a current Request for Exemption form from the Texas Film Commission (TFC) website, filled out completely and signed by an authorized representative of Requestor;

(2) a specific and detailed description of the project;

(3) a site plan for the proposed media production location;

(4) a floor plan for the proposed media production facility;

(5) an itemized budget for the project;

(6) a schedule of media production equipment (as opposed to physical plant equipment and fixtures) to be bought, rented, or leased for use specifically and exclusively in the proposed media production facility;

(7) an economic impact analysis, in the form specified in §123.7 of this chapter;

(8) a financial statement and background information on Requestor;

(9) such other written documents on which Requestor relies to qualify for and obtain a MPDZ Exemption; and

(10) such other written documents containing information reasonably requested by the Nominating Body, the TFC, or the Comptroller which shall be provided within 20 days of the date of the request. The TFC may, for good cause, allow additional time to comply with a request.

(c) The request contents shall be provided in the following formats:

(1) one original hard copy of the complete request in a three ring binder with tabs separating each section of the documents submitted; and

(2) one electronically digitized copy formatted in searchable portable document format (PDF) or other format acceptable to the office.

(d) The request shall be submitted in any manner acceptable to the Nominating Body.

*§123.4. Request Review by Nominating Body.*

(a) Within 7 days of receipt of a request for MPDZ Exemption, the Nominating Body shall deliver to the Texas Film Commission (TFC) a digitized copy of the request.

(b) If the Nominating Body determines that the Requestor has submitted a complete request and, by official action, decides to consider that request, the Nominating Body shall provide written notice to the Requestor and to the TFC that includes:

(1) a statement that the Nominating Body has received and will be considering a completed request; and

(2) the date on which the request was received.

(c) In reviewing a request, the Nominating Body shall consider:

(1) whether the proposed media production location meets the requirements of the Act;

(2) whether the Requestor has the ability and financial wherewithal to successfully complete the building, constructing, renovating, or expanding of the proposed media production facility within 18 months from certification as a qualified person under §123.6(f)(1) of this chapter; and

(3) whether the proposed financial incentives are in the best interest of the Nominating Body and this state.

(d) Within 90 days of deciding to consider a completed request, the Nominating Body shall either:

(1) adopt a written ordinance or order nominating the proposed media production location which shall include:

(A) written findings as to each criterion listed in §485A.102 of the Act;

(B) written information as listed in §485A.105 of the Act;

(C) a determination that granting the MPDZ Exemption is in the best interest of the Nominating Body and this state; and

(D) designate and direct a representative of the Nominating Body to execute an Application for Exemption pursuant to §485A.106 of the Act and submit same to the TFC;

(2) deny the request; or

(3) take no official action and the request shall be considered denied on the 91st day after the request consideration start date.

(e) A Nominating Body may, for good cause and upon written notice to the Requestor with a copy to the TFC, take more than 90 days to consider a request under subsection (d) of this section.

(f) If not previously recognized, the Nominating Body at the same time shall also adopt a written ordinance or order recognizing the media production development zone in which a location nominated under subsection (d)(1) of this section is located. This ordinance or order shall include:

(1) a precise description of the zone by a legal description or reference to municipal or county boundaries;

(2) written findings as to each criterion listed in §485A.101 of the Act; and

(3) a determination that recognizing the zone is in the best interest of the Nominating Body and the state.

*§123.5. Application for MPDZ Exemption.*

(a) A Nominating Body that has recognized a zone, nominated a location, and certified a person for the purposes of a MPDZ Exemption shall submit a written application to the Texas Film Commission (TFC).

(b) A completed application shall include:

(1) the current Application for Exemption form from the TFC website, filled out completely and signed by an authorized representative of the Nominating Body, with all specified attachments; and

(2) such other written documents containing information reasonably requested by the TFC or the Comptroller which shall be provided within 20 days of the date of the request. The TFC or Comptroller may, for good cause, allow additional time to comply with a request.

(c) The application contents shall be provided in the following formats:

(1) one original hard copy of the complete application in a three ring binder with tabs separating each section of the documents submitted; and

(2) one electronically digitized copy formatted in searchable portable document format (PDF) or other format acceptable to the TFC.

(d) The application shall be submitted in any manner acceptable to the TFC.

*§123.6. Application Review.*

(a) Upon receipt of an Application for MPDZ Exemption from a Nominating Body, the Texas Film Commission (TFC) shall review the application to determine:

(1) whether the application is complete in accordance with §485A.106 of the Act and with the provisions of this chapter;

(2) whether the nominated location qualifies for designation as a media production location; and

(3) if not previously reviewed, whether the recognized zone qualifies for approval as a media production development zone.

(b) The TFC shall provide to the Nominating Body written notice that either:

(1) the application is complete and is being considered; or

(2) the application is incomplete and is being returned to the Nominating Body for remediation.

(c) Upon acceptance of an application for consideration, the TFC shall deliver to the Comptroller's office:

(1) a digitized copy of the Requestor's request;

(2) a digitized copy of Nominating Body's application; and

(3) a request for certification as to whether the proposed project will have a positive impact on state revenue.

(d) Within 30 days of receipt of the items in subsection (c) of this section, the Comptroller's office shall provide in writing to the TFC certification as to whether the proposed project will have a positive impact on state revenue. Should the Comptroller's office request additional information from the Requestor or the Nominating Body, the time it takes a party to provide the additional information shall not count toward the 30 days.

(e) Upon receipt of certification of positive state revenue impact from the Comptroller's office, the TFC shall call a meeting of the Media Production Advisory Committee to, as soon as practicable:

(1) review the Requestor's request, the Nominating Body's application and the Comptroller's certification; and

(2) provide a written recommendation to the TFC with respect to the pending application.

(f) If the TFC approves an application, it shall provide to the Requestor, with a copy to the Nominating Body, a letter indicating:

(1) certification of the Requestor as a qualified person;

(2) approval granting the MPDZ Exemption to the qualified person; and

(3) the expiration date for such exemption.

(g) If the TFC approves an application, it shall, as needed, simultaneously approve the project's recognized zone as a media production development zone, and designate the project's nominated location

as a qualified media program location. It shall communicate these actions in writing to the Nominating Body and the Requestor.

(h) If the TFC denies an application, it shall provide written notification to the Nominating Body and the Requestor.

*§123.7. Economic Impact Analysis.*

(a) The economic impact analysis shall be conducted at the Requestor's sole expense by an independent economic expert; that is, a person with specialized knowledge, skill, experience, training, or education in the subjects of economics and state and local taxation.

(b) The economic impact analysis shall be presented in the format promulgated by the Comptroller's office and must include:

(1) an estimate of the amount of revenue to be generated to the state by the project or activity;

(2) an estimate of any secondary economic benefits to be generated by the project or activity;

(3) an estimate of the amount of state taxes to be exempted, as provided by Texas Tax Code, §151.3415; and

(4) any other information required by the Comptroller for purposes of making the certification required by §485A.109(b) of the Act.

*§123.8. Reports by Texas Film Commission.*

(a) In order to fulfill its statutory obligation under the Act, the Texas Film Commission (TFC) may request information from any qualified person, Nominating Body, appraisal district, or any other relevant source.

(b) The entities receiving a request from the TFC under this section shall provide the information requested in the form and in the manner designated by the TFC.

*§123.9. Media Production Advisory Committee.*

(a) Purpose. Created pursuant to §485A.107 of the Act, the Media Production Advisory Committee (MPAC) reviews applications submitted to the Texas Film Commission (TFC) under the Act. The advice and recommendations expressed by the MPAC provide the TFC and the Comptroller's office with a broader perspective regarding media production matters that will be considered in determining whether to approve an application.

(b) Tasks. The MPAC shall:

(1) review each application for designation of qualified media production locations eligible to be certified under the Act, and make a recommendation to the TFC with respect to those applications; and

(2) perform other duties as determined by the TFC.

(c) Reporting requirements. The MPAC will report to the TFC by way of consultation at called meetings; no formal reports, other than the committee's written recommendation on an application, are required unless requested by the director of the TFC.

(d) Independence. Each MPAC member shall in fact and in appearance be independent of any media production location, facility, or qualified person who has been nominated, recognized, qualified, or certified under the provisions of the Act and this chapter.

(1) A MPAC member lacks independence *prima facie* if such member, or any member of his or her immediate family, with regard to any media production location, facility, qualified person, or Requestor:

(A) has any direct or material indirect financial interest; or

(B) is employed by or affiliated with as a director, officer, manager, or consultant.

(2) If an MPAC member lacks independence, that member must be recused from any meeting about such location, facility, qualified person, or Requestor and may not hear, discuss, deliberate on, or vote on the determination of the recommendation thereon.

*§123.10. Miscellaneous Provisions.*

(a) Not every application will qualify for a MPDZ Exemption. The Texas Film Commission (TFC) is not required to act on or approve any application. All decisions by the TFC are final and not subject to review.

(b) If the Comptroller receives written notice from the Nominating Body or the TFC that a qualified person was not entitled to a MPDZ Exemption or was entitled to a lesser amount than an approved application received, the Comptroller shall investigate that determination and provide a written response to the Nominating Body that concludes either that the approved application may have or may not have received unauthorized tax exemptions. If the Nominating Body and the Comptroller agree that an approved application may not have been entitled to a tax exemption, they shall promptly notify the qualified person, the appropriate taxing authorities, and the TFC.

(c) The TFC division of the Office of the Governor is a state agency and must comply with the Texas Public Information Act (PIA). In the event that a public information request related to the Requestor and/or an application is submitted to the agency, the Office of the Governor will promptly notify the Requestor of the request if current contact information is available, take all appropriate actions with the Attorney General of Texas to prevent release of confidential information, including asserting exemptions under the PIA, and provide the Requestor with full information and opportunity to participate in such process if current contact information is available.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Assistant General Counsel
Texas Film Commission
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For further information, please call: (512) 936-0181

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# TITLE 16. ECONOMIC REGULATION

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

### SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

## DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

### 16 TAC §25.211

The Public Utility Commission of Texas (commission) adopts amendments to §25.211, relating to Interconnection of On-Site Distributed Generation (DG), with changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6458). The amendments modify §25.211 by adopting the Pro-Forma DG Interconnection Agreement and Tariff into the rule. The amendments modify the Interconnection Agreement to include options regarding indemnification and choice of law for parties entering into an agreement with a federal agency. In addition, the amendments include modifications to the Interconnection Agreement to implement the requirement in subsection (n) that the owner of a distributed generation facility report to the utility any change in ownership of the facility and the cessation of operations of the facility within 14 days of such change. These amendments are adopted under Project Number 41325.

The commission received comments on the proposed amendments from AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (AEP Companies); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); El Paso Electric Company (EPE); Oncor Electric Delivery Company LLC (Oncor); and Southwestern Public Service Company (SPS).

*The commission posed the following question:*

(1) Do amendments need to be made to the rule, tariff, application, or interconnection agreement to effectuate third-party ownership of distributed renewable generation pursuant to Public Utility Regulatory Act §39.916 and §25.217 of this title?

The AEP Companies stated that they had no specific concerns with the proposed amendments to §25.211, the tariff for interconnection, or the interconnection agreement. CenterPoint recommended that the commission adopt the proposed amendments to §25.211 as published. Oncor commented that it generally supported the proposed amendments.

AEP Companies, SPS, EPE, and CenterPoint recommended a separate project be opened following the adoption of these rule amendments that would address the issues associated with third party ownership. Oncor did not oppose the suggestion to open a separate project, but urged the commission in whatever approach it takes, to keep the administrative burden on DG owners and utilities to a minimum.

The AEP Companies stated that they do not believe amendments need to be made to the rule, tariff, or application to effectuate third-party ownership of distributed renewable generation. However, they recommended that a three-party interconnection agreement or specific supplemental terms and conditions to the interconnection agreement be added to accommodate instances where the premises owner requests that a third-party generator be a party to the interconnection agreement.

SPS commented that the proposed amendments do not cover all documents impacted, do not use terms consistently, and do not make clear which part is the responsibility of which parties for certain items; therefore, SPS stated that amendments need to be made to effectuate third-party ownership of distributed generation so that all documents are clear regarding ownership, applicability, and responsibility. SPS also commented that the current rules and other documents ownership of distributed generation so that all documents are clear regarding ownership, applicability, and responsibility. SPS also commented that the current rules and other documents do not clearly differentiate between entities and instead largely assume that the DG owner, the site owner, and the retail customer are the same entity. SPS recommended that the Interconnection Manual and Interconnection Agreement also be reviewed and updated, and suggested a working session or limited series of working sessions so that technical and other experts can work to develop a consistent set of rules and associated documents.

CenterPoint also suggested that the Commission open a separate project to consider issues such as third-party ownership of distributed generation facilities, noting that the transmission and distribution utilities (TDUs) do not currently address the issue in a consistent manner. CenterPoint also remarked that the issue of third-party ownership raised questions with the definition of "customer" as currently defined in the rule because while CenterPoint believes the definition contained in the rule relates to the customer of record for the location being served, some entities have argued that the customer is the owner of the DG facility.

EPE supported the idea of a separate project to address third-party ownership, stating that it was evident from initial comments that utilities have handled third-party ownership differently, which demonstrated a clear need for greater guidance from the commission if the commission desires a level of uniformity of treatment throughout the state. EPE also stated that it may be appropriate to have different procedures within the Electric Reliability Council of Texas (ERCOT) and outside ERCOT, because bundled utilities have greater privity with the retail customer than do the TDUs within ERCOT.

Oncor pointed out that it has interconnected over 550 DG facilities where the owner of the DG facility is not the utility customer/owner of the property upon which the DG facility is installed, and has developed an approach to address such circumstances in the Interconnection Agreement and Facility Schedule that has been acceptable to all parties involved. Oncor stated that the commission could indicate that Oncor's approach is acceptable in the preamble to the adoption of the rule amendments, or could develop a separate Interconnection Agreement and Facility Schedule that applies only to third-party DG ownership situations. Oncor stressed that its current approach minimizes the amount of paperwork involved, and urged the commission to keep the administrative burden on DG owners and utilities to a minimum in whatever approach it takes.

*Commission Response*

Consistent with the comments, the commission intends to open a separate project to address third-party ownership of DG.

*Subsection (c)*

EPE proposed that the definition of "Facility" in subsection (c)(5) be modified to make clear that not all distribution feeder systems have sufficient capacity to interconnect 10 MW of generation, especially in residential areas. Additionally, EPE stated that requiring a utility to uniformly connect and receive 10 MW from anywhere on its system may put the reliability of a utility's system in jeopardy. EPE proposed revisions to subsection (c)(5) to address this concern.

*Commission response*

The commission declines to adopt EPE's proposed language. The language is unnecessary because subsection (h)(4) already adequately addresses this issue by providing that a utility may reject applications for a distributed generation facility under this section if the utility can demonstrate specific reliability or safety reasons why the distributed generation should not be interconnected at the requested site. However, in such cases the utility shall work with the customer to attempt to resolve such problems to their mutual satisfaction.

EPE recommended that the definition of "inverter-based protective function" in subsection (c)(8) be modified to specify that DG must meet, at a minimum, "IEEE 1547" and "UL 1747." It was EPE's contention that doing so would protect the utility from allegations that it is unfairly or arbitrarily applying such standards. EPE proposed language to amend the subsection (c)(5).

*Commission response*

The commission declines to adopt EPE's proposed language. The commission does not agree that the proposed modification is necessary, and utilities have sufficient ability to explain their adherence to appropriate standards.

*Subsection (d)*

EPE proposed that subsection (d)(2) be amended to make clear that any costs incurred modifying distribution facilities to accommodate interconnection of DG be borne by the DG owner. EPE argued that this provision should be changed to allow the utility to access a charge on a DG facility in limited circumstances when the utility must incur costs to protect other customers from adverse impacts resulting from the operation of the distributed generation facility.

*Commission response*

The commission declines to adopt EPE's proposed language. EPE's comments are confusing because they refer to recovery of facility costs from the DG customer, while its proposed language would be included in the rule provision that addresses operations and maintenance costs and would limit cost recovery to customers in the DG customer's customer class. The commission does not agree that EPE's proposed changes are warranted and, therefore, declines to adopt EPE's proposed modification.

Oncor stated that subsection (d)(4) could be read to require that existing agreements for interconnection and parallel operation (AIs) be modified to reflect changes to the rule that are adopted by the commission. In light of the fact that it had approximately 1,800 signed AIs at the time it filed its comments, Oncor strongly recommended, and EPE expressed support in its reply comments, that subsection (d)(4) either be struck or changed to indicate that the proposed AI changes do not require modification of existing AIs.

*Commission response*

Although the amendments being adopted by the commission improve the existing rule and AI, they do not warrant the time and expense that would be necessary to reform existing contracts. Therefore, the commission has amended subsection (d)(4) to require use of the AI resulting from this rulemaking for a new or amended AI.

Oncor commented that, since charges for interconnection studies and their respective supporting data have already been reviewed and approved by the commission in rate cases, subsections (d)(5) and (d)(5)(A) should be clarified that while conforming tariff changes for the application and the AI are to be filed, this is not true of changes in rates and their supporting data. EPE agreed with Oncor, adding that the provisions are burdensome and unnecessary.

*Commission response*

The commission has amended subsection (d)(5) consistent with Oncor's comments.

*Subsection (h)*

EPE proposed that the time to complete interconnection and network studies in subsection (h)(3) be lengthened from six to eight weeks, citing competing priorities for engineering personnel, operational challenges during peak season, and the time needed to elicit information from customers and customers' consultants and engineering firms.

*Commission response*

Prompt interconnection of distributed generation is in the public interest because it is good customer service and promotes adequate generation resources. The commission concludes that six weeks is sufficient time to complete interconnection and network studies and, therefore, declines to adopt EPE's proposed modification.

EPE proposed that subsection (h)(5) be amended to give the utility discretion as to whether a DG customer's service should be switched to a radial feed to permit the export of power from the DG facility. EPE stated that a customer should not be in a position to dictate to a utility how it may operate its system. EPE further stated that if the utility determines the most practical and safe way to interconnect a customer's system is to convert that customer to radial feed that the utility should be able to do so without the customer's consent. EPE proposed modification to subsection (h)(5) to address its concerns.

*Commission response*

The commission declines to adopt EPE's proposed modification to subsection (h)(5). EPE did not demonstrate that this change is necessary. Converting to a radial feed would reduce the reliability of service to the customer, and the customer may not find that approach acceptable.

*Subsection (i)*

EPE sought to increase the time to complete pre-interconnection studies based on the size of the facility being interconnected, increasing the period from four to six weeks for systems larger than 500 kW and eight weeks for systems larger than 2MW. EPE stated that the deadlines should reflect the amount of time necessary to complete pre-interconnection study given real world conditions and the complexity involved when evaluating feeders in light of the utility's responsibility to provide safe and reliable service.

*Commission response*

The commission declines to adopt EPE's proposed language. Prompt interconnection of distributed generation is in the public interest because it is good customer service and promotes adequate generation resources. The commission concludes that the existing rule provides sufficient time for pre-interconnection studies.

*Subsection (p)*

CenterPoint commented that it supported the modifications to the AI related to indemnification of facilities owned by federal governmental entities as it had issues related to this on various

occasions and the proposed amendments would provide a resolution.

EPE proposed that an additional change be made to the standard AI by adding an addendum. This addendum would accommodate political subdivisions of the State of Texas that EPE asserts are generally prohibited by law from entering into contractual indemnification obligations. The effect of the addendum would be to remove the reciprocal indemnification provisions of numbers 4(c) and 4(d) from the AI. EPE stated that it is appropriate to remove both the indemnification provisions from the AI in these circumstances in order for the agreement to be balanced.

*Commission response*

The commission declines to adopt EPE's proposed modification to the AI. EPE's proposal to address indemnification of facilities related to political subdivisions of the State of Texas is distinct from, and inconsistent with, the commission's amendments to address indemnification specific to federal law and federal entities. Additionally, while comments were filed in support of the modification related to federal entities, no reply comments were submitted regarding EPE's proposed modification related to state entities. Furthermore, EPE's specific indemnification issue with the County of El Paso is currently being addressed in a separate proceeding (Tariff Control Number 42105). A consistent and comprehensive approach to address indemnification issues related to state governmental entities may be appropriate in the future. However, absent comments in support of EPE's proposed modification, and absent a significant number of instances in which indemnification issues related to state entities have occurred or are likely to occur, the modification proposed by EPE is not warranted at this time.

Oncor recommended several modifications to add clarity. Oncor proposed that language be added to the end of the third paragraph of number 3 of the AI to explicitly state what should happen after notice is given by the Company to the customer if operation of the Customer's Facilities is causing disruption of service to other utility customers or damage to the Company's equipment. Oncor's language would allow the customer to either (1) modify its facilities or their operation so as to eliminate the problem; or (2) if the Company can modify its facilities so as to rectify the problems, then pay the Company to make those modifications. Should the Customer simply ignore the problem, then this provision would authorize the Company to disconnect the Customer's Facilities until such time as the problem no longer exists.

Oncor suggested that in the signature blocks, between the "BY" and the "TITLE" lines, for both the Company and Customer, the line be added "PRINTED NAME," as many signatures are often illegible. Oncor also recommended changes to several paragraphs of the proposed Facility Schedule, to provide clarification. Oncor also recommended several changes to the Facility Schedule.

EPE supported the recommendations made by Oncor.

*Commission response*

The commission has changed the agreement to state that Company and Customer shall work cooperatively and promptly to resolve the problem. Depending on the nature of the problem, Company may be responsible for the costs to resolve the problem. The commission has made clarifications similar to the other changes proposed by Oncor.

*Subsection (q)*

EPE did not object to the incorporation of the standard tariff with changes as proposed in the rule.

Oncor expressed several concerns with the proposed form of the tariff. Oncor stated that the title of the tariff would suggest that this will be an entirely new tariff, rather than be part of each utility's existing tariff. Oncor explained that for TDUs, as set out in §25.214(d) (the Pro Forma tariff), the current tariff is titled "Tariff for Retail Delivery Service." Oncor recommended that the title be removed, or if this is in fact intended to be an entirely new and separate tariff, that there should be blanks for the sheet number, the revision number, and the section number rather than actual numbers.

Oncor strongly urged the deletion of the first two pages of the proposed tariff. Questioning the need for those pages, Oncor stated that the tariff already includes the current version of the Application, and the first two pages have not proved to be necessary. Oncor was also unclear as to what the "Definitions," "Pricing," "Standby," "Maintenance" and "Supplemental" provisions are designed to accomplish. For a TDU such as Oncor, these provisions are irrelevant; to the extent they may have some use for integrated utilities, then that would suggest that there needs to be separate tariff forms for the two types of utilities. Further, since these provisions are not part of the Application itself, it is unclear whether these pages would be filled in and sent out to the prospective DG customer as part of the Application, or just what function they are intended to serve.

Oncor also pointed out that pre-interconnection study fees are already contained in the Discretionary Charges section of the Tariff. Oncor stated that it is more appropriate to have the charges remain in the portion of the Tariff that contains all of utility's charges, rather than have them listed separately. Oncor recommended that rather than listing the charges in the Application, that a reference to the Discretionary Charges section of the Tariff be included here, as well as clarifying changes to address authorized release of information, and some of the questions in the Application. EPE did not object to the proposed changes by Oncor.

*Commission response*

The commission agrees with Oncor that the DG tariff should be part of each utility's overall retail tariff. In addition, the commission agrees that the pricing provisions should be located in another part of the utility's retail tariff, where the pricing provisions for other services are located. The commission has changed the rule accordingly. The commission has retained statements about the applicability of the commission's rules and the need for the customer to submit an application. The commission has added clarifications to the application form similar to those proposed by Oncor.

All comments, including any not specifically referenced herein, were fully considered by the commission. The commission has made changes to the rule in addition to those specifically described in order to clarify its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that

power and jurisdiction; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and PURA §39.101(b)(3) which requires the commission to ensure that customers have access to on-site distributed generation and to providers of energy generation by renewable energy resources.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 36.003, 38.001, and 39.101(b)(3).

*§25.211. Interconnection of On-Site Distributed Generation (DG).*

(a) Application. Unless the context indicates otherwise, this section and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation) apply to an electric utility for all purposes except to the extent preempted by federal law. The only part of this section that applies to electric cooperatives is subsection (o) of this section.

(b) Purpose. The purpose of this section includes stating the terms and conditions that govern the interconnection and parallel operation of both on-site distributed generation in order to implement Public Utility Regulatory Act (PURA) §39.101(b)(3) and a natural gas distributed generation facility in order to implement PURA §35.036. Sales of power by on-site distributed generation and natural gas distributed generation in the intrastate wholesale market are subject to §§25.191 - 25.203 of this title (relating to Open-Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas).

(c) Definitions. The following words and terms when used in this section and §25.212 of this title shall have the following meanings, unless the context indicates otherwise:

(1) Application for interconnection and parallel operation or application--The form of application prescribed in subsection (q) of this section.

(2) Company--An electric utility operating a distribution system.

(3) Customer--Any entity interconnected to the company's utility system for the purpose of receiving or exporting electric power from or to the company's utility system.

(4) Distributed natural gas generation facility--A facility installed on the customer's side of the meter that uses natural gas to generate not more than 2,000 kilowatts of electricity.

(5) Facility--An electrical generating installation consisting of one or more on-site distributed generation units, including a distributed natural gas generation facility. The total capacity of the installation's on-site distributed generation units may exceed ten megawatts (MW); however, no more than ten MW of the installation's capacity will be interconnected at any point in time at the point of common coupling under this section.

(6) Interconnection--The physical connection of distributed generation to the utility system in accordance with the requirements of this section so that parallel operation can occur.

(7) Interconnection agreement--The form of agreement prescribed in subsection (p) of this section. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

(8) Inverter-based protective function--A function of an inverter system, carried out using hardware and software, that is designed to prevent unsafe operating conditions from occurring before, during, and after the interconnection of an inverter-based static power converter unit with a utility system. For purposes of this definition, unsafe operating conditions are conditions that, if left uncorrected, would result in harm to personnel, damage to equipment, unacceptable system instability or operation outside legally established parameters affecting the quality of service to other customers connected to the utility system.

(9) Network service--Network service consists of two or more utility primary distribution feeder sources electrically tied together on the secondary (or low voltage) side to form one power source for one or more customers. The service is designed to maintain service to the customers even after the loss of one of these primary distribution feeder sources.

(10) On-site distributed generation (or distributed generation)--An electrical generating facility located at a customer's point of delivery (point of common coupling) of ten megawatts (MW) or less and connected at a voltage less than 60 kilovolts (kV) which may be connected in parallel operation to the utility system.

(11) Parallel operation--The operation of on-site distributed generation while the customer is connected to the company's utility system.

(12) Point of common coupling--The point where the electrical conductors of the company utility system are connected to the customer's conductors and where any transfer of electric power between the customer and the utility system takes place, such as switchgear near the meter.

(13) Pre-certified equipment--A specific generating and protective equipment system or systems that have been certified as meeting the applicable parts of this section relating to safety and reliability by an entity approved by the commission.

(14) Pre-interconnection study--A study or studies that may be undertaken by a company in response to its receipt of a completed application for interconnection and parallel operation with the utility system. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.

(15) Stabilized--A company utility system is considered stabilized when, following a disturbance, the system returns to the normal range of voltage and frequency for a duration of two minutes or a shorter time as mutually agreed to by the company and customer.

(16) Tariff for interconnection and parallel operation of distributed generation--The tariff for interconnection and parallel operation of distributed generation prescribed in subsection (q) of this section.

(17) Unit--A power generator.

(18) Utility system--A company's distribution system below 60 kV to which the generation equipment is interconnected.

(d) Terms of Service.

(1) Distribution line charge. No distribution line charge shall be assessed to a customer for exporting energy to the utility system.

(2) Interconnection operations and maintenance costs. No charge for operation and maintenance of a utility system's facilities shall be assessed against a customer for exporting energy to the utility system.

(3) Transmission charges. No transmission charges shall be assessed to a customer for exporting energy. For purposes of this paragraph, the term transmission charges means transmission access and line charges, transformation charges, and transmission line loss charges.

(4) New or amended interconnection agreements. A new or amended interconnection agreement entered into 30 or more days after the commission's approval of an electric utility's compliance tariff filed pursuant to paragraph (5) of this subsection shall meet the requirements of this section.

(5) Tariffs. Not later than 30 days after the effective date of this amended section, an electric utility shall file with the commission for approval tariff amendments to comply with this amended section, including subsections (p) and (q) of this section. An electric utility shall include in its tariff the fees for interconnection studies. An electric utility that sells electricity shall also include back-up, supplemental, and maintenance power services for distributed generation in its tariff.

(e) Disconnection and reconnection. A utility may disconnect a distributed generation unit from the utility system under the following conditions:

(1) Expiration or termination of interconnection agreement. The interconnection agreement specifies the effective term and termination rights of company and customer. Upon expiration or termination of the interconnection agreement with a customer, in accordance with the terms of the agreement, the utility may disconnect customer's facilities.

(2) Non-compliance with the technical requirements specified in §25.212 of this title. A utility may disconnect a distributed generation facility if the facility is not in compliance with the technical requirements specified in §25.212 of this title. Within two business days from the time the customer notifies the utility that the facility has been restored to compliance with the technical requirements of §25.212 of this title, the utility shall have an inspector verify such compliance. Upon such verification, the customer in coordination with the utility may reconnect the facility.

(3) System emergency. A utility may temporarily disconnect a customer's facility without prior written notice in cases where continued interconnection will endanger persons or property. During the forced outage of a utility system, the utility shall have the right to temporarily disconnect a customer's facility to make immediate repairs on the utility's system. When possible, the utility shall provide the customer with reasonable notice and reconnect the customer as quickly as reasonably practical.

(4) Routine maintenance, repairs, and modifications. A utility may disconnect a customer or a customer's facility with seven business days prior written notice of a service interruption for routine maintenance, repairs, and utility system modifications. The utility shall reconnect the customer as quickly as reasonably possible following any such service interruption.

(5) Lack of approved application and interconnection agreement. In order to interconnect distributed generation to a utility system, a customer must first submit to the utility an application for interconnection and parallel operation with the utility system and execute an interconnection agreement on the forms prescribed by the commission. The utility may refuse to connect or may disconnect the customer's facility if such application has not been received and approved.

(f) Incremental demand charges. During the term of an interconnection agreement a utility may require that a customer disconnect its distributed generation unit and/or take it off-line as a result of utility system conditions described in subsection (e)(3) and (4) of this section. Incremental demand charges arising from disconnecting the distributed generator as directed by company during such periods shall not be assessed by company to the customer.

(g) Pre-interconnection studies for non-network interconnection of distributed generation. A utility may conduct a service study, coordination study or utility system impact study prior to interconnection of a distributed generation facility. In instances where such studies are deemed necessary, the scope of such studies shall be based on the characteristics of the particular distributed generation facility to be interconnected and the utility's system at the specific proposed location. By agreement between the utility and its customer, studies related to interconnection of on-site distributed generation on the customer's premises may be conducted by a qualified third party.

(1) Distributed generation facilities for which no pre-interconnection study fees may be charged. A utility may not charge a customer a fee to conduct a pre-interconnection study for pre-certified distributed generation units up to 500 kW that export not more than 15% of the total load on a single radial feeder and contribute not more than 25% of the maximum potential short circuit current on a single radial feeder.

(2) Distributed generation facilities for which pre-interconnection study fees may be charged. Prior to the interconnection of a distributed generation facility not described in paragraph (1) of this subsection, a utility may charge a customer a fee to offset its costs incurred in the conduct of a pre-interconnection study. In those instances where a utility conducts an interconnection study the following shall apply:

(A) The conduct of such pre-interconnection study shall take no more than four weeks;

(B) A utility shall prepare written reports of the study findings and make them available to the customer;

(C) The study shall consider both the costs incurred and the benefits realized as a result of the interconnection of distributed generation to the company's utility system; and

(D) The customer shall receive an estimate of the study cost before the utility initiates the study.

(h) Network interconnection of distributed generation. Certain aspects of secondary network systems create technical difficulties that may make interconnection more costly to implement. In instances where customers request interconnection to a secondary network system, the utility and the customer shall use best reasonable efforts to complete the interconnection and the utility shall utilize the following guidelines:

(1) A utility shall approve applications for distributed generation facilities that use inverter-based protective functions unless total distributed generation (including the new facility) on affected feeders represents more than 25% of the total load of the secondary network under consideration.

(2) A utility shall approve applications for other on-site generation facilities whose total generation is less than the local customer's load unless total distributed generation (including the new facility) on affected feeders represents more than 25% of the total load of the secondary network under consideration.

(3) A utility may postpone processing an application for an individual distributed generation facility under this section if the total existing distributed generation on the targeted feeder represents more than 25% of the total load of the secondary network under consideration. If that is the case, the utility should conduct interconnection and

network studies to determine whether, and in what amount, additional distributed generation facilities can be safely added to the feeder or accommodated in some other fashion. These studies should be completed within six weeks, and application processing should then resume.

(4) A utility may reject applications for a distributed generation facility under this section if the utility can demonstrate specific reliability or safety reasons why the distributed generation should not be interconnected at the requested site. However, in such cases the utility shall work with the customer to attempt to resolve such problems to their mutual satisfaction.

(5) A utility shall make all reasonable efforts to seek methods to safely and reliably interconnect distributed generation facilities that will export power. This may include switching service to a radial feed if practical and if acceptable to the customer.

(i) Pre-Interconnection studies for network interconnection of distributed generation. Prior to charging a pre-interconnection study fee for a network interconnection of distributed generation, a utility shall first advise the customer of the potential problems associated with interconnection of distributed generation with its network system. For potential interconnections to network systems there shall be no pre-interconnection study fee assessed for a facility with inverter systems under 20 kW. For all other facilities the utility may charge the customer a fee to offset its costs incurred in the conduct of the pre-interconnection study. In those instances where a utility conducts an interconnection study, the following shall apply:

(1) The conduct of such pre-interconnection studies shall take no more than four weeks;

(2) A utility shall prepare written reports of the study findings and make them available to the customer;

(3) The studies shall consider both the costs incurred and the benefits realized as a result of the interconnection of distributed generation to the utility's system; and

(4) The customer shall receive an estimate of the study cost before the utility initiates the study.

(j) Communications concerning proposed distributed generation projects. In the course of processing applications for interconnection and parallel operation and in the conduct of pre-interconnection studies, customers shall provide the utility detailed information concerning proposed distributed generation facilities. Such communications concerning the nature of proposed distributed generation facilities shall be made subject to the terms of §25.84 of this title (relating to Annual Reporting of Affiliate Transactions for Electric Utilities), §25.272 of this title (relating to Code of Conduct for Electric Utilities and their Affiliates), and §25.273 of this title (relating to Contracts between Electric Utilities and their Competitive Affiliates). A utility and its affiliates shall not use such knowledge of proposed distributed generation projects submitted to it for interconnection or study to prepare competing proposals to the customer that offer either discounted rates in return for not installing the distributed generation, or offer competing distributed generation projects.

(k) Equipment pre-certification.

(1) Entities performing pre-certification. The commission may approve one or more entities that shall pre-certify equipment as defined pursuant to this section.

(2) Standards for entities performing pre-certification. Testing organizations and/or facilities capable of analyzing the function, control, and protective systems of distributed generation units may request to be certified as testing organizations.

(3) Effect of pre-certification. Distributed generation units which are certified to be in compliance by an approved testing facility or organization as described in this subsection shall be installed on a company utility system in accordance with an approved interconnection control and protection scheme without further review of their design by the utility.

(l) Designation of utility contact persons for matters relating to distributed generation interconnection.

(1) Each electric utility shall designate a person or persons who will serve as the utility's contact for all matters related to distributed generation interconnection.

(2) Each electric utility shall identify to the commission its distributed generation contact person.

(3) Each electric utility shall provide convenient access through its internet web site to the names, telephone numbers, mailing addresses and electronic mail addresses for its distributed generation contact person.

(m) Time periods for processing applications for interconnection and parallel operation. In order to apply for interconnection the customer shall provide the utility a completed application for interconnection and parallel operation. The interconnection of distributed generation shall take place within the following schedule:

(1) For a facility with pre-certified equipment, interconnection shall take place within four weeks of the utility's receipt of a completed application.

(2) For other facilities, interconnection shall take place within six weeks of the utility's receipt of a completed application.

(3) If interconnection of a particular facility will require substantial capital upgrades to the utility system, the company shall provide the customer an estimate of the schedule and customer's cost for the upgrade. If the customer desires to proceed with the upgrade, the customer and the company will enter into a contract for the completion of the upgrade. The interconnection shall take place no later than two weeks following the completion of such upgrades, except in situations in which a customer is not able to connect within two weeks following the completion of such upgrades, this time may be extended by agreement of the electric utility and the customer. The utility shall employ best reasonable efforts to complete such system upgrades in the shortest time reasonably practical.

(4) A utility shall use best reasonable efforts to interconnect facilities within the time frames described in this subsection. If in a particular instance, a utility determines that it cannot interconnect a facility within the time frames stated in this subsection, it will notify the applicant in writing of that fact. The notification will identify the reason or reasons interconnection could not be performed in accordance with the schedule and provide an estimated date for interconnection.

(5) All applications for interconnection and parallel operation shall be processed by the utility in a non-discriminatory manner. Applications shall be processed in the order that they are received. It is recognized that certain applications may require minor modifications while they are being reviewed by the utility. Such minor modifications to a pending application shall not require that it be considered incomplete and treated as a new or separate application.

(n) Reporting requirements. Each electric utility shall maintain records concerning applications received for interconnection and parallel operation of distributed generation. Such records will include the name of the applicant, the business address of the applicant, and the location of the proposed facility by county, the capacity rating of the facility in kilowatts, whether the facility is a renewable energy resource

as defined in §25.173 of this title (relating to Goal for Renewable Energy), the date each application is received, documents generated in the course of processing each application, correspondence regarding each application, and the final disposition of each application. The owner of a distributed generation facility that is interconnected under this section shall report to the utility any change in ownership of the facility and the cessation of operations of a facility within 14 days of such change. By March 30 of each year, every electric utility shall file with the commission a distributed generation interconnection report for the preceding calendar year that identifies each distributed generation facility interconnected with the utility's distribution system. The report shall list the new distributed generation facilities interconnected with the system since the previous year' report, any change in ownership or the cessation of operations of any distributed generation that has been reported to the electric utility and not included in the previous report, the capacity of each facility and whether it is a renewable energy resource, and the feeder or other point on the company's utility system where the facility is connected. The annual report shall also identify all applications for interconnection received during the previous one-year period, and the disposition of such applications.

(o) Distributed natural gas generation facility. This subsection, as well as the other subsections of this section, apply to a distributed natural gas generation facility. This subsection does not require an electric cooperative to transmit electricity to a retail point of delivery in the certificated area of the electric cooperative if the electric cooperative has not adopted customer choice. If there is a conflict between this subsection and another subsection of this section, this subsection controls.

(1) Transmission.

(A) Electric utilities. At the request of the owner or operator of a distributed natural gas generation facility, an electric utility shall allow the owner or operator of the facility to interconnect with and use transmission and distribution facilities to transmit electricity to another entity that is acceptable to the owner or operator in accordance with this section and the commission's rules for open-access comparable transmission service for electric utilities in ERCOT, §§25.191 - 25.203 of this title, or a tariff approved by the Federal Energy Regulatory Commission (FERC).

(B) Electric cooperatives. At the request of the owner or operator of a distributed natural gas generation facility, an electric cooperative shall allow the owner or operator of the facility to use transmission and distribution facilities to transmit the electric power to another entity that is acceptable to the owner or operator in accordance with the commission's rules for open-access comparable transmission service for electric utilities in ERCOT, §§25.191 - 25.203 of this title, or a tariff approved by FERC.

(2) Interconnection Disputes. If an electric utility or electric cooperative seeks to recover from the owner or operator of a distributed natural gas generation facility an amount that exceeds the amount in the estimate provided under PURA §35.036(e) by more than 5%, the commission shall resolve the dispute at the request of the owner or operator of the facility.

(p) Agreement for Interconnection and Parallel Operation of Distributed Generation.
Figure: 16 TAC §25.211(p)

(q) Tariff for Interconnection and Parallel Operation of Distributed Generation.
Figure: 16 TAC §25.211(q)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Adriana A. Gonzales
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## 16 TAC §25.213

The Public Utility Commission of Texas (commission) adopts amendments to §25.213, relating to Metering for Distributed Renewable Generation and Certain Qualifying Facilities, with changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6459). The amendments modify §25.213 by conforming it to Public Utility Regulatory Act (PURA) §39.554 and the definition of distributed renewable generation owner in §25.217 of this title. The amendments also provide for net metering for an electric utility subject to PURA Chapter 39, Subchapter L. These amendments are adopted under Project Number 41326.

The commission received comments on the proposed amendments from Mr. Robert Moss, a distributed renewable generation owner (DRGO), El Paso Electric Company (EPE), and the Texas Industrial Energy Consumers (TIEC).

*General Comments*

EPE supported all of the proposed changes to the rule as consistent with PURA §39.554.

TIEC proposed that to be consistent with the statute, the commission add a new provision to proposed §25.213(c) that is virtually identical to the language in PURA §39.554(h) in order to ensure that any unrecovered costs resulting from the distributed renewable generation (DRG) metering are not shifted to other customers in other classes. They stated that the Legislature included this language in Senate Bill (SB) 1910 to protect against cost-shifting from participating to non-participating customer classes. TIEC contended that the possibility of cost-shifting arises because a meter that spins in both directions can "erase" customer consumption from periods of high demand on the system when higher-cost generation may have been used to serve the customer's load. They argued that if the customer's DRG facility provides energy to the utility's system during low-demand/low-cost periods, the utility will incur unrecovered costs unless the rates of some other customers are increased. Further, TIEC asserted, some consumption-based rates are set to recover fixed costs, such as distribution system costs, which cannot be "erased" by the output of a DRG facility. Finally, TIEC claimed that DRG installations require that the utility make incremental metering and infrastructure investments that TIEC maintained should be borne by the customers with the installations. TIEC stated that PURA §39.554(h) provides that these cost-shifting issues be isolated to within the customer classes that include DRGOs. TIEC recommended that its paraphrasing of the statutory language be explicitly included in the rule. EPE commented that it does not object to TIEC's proposed addition.

However, it stated that the statutory language is sufficient and does not need to be repeated in the rule.

*Commission response*

The commission must comply with PURA §39.554(h) regardless of whether its requirements are included in a rule. In addition, PURA §39.554(h) addresses only base rate and fuel cost recovery proceedings, whereas this rule addresses metering. The commission therefore declines to adopt TIEC's proposed language because it is unnecessary and does not fall within the scope of the rule.

*Subsection (c)*

Mr. Moss suggested that the word "customer" be replaced with the words "distributed renewable generation owner." Mr. Moss argued that only by doing so will the commission meet the legislative requirement to provide DRGOs in an area subject to Subchapter L the additional metering option described in PURA §39.554(e).

EPE responded that the word "customer" is preferable because the company conducts business with customers as it interconnects DRG. EPE stated that the word "customer" is consistent with the intent of the Legislature reflected in PURA §39.554(f)(1), which provides that DRG production would first offset the "owner's consumption." The company observed that it is only the customer who consumes electricity, and thus an offset cannot happen unless "owner" is read as "customer." EPE argued that its reading of the statute flows through to PURA §39.554(g) which provides "(a) credit balance of not more than $50 on the owner's monthly bill may be carried forward onto the owner's next monthly bill." EPE added that if the Legislature had envisioned a utility dealing directly with a third-party owner, PURA would have provided for a different treatment of the credit, such as direct payment to the DRGO.

*Commission response*

The commission declines to change "customer" to "distributed renewable generation owner," as proposed by Mr. Moss. Use of "customer" is more clear because PURA §39.554(a)(2) provides that "'distributed generation owner' means an owner of distributed renewable generation that is a retail electric customer."

*Subsection (c)(4)*

Mr. Moss recommended modifications to the language in this subsection relating to the use of "measured net production" and "measured net consumption". EPE did not agree and responded that the language in the proposed rule is appropriate. The company observed that the original language mirrors the existing language in §25.242(h)(3), which also addresses production from qualifying facilities. In addition, EPE argued that the phrases "measured net production" and "measured net consumption" accurately describe those situations.

*Commission response*

The commission agrees with EPE that the language does not need to be modified. The commission declines to adopt the modifications proposed by Mr. Moss because the use of the phrases "measured net production" and "measured net consumption" accurately reflect the existing language in commission rules and in the statute. The commission declines to adopt the modifications recommended by Mr. Moss.

*Subsection (c)(5)*

Mr. Moss recommended that language be added regarding the reporting requirement in PURA §39.554(g): "The utility shall take reasonable steps to inform the owner of the amount of surplus electricity purchased from the owner in kilowatt hours during the owner's most recent billing cycle." Mr. Moss also recommended a reference to "surplus electricity purchased," rather than "non-firm energy." EPE responded that this recommendation is unnecessary, and the use of the phrase "non-firm energy" is a more complete description of the electricity purchases than the statutory phrase "surplus electricity" because the electricity purchases will be treated as non-firm energy. EPE argued that the customer bill credit satisfies the reporting requirement because it provides information to the customer through the normal course of business.

*Commission response*

The commission agrees with EPE that the use of the phrase "non-firm energy" is a more complete description of electricity purchases, and therefore the commission declines to change this phrase. The commission agrees with Mr. Moss that the proposed rule does not adequately address the reporting requirement. The commission has added language requiring that the utility include in the bill the amount of non-firm energy purchased in kilowatt hours.

All comments, including any not specifically referenced herein, were fully considered by the commission.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §39.101(b)(3), which requires the commission to ensure that customers have access to on-site distributed generation and to providers of energy generation by renewable energy resources; §39.554, which provides for the interconnection of distributed renewable generation by El Paso Electric Company; and §39.916, which generally addresses the interconnection of distributed renewable generation.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 36.003, 38.001, 39.101(b)(3), and 39.554.

*§25.213. Metering for Distributed Renewable Generation and Certain Qualifying Facilities.*

(a) Application. This section applies to transmission and distribution utilities, excluding river authorities; an electric utility subject to Public Utility Regulatory Act (PURA) Chapter 39, Subchapter L; distributed renewable generation owners as defined in §25.217 of this title (relating to Distributed Renewable Generation); and the entity responsible for settlement.

(b) Metering.

(1) Upon request by a customer that has, or is in the process of installing distributed renewable generation with a capacity of less than 50 kilowatts (kW) on the retail electric customer's side of the meter and that desires to measure the generation's out-flow production, an electric utility shall provide metering at the point of common coupling using one or two meters that separately measure both the customer's electricity consumption from the distribution network and the out-flow that is delivered from the customer's side of the meter to the distribution network and separately report each metered value to the transmission and distribution utility. The two metered values shall be separately accounted for by the entity responsible for settlement.

(2) Upon request by a retail electric customer that has, or is in the process of installing distributed renewable generation with a capacity equal to or greater than 50 kW up to 2,000 kW on the retail electric customer's side of the meter, an electric utility shall provide one or two interval data recorders at the point of common coupling that separately measure both the customer's electricity consumption from the distribution network and the out-flow that is delivered from the retail electric customer's side of the meter to the distribution network and separately report each metered value to the transmission and distribution utility. The two metered values shall be separately accounted for by the entity responsible for settlement.

(3) Upon request by a retail electric customer that has, or is in the process of installing distributed renewable generation with a capacity of less than 50 kW on the retail electric customer's side of the meter and that does not desire to measure the generation's out-flow production, an electric utility shall provide metering in accordance with paragraph (1) of this subsection or, at the electric utility's option, install a meter that measures the customer's electricity consumption from the distribution network but does not measure the out-flow that is delivered from the retail electric customer's side of the meter to the distribution network. Unless an existing distributed renewable generation owner requests to have the existing meter replaced, the electric utility may, at its option and expense, replace an existing distributed renewable generation owner's meter with a meter of a type specified in this rule.

(4) Pursuant to the applicable schedule in its tariff, an electric utility shall charge for the customer's electricity consumption from the distribution network as measured by the metering installed pursuant to paragraph (1), (2) or (3) of this subsection.

(5) An electric utility shall not provide metering for purposes of PURA §39.914(d) and PURA §39.916(f), that is inconsistent with paragraph (1), (2) or (3) of this subsection, unless ordered by the commission.

(6) The distributed renewable generation owner shall pay any significant differential cost of the metering.

(7) Electric utilities shall file tariffs for metering under this section within 60 days of its effective date.

(8) Distributed renewable generation owners may begin selling out-flow at any time. Electric utilities are required to comply with paragraphs (1), (2) and (3) of this subsection, as they relate to reporting the two metered values. The entity responsible for settlement is required to accept the meter data provided pursuant to paragraph (1), (2) or (3) of this subsection.

(9) The entity responsible for settlement shall have a process for settlement of electricity consumption and out-flow that reflects time of generation.

(c) Metering Provisions Specific to an Electric Utility Subject to PURA Chapter 39, Subchapter L.

(1) This subsection applies to an electric utility subject to PURA Chapter 39, Subchapter L.

(2) An electric utility shall provide the additional option of interconnection through a single meter that runs forward and backward for a customer that is either:

(A) an apartment house occupied by low-income elderly tenants that qualifies for master metering under Texas Utilities Code §184.012(b) and the distributed renewable generation is reasonably expected to generate not less than 50 percent of the apartment house's annual electricity use; or

(B) has a qualifying facility with a design capacity of 50 kW or less and that uses a renewable energy resource.

(3) The net metering option provided by paragraph (2) of this subsection is available only if the distributed renewable generation or qualifying facility is rated to produce an amount of electricity that is less than or equal to:

(A) the customer's estimated annual kilowatt-hour consumption for a new apartment house or qualifying facility; or

(B) the amount of electricity the customer consumed in the year before installation of the distributed renewable generation or qualifying facility.

(4) Measured net consumption shall be billed under the electric utility's standard tariff schedule applicable to the customer. Measured net production shall be purchased in accordance with §25.217 of this title.

(5) The electric utility shall credit the payments to the customer's monthly electric service bill, and specify in the bill the amount of non-firm energy purchased in kilowatt hours. If the payment for non-firm energy supplied to the electric utility exceeds the total of the owner's monthly electric service bill, a credit balance of not more than $50 shall be carried forward to the owner's next monthly bill. The electric utility shall refund to the customer a credit balance that is not carried forward, or the portion of a credit balance that exceeds $50, if the credit balance is carried forward.

(6) An electric utility shall install, maintain, and retain ownership of the meter(s) and metering equipment installed for purposes of this subsection and may install load research metering equipment on the premises of the owner, at no expense to the owner.

(7) At the request of an electric utility, the customer shall:

(A) provide and install a meter socket, a metering cabinet, or both a socket and cabinet at a location designated by the electric utility on the premises of the owner; and

(B) provide, at no expense to the electric utility, a suitable location for the electric utility to install meters and equipment associated with billing and load research.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 101. ASSESSMENT

### SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

### DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENTS FOR GRADUATION

**19 TAC §§101.3021 - 101.3023**

The Texas Education Agency adopts amendments to §§101.3021 - 101.3023, concerning assessment. The amendments are adopted with changes to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8346). The sections address participation and assessment and cumulative score requirements for graduation. The adopted amendments reflect changes made to the state assessment program by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013.

HB 5, 83rd Texas Legislature, Regular Session, 2013, made changes to the state's assessment graduation requirements. The adopted amendments to 19 TAC Chapter 101, Subchapter CC, Division 2, reflect these changes by stipulating that students must pass the five end-of-course (EOC) assessments listed in the TEC, §39.023(c), in order to graduate; removing the 15% course grade and cumulative score requirements for EOC assessments; and specifying how the English I and II reading and writing assessments taken before spring 2014 can be used for purposes of graduation. Specifically, the following changes are made.

Section 101.3021, Required Participation in Academic Content Area Assessments and Course Grading, is amended to remove the 15% course grade and cumulative course requirements for EOC assessments. In addition, the amendment specifies that only students previously failing an EOC assessment may retake that assessment. Other conforming changes are also made, and the section title is changed to more accurately reflect the updated section.

Due to recent legal clarification concerning the implementation of the new foundation high school program, §101.3021 is amended at adoption to limit the assessment exception in subsection (e) to only those students graduating under the minimum, recommended, or distinguished high school programs as those graduation programs existed prior to the adoption of HB 5, 83rd Texas Legislature, Regular Session, 2013. The exemption also applies to courses for which credit was earned prior to September 1, 2014, by students who will graduate under the foundation high school program.

Section 101.3022, Assessment and Cumulative Score Requirements for the Minimum, Recommended, and Distinguished Achievement High School Programs, is amended to require students to achieve satisfactory performance on the EOC assessments listed in the TEC, §39.023(c), to be eligible to receive a high school diploma regardless of a student's high school program. References to other assessment graduation requirements beyond meeting satisfactory performance on the five required EOC assessments are removed. In addition, subsection (b) is amended to provide flexibility to students affected by the transition from separate reading and writing assessments in English I and II to the new assessments combining reading and writing into one assessment for each course. The adopted amendment maintains the minimum and cumulative score requirements for these subjects to determine whether students met the assessment requirements for the two courses. Students who took separate reading and writing assessments in either course will need to meet the following three criteria in order to fulfill the assessment graduation requirements for that course: pass one assessment (either reading or writing); meet at least the minimum score on the other assessment (either reading or writing); and achieve a combined scale score of 3750 (the phase-in 1 standard), which represents the sum of the scale scores needed to reach Level II for reading (1875) and Level II for writing (1875).

Additionally, the title of §101.3022 is changed to more accurately reflect the updated section.

At adoption, §101.3022 is also amended by adding language in subsection (a) to specify that the standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career. A similar provision was first implemented when §101.3022 was initially adopted. The language was inadvertently omitted in the proposal but is reinstated in subsection (a) at adoption with a revision to specify that the performance standard in place when a student first took an EOC assessment shall apply to all five EOC assessments.

Section 101.3023, Participation, Graduation Assessment, and Cumulative Score Requirements for Students Receiving Special Education Services, is amended to remove references to the cumulative score and 15% course grade requirements. In addition, subsection (e), which addressed assessment requirements for assessments with no alternative version, is removed since each of the five required EOC assessments have an alternative version to be used by eligible students. The title of §101.3022 is changed to more accurately reflect the updated section.

In response to public comment, §101.3023 is amended at adoption in subsection (c) to account for the discontinuation of modified assessments after the 2013-2014 school year. Subsection (c) is further amended to specify that the subsection applies to a student whose individualized education program (IEP) does not indicate the student will be administered an alternate assessment.

The amendments to 19 TAC Chapter 101, Subchapter CC, Division 2, do not address recent statutory changes to the TEC, §28.023, made by Senate Bill 1365, 83rd Texas Legislature, Regular Session, 2013. This legislation specifies that a student in Grade 6 or higher is not required to take an EOC assessment in a subject area for which the student received credit by examination (CBE). By definition, students who receive CBE have not been given formal instruction for that course. In January 2014, the State Board of Education (SBOE) modified provisions in 19 TAC Chapter 74, Curriculum Requirements, Subchapter C, Other Provisions, relating to CBE requirements. CBE rule changes adopted by the SBOE will be evaluated to determine whether further amendments to this subchapter are necessary to be consistent with CBE rule.

The adopted rule actions reduce the procedural and reporting implications that apply to all Texas students with respect to implementation of the state's assessment program.

The adopted rule actions reduce the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students, parent notification, and reporting of results.

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

The public comment period on the proposal began November 22, 2013, and ended December 23, 2013. Following is a summary of the public comment received and corresponding agency response regarding the proposed amendments to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 2, Participation and Assessment and Cumulative Score Requirements for Graduation.

Comment: The Texas School Alliance asked for further clarification in rule regarding the difference between subsections (b) and (c) of §101.3023.

Response: The agency agrees that clarification is needed. In §101.3023, subsection (b) is specific to students with severe cognitive disabilities who shall be administered the STAAR® Alternate assessments. Subsection (c) is specific to those students receiving special education services who are administered the modified form of the assessments. At adoption, subsection (c) was amended to account for the discontinuation of the STAAR® Modified assessments after the 2013-2014 school year. Subsection (c) was further amended to specify that the subsection applies to students whose IEP does not indicate they will be administered a STAAR® Alternate assessment.

The amendments are adopted under Texas Education Code (TEC), §39.023, as amended by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the agency to adopt end-of-course assessment instruments for secondary-level courses identified in the TEC, §39.023(c); TEC, §39.025, as amended by HB 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules requiring a student participating in the recommended or advanced high school program to be administered each end-of-course assessment instrument listed in the TEC, §39.023(c), and requiring a student participating in the minimum high school program to be administered an end-of-course assessment instrument listed in the TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered; HB 5, Section 36, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules requiring a student participating in the foundation high school program under the TEC, §28.025, to be administered each end-of-course assessment instrument listed in the TEC, §39.023(c), beginning with the 2014-2015 school year; and HB 5, Section 79, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt a transition plan to implement the amendments made by HB 5 relating to end-of-course testing requirements during the 2013-2014 and 2014-2015 school years.

The amendments implement the TEC, §39.023 and §39.025, as amended by HB 5, 83rd Texas Legislature, Regular Session, 2013; and HB 5, Sections 36 and 79, 83rd Texas Legislature, Regular Session, 2013.

*§101.3021. Required Participation in Academic Content Area Assessments.*

(a) Beginning with students first enrolled in Grade 9 in the 2011-2012 school year, a student enrolled in a course for which an end-of-course (EOC) assessment exists as required by the Texas Education Code (TEC), §39.023(c), shall take the appropriate assessment.

(b) A student is required to meet the EOC assessment graduation requirements of §101.3022 of this title (relating to Assessment Requirements for Graduation) to receive a Texas diploma if a student:

(1) is participating in a distance-learning or correspondence course as outlined in §74.23 of this title (relating to Correspondence Courses and Distance Learning) for which there is an EOC assessment as listed in the TEC, §39.023(c); or

(2) is participating in a dual-credit course as specified in §74.25 of this title (relating to High School Credit for College Courses) for which there is an EOC assessment as listed in the TEC, §39.023(c).

(c) An EOC assessment administered under the TEC, §39.023(c), cannot be used for purposes of credit by examination as specified in §74.24 of this title (relating to Credit by Examination).

(d) Beginning in the 2011-2012 school year, a student in Grade 8 or lower who takes a high school course for credit is required to take the applicable EOC assessment specified in the TEC, §39.023(c). The EOC assessment result shall be applied toward the student's assessment graduation requirements, as specified in §101.3022 of this title.

(e) If a student earned high school credit for a course for which there is an EOC assessment as listed in the TEC, §39.023(c), prior to enrollment in a Texas public school district and the credit has been accepted by a Texas public school district, or a student completed a course for Texas high school credit in a course for which there is an EOC assessment prior to the 2011-2012 spring administration, the student is not required to take the corresponding EOC assessment as listed in the TEC, §39.023(c). This subsection applies only to:

(1) students who will graduate under the minimum, recommended, or distinguished high school programs as those programs existed before the adoption of House Bill 5, 83rd Texas Legislature, Regular Session, 2013; or

(2) courses for which credit was earned prior to September 1, 2014, by students who will graduate under the foundation high school program.

(f) A student may retake an EOC assessment under the TEC, §39.023(c), only if the student previously failed the EOC assessment. A student is not required to retake a course in order to be administered a retest of an EOC assessment.

*§101.3022. Assessment Requirements for Graduation.*

(a) Beginning with students first enrolled in Grade 9 in the 2011-2012 school year, a student must meet satisfactory performance on each end-of-course (EOC) assessment listed in the Texas Education Code (TEC), §39.023(c), except in cases as provided by subsection (b) of this section and §101.3021(e) of this title (relating to Required Participation in Academic Content Area Assessments), in order to be eligible to receive a Texas diploma. The standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career.

(b) A student who was administered separate reading and writing EOC assessments under the TEC, §39.023(c), for the English I or English II course has met that course's assessment graduation requirement if the student has met the following criteria:

(1) achieved satisfactory performance on either the reading or writing EOC assessment for that course;

(2) met at least the minimum score on the other EOC assessment for that course; and

(3) achieved an overall scale score of 3750 or greater when the scale scores for reading and writing are combined for that course.

(c) Exceptions to subsection (a) of this section related to English I shall apply to English language learners who meet the criteria specified in §101.1007 of this title (relating to Assessment Provisions for Graduation).

(d) If a student failed a course but achieved satisfactory performance on the applicable EOC assessment, that student is not required to retake the assessment if the student is required to retake the course.

*§101.3023. Participation and Graduation Assessment Requirements for Students Receiving Special Education Services.*

(a) As stipulated by §89.1070 of this title (relating to Graduation Requirements), a student receiving special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A, who successfully completes the requirements of his or her individualized education program (IEP), including performance on a state assessment required for graduation, shall receive a Texas high school diploma. A student's admission, review, and dismissal (ARD) committee shall determine if the student will be required to meet satisfactory performance on an assessment for purposes of graduation.

(b) Beginning with the 2011-2012 school year, all Grades 9-12 students with significant cognitive disabilities who are assessed with an alternate assessment as specified in the student's IEP will be assessed using alternate versions of end-of-course (EOC) assessments as listed in §101.3011(b)(2) of this title (relating to Implementation and Administration of Academic Content Area Assessment Instruments).

(c) For the 2011-2012 through 2013-2014 school years, a student who is receiving special education services under the TEC, Chapter 29, Subchapter A, and who is first enrolled in Grade 9 or below in the 2011-2012 school year shall be administered an alternative version of an EOC assessment instrument upon completion of the corresponding course as required by the student's IEP. Beginning with the 2014-2015 school year, a student who is receiving special education services under the TEC, Chapter 29, Subchapter A, whose IEP does not specify the administration of an alternate assessment and who is first enrolled in Grade 9 or below in the 2011-2012 school year shall be administered an EOC assessment instrument upon completion of the corresponding course as required by the student's IEP.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2014.

TRD-201401043
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 25, 2014
Proposal publication date: November 22, 2013
For further information, please call: (512) 475-1497

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# TITLE 22. EXAMINING BOARDS

## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 273. GENERAL RULES

**22 TAC §273.6, §273.14**

The Texas Optometry Board adopts amendments to §273.6 and new §273.14 without changes to the proposed text as published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8757).

The amendments concern an alternate licensing procedure for a spouse of a person serving on active duty as a member of the armed forces of the United States. The amendments to §273.6 delete language which is now included in new §273.14

No comments were received.

The new rule and amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.252, and 351.254, and Senate Bill 162, 83rd Legislature, Regular Session. No other sections are affected.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.252 and §351.254 as setting the requirements for license, and Senate Bill 162, 83rd Legislature, Regular Session, as authorizing the alternate licensing procedure to spouses of persons on active duty with the armed forces.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400965
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: March 23, 2014
Proposal publication date: December 6, 2013
For further information, please call: (512) 305-8502

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### CHAPTER 277. PRACTICE AND PROCEDURE

**22 TAC §§277.1, 277.2, 277.10**

The Texas Optometry Board adopts amendments to §277.1 and §277.2 and new §277.10 without changes to the proposed sections published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8759).

The amendments and new rule add a Remedial Plan as a method to dispose of a complaint.

No comments were received.

The new rule and amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, and §351.509. No other sections are affected.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the

regulation of the optometric profession. The agency interprets §351.509 as authorizing the use of a Remedial Plan to resolve complaints.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400966
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: March 23, 2014
Proposal publication date: December 6, 2013
For further information, please call: (512) 305-8502

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# PART 15. TEXAS STATE BOARD OF PHARMACY

## CHAPTER 291. PHARMACIES

## SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

### 22 TAC §291.32

The Texas State Board of Pharmacy adopts amendments to §291.32, concerning Personnel. The amendments are adopted without changes to the proposed text as published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 8997).

The amendments to §291.32 change the ratio of pharmacists to pharmacy technicians in a Class A pharmacy from 1:3 to 1:4.

Written comments were received as follows: American Pharmacies and Texas Pharmacy Business Council supported the ratio change. The National Association of Chain Drug Stores was discouraged that the ratio was not eliminated but supports the change in the interim. HEB commented that the ratio should be eliminated. The Board has established a task force to further study the issue.

The amendments are adopted under §§551.002, 554.051, and 554.054 of the Texas Pharmacy Act (Chapters 551 - 566, 568, and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the agency to determine the ratio of pharmacists to pharmacy technicians in a pharmacy.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566, 568, and 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2014.

TRD-201401048
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 26, 2014
Proposal publication date: December 13, 2013
For further information, please call: (512) 305-8073

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## SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

### 22 TAC §291.53

The Texas State Board of Pharmacy adopts amendments to §291.53, concerning Personnel. The amendments are adopted without changes to the proposed text as published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 8998).

The amendments to §291.53 change the ratio of pharmacists to pharmacy technicians in a Class B pharmacy from 1:3 to 1:4.

Written comments were received as follows: American Pharmacies and Texas Pharmacy Business Council supported the ratio change. The National Association of Chain Drug Stores was discouraged that the ratio was not eliminated but supports the change in the interim. HEB commented that the ratio should be eliminated. The Board has established a task force to further study the issue.

The amendments are adopted under §§551.002, 554.051, and 554.054 of the Texas Pharmacy Act (Chapters 551 - 566, 568, and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the agency to determine the ratio of pharmacists to pharmacy technicians in a pharmacy.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566, 568, and 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2014.

TRD-201401049
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 26, 2014
Proposal publication date: December 13, 2013
For further information, please call: (512) 305-8073

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## SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

### 22 TAC §291.125

The Texas State Board of Pharmacy adopts amendments to §291.125 concerning Centralized Prescription Dispensing. The

amendments are adopted without changes to the proposed text as published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9000).

The amendments to §291.125 add definitions of central fill pharmacy and outsourcing pharmacy; and allow the central fill pharmacy to be identified on the prescription label by a unique identifier.

Written comments were received from HEB and CVS Caremark supporting the change to the rules.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, 568, and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566, 568, and 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2014.

TRD-201401050
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 26, 2014
Proposal publication date: December 13, 2013
For further information, please call: (512) 305-8073

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## SUBCHAPTER H. OTHER CLASSES OF PHARMACY

### 22 TAC §291.153

The Texas State Board of Pharmacy adopts amendments to §291.153, concerning Central Prescription Drug or Medication Order Processing Pharmacy (Class G). The amendments are adopted without changes to the proposed text as published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9001).

The amendments to §291.153 change the ratio of pharmacists to pharmacy technicians in a Class G pharmacy from 1:6 to 1:8.

Written comments were received as follows: American Pharmacies and Texas Pharmacy Business Council supported the ratio change. The National Association of Chain Drug Stores was discouraged that the ratio was not eliminated but supports the change in the interim. HEB commented that the ratio should be eliminated. The Board has established a task force to further study the issue.

The amendments are adopted under §§551.002, 554.051, and 554.054 of the Texas Pharmacy Act (Chapters 551 - 566, 568, and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the agency to determine the ratio of pharmacists to pharmacy technicians in a pharmacy.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566, 568, and 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2014.

TRD-201401051
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 26, 2014
Proposal publication date: December 13, 2013
For further information, please call: (512) 305-8073

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# PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

## CHAPTER 461. GENERAL RULINGS

### 22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.7, concerning License Statuses, without changes to the proposed text published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6156). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted reflects the change in terminology from "continuing education" to "professional development" set out in the adopted change to Board rule §461.11.

No comments were received regarding the adoption of the amendment.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400970
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 23, 2014
Proposal publication date: September 20, 2013
For further information, please call: (512) 305-7706

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**22 TAC §461.16**

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.16, concerning Inaccurate and False Information in Licensure Application/Documentation and for Annual Licensure Renewal Application/Documentation, without changes to the proposed text published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6157). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted reflects the change in terminology from "continuing education" to "professional development" set out in the adopted change to Board rule §461.11.

No comments were received regarding the adoption of the amendment.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400971
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 23, 2014
Proposal publication date: September 20, 2013
For further information, please call: (512) 305-7706

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## CHAPTER 463. APPLICATIONS AND EXAMINATIONS

**22 TAC §463.30**

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.30, concerning Licensing of Military Spouses and Applicants with Military Experience, with changes to the proposed text published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7600). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comply with Senate Bill 162 and the changes made to Chapter 55 of the Occupations Code by the 83rd Legislature, regarding licensing of military spouses and applicants with military experience.

A general comment was received regarding the adoption of the amendment.

Comment

The Board received one comment in opposition to the proposed amendment from Dr. Margaret Ann (Bonny) Gardner. In general, the opposing comment reflected a belief that reference letters provide added protection to the public by requiring applicants for licensure to undergo close scrutiny by and obtain endorsement from other practicing psychologists when applying for licensure.

Response

The amendment is necessary to comply with Senate Bill 162 and the changes made to Chapter 55 of the Occupations Code by the 83rd Legislature, regarding applicants with military experience. The elimination of the requirement for reference letters from applicants with military experience represents a fair compromise between the licensing standards set out in the Psychologists Licensing Act and Senate Bill 162. The Board does not believe that excepting applicants with military experience from obtaining reference letters, as set out in the proposed rule, presents an unreasonable risk of harm to the public. Furthermore, the Board cannot waive any statutorily mandated licensing criteria, such as examination requirements, in its effort to comply with Senate Bill 162. Thus, the Board declines to withdraw or make any further changes to the proposed amendment.

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

*§463.30. Licensing of Military Spouses and Applicants with Military Experience.*

(a) Military Spouses.

(1) A license may be issued to a military spouse, as defined by Chapter 55, Occupations Code, provided that the following documentation is provided to the Board:

(A) proof of the marriage to the spouse of an active duty member of the armed forces; and

(B) proof that the spouse holds a current license in another state and the licensing requirements for the license in the other state are substantially equivalent to the requirements for the license in Texas; or

(C) proof that within the five years preceding the application date, the spouse held the license in Texas and it expired while the applicant lived in another state for at least six months.

(2) An applicant applying for licensure under paragraph (1) of this subsection must provide documentation from all other states in which the applicant is licensed that indicate that the applicant has received no disciplinary action from those states regarding a mental health license.

(3) Alternative demonstrations of competency to meet the requirements for licensure. The following provisions provide alternative demonstrations of competency to the Board's licensing standards.

(A) Licensed Specialist in School Psychology. A spouse that meets the requirements of paragraph (1)(A) and (B) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and evidence of the required coursework or National Association of School Psychologists certification, and passage of the National School Psychology Examination. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A spouse that meets the requirements of paragraph (1)(A) and (B) of this subsection is considered to have met the following requirements for this type of

license: three reference letters, submission of an official transcript, 450 internship hours, and passage of the Examination for Professional Practice (EPPP) in Psychology at the Texas cut-off. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. A spouse who meets the requirements of paragraph (1)(A) and (B) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and passage of the EPPP at the Texas cut-off. All other requirements for licensure are still required.

(D) Licensed Psychologist. A spouse who meets the requirements of paragraph (1)(A) and (B) of this subsection is considered to have met the following requirements for this type of license: two years of supervised experience. All other requirements for licensure, including the requirements of this paragraph, are still required.

(4) Determination of substantial equivalency for licensing requirements in another state. The applicant must provide to the Board proof that the state in which the applicant is licensed has standards for licensure that are substantially equivalent to the requirements of this Board for the applicable license type:

(A) Licensed Specialist in School Psychology (the license required to provide psychological services in the public schools).

*(i)* The completion of a training program in school psychology approved/accredited by the American Psychological Association or the National Association of School Psychologists or a master's degree in psychology with specific course work as set forth in Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology); and

*(ii)* Passage of the National School Psychology Examination.

(B) Licensed Psychological Associate (the master's level license that requires supervision by a licensed psychologist).

*(i)* Master's degree that is primarily psychological in nature and the degree is at least 42 hours with at least 27 hours in psychology courses; and

*(ii)* Passage of the EPPP at the master's level at 55%.

(C) Provisionally Licensed Psychologist (the doctoral level license that must be supervised by a licensed psychologist).

*(i)* Doctoral degree in psychology; and

*(ii)* Passage of the EPPP at the doctoral level at 70%.

(D) Licensed Psychologist (the doctoral license that is required to practice independently).

*(i)* Doctoral degree in psychology;

*(ii)* Passage of the EPPP at the doctoral level of 70%;

*(iii)* Two years of supervised experience by a licensed psychologist; and

*(iv)* Passage of an oral examination.

(5) Renewal of License Issued to Military Spouse. A license issued to a military spouse under paragraph (1)(A) and (B) of this subsection shall remain active until the licensee's birthdate following a period of one year from the date of issuance of the license, at which time it will be subject to all renewal requirements.

(b) Applicants with Military Experience.

(1) A military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(A) Licensed Specialist in School Psychology. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters, 450 hours of supervised experience. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(D) Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year of post-doctoral supervised experience. All other requirements for licensure are still required.

(2) An applicant with an honorable discharge from the United States military either during the application process or within the three year period preceding the date the application is received by the Board, is considered to have met the requirement for one of the three reference letters.

(3) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400972
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 23, 2014
Proposal publication date: November 1, 2013
For further information, please call: (512) 305-7706

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## CHAPTER 469. COMPLAINTS AND ENFORCEMENT

**22 TAC §469.8**

The Texas State Board of Examiners of Psychologists adopts an amendment to §469.8, concerning Rehabilitation Guidelines, without changes to the proposed text published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6160). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted reflects the change in terminology from "continuing education" to "professional development" set out in the adopted change to Board rule §461.11.

No comments were received regarding the adoption of the amendment.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: September 20, 2013
For further information, please call: (512) 305-7706

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## CHAPTER 470. ADMINISTRATIVE PROCEDURE

### 22 TAC §470.22

The Texas State Board of Examiners of Psychologists adopts an amendment to §470.22, concerning Schedule of Sanctions, without changes to the proposed text published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6160). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted reflects the change in terminology from "continuing education" to "professional development" set out in the adopted change to Board rule §461.11.

No comments were received regarding the adoption of the amendment.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400974
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: September 20, 2013
For further information, please call: (512) 305-7706

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## CHAPTER 471. RENEWALS

### 22 TAC §471.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §471.5, concerning Updated Information Requirements, without changes to the proposed text published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6162). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted reflects the change in terminology from "continuing education" to "professional development" set out in the adopted change to Board rule §461.11.

No comments were received regarding the adoption of the amendment.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400975
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 23, 2014
Proposal publication date: September 20, 2013
For further information, please call: (512) 305-7706

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## CHAPTER 473. FEES

### 22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.3, concerning Annual Renewal Fees (Not Refundable), without changes to the proposed text published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6162). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to cover the costs of staff salary increases and the hiring of an Enforcement Investi-

gator and is necessary to comply with Texas Occupations Code Annotated §§501.152, 501.153 and 501.302 and the Board's bill pattern set out in Texas Senate Bill 1, 83rd Legislature, Regular Session (2013).

No comments were received regarding the adoption of the amendment.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2014.

TRD-201400976
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 23, 2014
Proposal publication date: September 20, 2013
For further information, please call: (512) 305-7706

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# TITLE 28. INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

The Texas Department of Insurance adopts the repeal of 28 TAC §3.3053, concerning non-duplication of benefits provisions in individual accident and health insurance policies, and Subchapter V, 28 TAC §§3.3501 - 3.3511, concerning group coordination of benefits. The repeal is adopted without changes to the proposal published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7834).

REASONED JUSTIFICATION. The repeal of §3.3053 and Subchapter V are necessary because the department is adopting a new Subchapter V, 28 TAC §§3.3501 - 3.3510 (relating to Coordination of Benefits), which contains substantial revisions and more specific guidelines relating to coordination of benefits (COB). The department adopted §3.3053 to be effective in 1977 and amended it to be effective in 1983 and 1984. Repeal of §3.3053, which addresses non-duplication of individual accident and health insurance policies with other policies, is necessary because it is outdated and does not address current industry practices and procedures. Instead, the new Subchapter V will address non-duplication in the context of coordination of benefits in both individual and group products. Repeal of Subchapter V is necessary because the department adopted the current coordination of benefits subchapter in 1994, but it is no longer current with existing practices in the industry and must be substantially revised. The adoption of new Subchapter V, 28 TAC §§3.3501 - 3.3510, is also published in this issue of the *Texas Register.*

HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will result in the elimination of outdated regulations. Adopted new Subchapter V, 28 TAC §§3.3501 - 3.3510 provides more specific guidelines relating to coordination of benefits.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed repeal.

### SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY FOR INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES

#### 28 TAC §3.3053

STATUTORY AUTHORITY. The repeal of §3.3053 is adopted under Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055(b), 1701.060, and 36.001. Section 1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201. Section 1201.101(a) provides that the commissioner must adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale. Section 1201.101(b) provides that rules adopted under Chapter 1201 must establish standards for policy readability and full and fair policy disclosures. Section 1201.101(c)(10) provides that standards established under Chapter 1201 may include standards that address reductions.

Section 1251.008 provides that the commissioner may adopt rules necessary to administer Chapter 1251.

Section 1701.055(b) provides that a form filed under Chapter 1701 that contains a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. It further provides that an order of benefits determination provision may not be approved if the provision violates this code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive.

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under §1701.005(b); and in which particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms. Section 1701.060(b) provides that a rule adopted under this chapter may not be repealed or amended until after the anniversary of the date on which the rule was adopted unless the commissioner determines that repeal or amendment is in the significant and material interests of the citizens of this state or is necessary due to legislative enactment.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: March 25, 2014
Proposal publication date: November 8, 2013
For further information, please call: (512) 463-6327

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## SUBCHAPTER V. GROUP COORDINATION OF BENEFITS

### 28 TAC §§3.3501 - 3.3511

STATUTORY AUTHORITY. The repeals of §§3.3501 - 3.3511 are adopted under Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055(b), 1701.060, and 36.001. Section 1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201. Section 1201.101(a) provides that the commissioner must adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale. Section 1201.101(b) provides that rules adopted under Chapter 1201 must establish standards for policy readability and full and fair policy disclosures. Section 1201.101(c)(10) provides that standards established under Chapter 1201 may include standards that address reductions.

Section 1251.008 provides that the commissioner may adopt rules necessary to administer Chapter 1251.

Section 1701.055(b) provides that a form filed under Chapter 1701 that contains a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. It further provides that an order of benefits determination provision may not be approved if the provision violates this code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive.

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under §1701.005(b); and in which particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms. Section 1701.060(b) provides that a rule adopted under this chapter may not be repealed or amended until after the anniversary of the date on which the rule was adopted unless the commissioner determines that repeal or amendment is in the significant and material interests of the citizens of this state or is necessary due to legislative enactment.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
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## SUBCHAPTER V. COORDINATION OF BENEFITS

### 28 TAC §§3.3501 - 3.3510

The Texas Department of Insurance adopts new Subchapter V, 28 TAC §§3.3501 - 3.3510, concerning coordination of benefits (COB). The new subchapter is adopted with changes to the proposed text published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7834).

REASONED JUSTIFICATION. This new subchapter is adopted to replace one that is repealed in this issue of the *Texas Register.* This adopted new subchapter is necessary to permit carriers to include COB provisions that are consistent with modern market conditions and to maintain, by regulation, a consistent order in which plans with COB provisions must pay their claims. The department adopted the current COB subchapter in 1994. Because the adoption of the existing COB subchapter occurred nearly 20 years ago, this adoption is necessary to address current industry matters and procedures involving a person covered under more than one plan.

Adopting a new subchapter to replace the outdated current subchapter will provide greater efficiency in the processing of claims when a person is covered under more than one plan. The department does not adopt the National Association of Insurance Commissioners' (NAIC) Coordination of Benefits Model Regulation, but the adopted rule is consistent with it, including modifications to the NAIC model adopted in 2013. A majority of the states have adopted versions of the model regulation, and rules that are consistent with the NAIC model will promote market efficiency, especially in the context of multistate plans and carriers operating in multiple states.

COB regulations are also necessary to implement the requirements for a form filed with the department that contains a COB provision. Insurance Code §1701.055(b) provides that a form filed under Chapter 1701 with a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. Section 1701.055(b) further provides that an order of benefits determination provision may not be approved if the provision violates the Insurance Code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive. Insurance Code §1701.060(a) further provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submit-

ted to the department under Chapter 1701 will be reviewed and approved by the commissioner.

In response to a comment, the department revises §3.3502(a)(6), as proposed, to clarify that the new subchapter applies to the medical care components of individual and group long-term care contracts. The department deletes "such as skilled nursing care subject to Insurance Code Chapter 1651." For consistency with this amendment, the department also revises Form COB TX under Figure: 28 TAC §3.3510(d), as proposed, in the definition section, to delete "such as skilled nursing care."

In response to a comment, the department revises the proposed language of §3.3502 to provide additional clarity on the transition to the new rule, including an explicit allowance for immediate implementation of the rule by carriers. Clarifying amendments to §3.3502 relating to transition are also necessary because, under both the proposed and adopted rule, consumers with multiple coverages could temporarily have some coverage with older COB language and other coverage with different COB language that complies with the new rule. The department has revised subsections (c) and (d) of §3.3502 and added new subsections (e) - (g). Because the adopted rule explicitly permits a carrier to comply with this adopted subchapter immediately, the department has modified proposed §3.3502(c) and (d) to address conflicts that may occur due to different implementation dates by different carriers. Specifically, the department revises §3.3502(c) to make the word "subsection" plural and to expand the referenced subsections from "(d)" to "(d) - (f)." Additionally, the department has replaced the bracketed text in the proposed rule with an actual date by which carriers must implement the new rule. The department also revises §3.3502(d) to provide additional transition clarification by deleting the reference to "the effective date of this subchapter" and replacing it with the required implementation date provided in subsection (c). The department adds §3.3502(e) to provide that a carrier in compliance with applicable form requirements may comply with this subchapter prior to its required implementation date. Additionally, the department adds §3.3502(f) to state that if there is a conflict in COB provisions in different coverages during implementation of the new subchapter for purposes of determining which carrier is primary and which is secondary, the prior COB rule will govern. Finally, the department moved part of the language previously included in proposed §3.3502(d) to §3.3502(g), to state, "[t]his subchapter does not apply to individual policies issued before March 25, 2014 that are noncancellable or guaranteed renewable." Government Code §2001.036(a) provides that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state. This new subsection clarifies that new §3.3502(g) refers to the statutory effective date of this new subchapter as opposed to the implementation dates provided in subsections (c) - (f) of this section.

The department, in response to a comment, revises §3.3503(15)(A)(ii), as proposed, to clarify that a plan does not include disability income protection coverage. The department adds, "excluding Disability Income Protection Coverage under §3.3075," because disability income protection is not considered health insurance subject to coordination of benefits. Because of the change to §3.3503(15)(A)(ii), as proposed, the department revises the applicability provision under §3.3502(a)(1) to exclude Disability Income Protection Coverage under §3.3075 and revises Form COB TX under Figure: 28 TAC §3.3510(d) in the definition section, to add "excluding Disability Income Protection Coverage."

Because of the change to §3.3503(15)(A)(ii), as proposed, the department revises Form COB TX under Figure: 28 TAC §3.3510(d), as proposed, in the definition section, to add that a plan does not include "disability income protection coverage."

The adopted amendments to §3.3507(d)(1) as proposed, include nonsubstantive changes in the text to correct punctuation and grammar and to add clarity. Specifically, the department adds "this subparagraph and" to §3.3507(d)(1)(A); adds "subparagraph (C) applies if" to §3.3507(d)(1)(B); and adds "under," and "as applicable" to §3.3507(d)(1)(C). The department deletes "if subparagraph (B) of this paragraph applies, then" in §3.3507(d)(1)(C).

These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice of this rule.

HOW THE SECTIONS WILL FUNCTION. New §3.3501 provides the purpose of the subchapter. New §3.3502 provides the policies, evidences of coverage, and contracts to which this subchapter applies. In addition to the subchapter applying to group, blanket, or franchise accident and health insurance policies under Insurance Code Chapter 1251, excluding Disability Income Protection Coverage under §3.3075; and group health maintenance organization evidences of coverage under Insurance Code §843.002, this new subchapter for COB includes individual health maintenance organization evidences of coverage under Insurance Code §843.002; individual accident and health insurance policies under Insurance Code §1201.001; individual and group preferred provider benefit plans and exclusive provider benefit plans under Insurance Code Chapter 1301; group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care; and the medical care components of individual and group long-term care contracts. Generally, new §3.3502 makes the subchapter applicable to major medical plans regulated by the department and exempts plans that are not regulated by the department or which are generally purchased with the intent that they not coordinate with other coverage. Additionally, this new subchapter applies to individual plans, and permits coordination with individual coverages.

Some individuals have more than one health plan for their health care needs. For this reason, this subchapter includes individual health plans so that each plan pays its share of the expenses for the care received by the person with more than one health plan. While in the past, individuals have not generally maintained more than one major medical insurance policy, changes in the market will likely result in this occurring more often in the future. For instance, 42 USC §300gg-14 extends the age of dependent coverage until the child turns 26 years of age. As a result, individuals up to age 26 are permitted to maintain coverage under their parents' health plans. Also, beginning in 2014, under 42 USC §300gg-1, and subject to certain requirements, each health insurance issuer that offers health insurance coverage in the individual or group market in a state must accept every employer and individual in the state that applies for coverage on a guaranteed issue basis. Without COB provisions applicable to individual coverage, individuals might have an incentive to purchase multiple individual medical policies to have the same claims paid multiple times. For this reason, the new COB subchapter establishes reduction standards that also apply to individual accident and health insurance policies under Insurance Code §1201.101(c)(10).

Insurance Code §1301.134 concerns coordinating payments for preferred provider benefit plans and determining the appropriate payment each health maintenance organization or insurer should make to the physician or health care provider. Insurance Code §1301.134(h) provides that the provisions of §1301.134 may not be waived, voided, or nullified by contract. For this reason, the new COB subchapter applies equally to preferred provider benefit plans and exclusive provider benefit plans.

The new subchapter for COB also applies to group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care. Title 42 USC §300gg-6(a) requires, effective January 1, 2014, that a health insurance issuer that offers health insurance coverage in the individual or small group market ensure that such coverage includes the essential health benefits package required under 42 USC §18022. Pediatric services, including oral and vision, are included as part of the essential health benefit package under 42 USC §18022(b)(1)(J). For this reason, the new COB subchapter includes provisions to clarify that dental benefits that are either embedded in a health benefit plan or attached to a health benefit plan must follow the COB rules.

The new COB subchapter also applies to the medical care components of individual and group long-term care contracts. Insurance Code §1651.051(c)(10) provides that the standards for the provisions of long-term care benefit plans must address reductions. Title 28 TAC §3.3826(a)(6) implements Insurance Code §1651.051(c)(10) to provide that:

(a) No policy or certificate may be delivered or issued for delivery in this state as a long-term care insurance policy or certificate if such policy or certificate limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(6) expenses for services or items available or paid under another long-term care insurance or health insurance policy.

However, 28 TAC §3.3826(a)(6) does not provide for the order of payment when a long-term care insurance plan coordinates its payment when there are expenses for services or items paid under another long-term care insurance or health insurance policy. As previously discussed, Insurance Code §1701.055(b) provides that a form filed under Chapter 1701 with a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. Insurance Code §1701.055(b) further provides that an order of benefits determination provision may not be approved if the provision violates the Insurance Code, a rule of the commissioner, or any other law. For these reasons, this new COB subchapter applies to the medical care components of individual and group long-term care contracts. New §3.3502 also clarifies the dates for applying this new subchapter and resolves conflicts.

New §3.3503 provides the definitions of the following words and terms used in the subchapter: "allowable expense," "allowed amount," "birthday," "carrier," "certificate holder," "claim," "closed panel plan," "Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)," "contract," "coordination of benefits," "custodial parent," "group-type contract," "high-deductible health plan," "hospital indemnity benefits," "plan," "policyholder," "primary plan," and "secondary plan." These definitions are necessary for the proper application of the requirements of the subchapter. The term "plan" is defined to identify those products with which coordination is permitted and not permitted. The term is generally defined to include major medical products whether or not they are regulated by the department, and exclude products that are subject to other coordination requirements or which are generally not intended to be subject to coordination. For example, Insurance Code Chapter 1203 provides the instances in which certain COB provisions are prohibited.

New §3.3504 establishes a general prohibition for when a carrier may not coordinate benefits to reduce the benefits paid under a plan regulated by the proposed new subchapter. This new section clarifies that a carrier is not required to coordinate benefits to reduce the amount it pays, but if it does coordinate benefits, it must comply with the requirements of the subchapter. This section is also consistent with Insurance Code §1701.055(b) which provides that a form filed under Chapter 1701 with a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children. An order of benefits determination provision may not be approved if the provision violates the Insurance Code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive.

New §3.3505 provides examples of expenses that are allowable and expenses that are not allowable. This section is essential to the subchapter as it identifies those expenses that will be considered in the calculation of how much a secondary carrier may reduce what it otherwise would have paid.

New §3.3506 describes the use of the term "plan" in contracts. This section clarifies the parts of a plan that may be coordinated, requires that carriers explain to consumers what plans may be coordinated, and permits limited COB provisions.

New §3.3507 provides the rules for determining the order of benefit payments when a person is covered by two or more plans. This section determines which plan must pay full benefits and which is permitted to reduce its benefits in various situations.

New §3.3508 provides the procedure to be followed by a secondary plan in determining the amount to be paid by the secondary plan on a claim when coordinating benefits. This section determines how much the secondary plan may reduce the benefits it would ordinarily have paid.

New §3.3509 provides miscellaneous provisions concerning the COB that are necessary to clarify and resolve particular issues.

New §3.3510 explains the model COB provision form for use in contracts. New §3.3510 also explains the model form written in plain language to describe the COB process to the covered person. While this form is not required to be used, this section is necessary to explain the form and its permissible use.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter suggests that the department revise the proposed rule to encourage or require the use of electronic data matching between commercial insurers to identify overlapping coverage. The commenter explains that, without sharing proprietary information with marketplace competitors, electronic data matching involves payers collaborating to identify other coverage through mutual data sharing by using an independent third party. Upon identifying a beneficiary with more than one coverage, the commenter states that the other coverage information for that beneficiary is validated and only returned to each of the involved payers.

Response: The department declines to make a change. Because carriers benefit from the coordination of benefits and would presumably benefit from better data matching, the department believes that it is best to allow carriers to pursue those market solutions and business decisions they believe best suit them, rather than imposing requirements by regulation. The department declines to opine on the particular merits of the commenter's proposal for use by carriers.

Comment: A commenter supports the proposed rules establishing new Subchapter V, 28 TAC §§3.3501 - 3.3510, concerning COB. The commenter explains that the proposal is necessary to permit carriers to include COB provisions that are consistent with modern market conditions and to maintain a consistent order in which plans with COB provisions must pay their claims. While the commenter supports the rule, the commenter requests as much flexibility as possible with the effective date. The commenter requests that the department strike §3.3502(d) and amend §3.3502(c) to provide that, "This subchapter applies to individual and group plans that are delivered, issued for delivery, or renewed on or after the rule effective date."

Response: The department agrees in part. The department disagrees with the proposed language, because it would require immediate implementation of the new rule by all carriers. Instead, the adopted section is modified so that a carrier in compliance with applicable filing requirements may comply with the new subchapter requirements prior to the implementation date of the new rule. Under both permitted transition periods in the proposed and the adopted rule, there is a possibility of consumers having policies with different COB language. In light of the comment, the department has modified the adopted section to provide that if there is a conflict between the order of benefit provisions of different plans for purposes of determining which carriers are primary and secondary, then the order of benefit payments will be determined under the prior version of the COB subchapter.

Comment: A commenter cites to the following proposal preamble language, "The proposed new COB subchapter would also apply to the medical care components of individual and group long-term care contracts, such as skilled nursing care subject to Insurance Code Chapter 1651." The commenter further states that the applicability section in proposed §3.3502 includes subsection six which provides for, "the medical care components of individual and group-long term care contracts, such as skilled nursing care subject to Insurance Code Chapter 1651." The commenter further states that subsection seven provides an exemption for "benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, custodial care, or for contracts that pay affixed daily benefit without regard to expenses incurred or the receipt of services."

With respect to "nonmedical services," the commenter requests proposed §3.3502(a)(6) to provide clarification to the interpretation of proposed §3.3502(a)(6) and (b)(7) as follows, "the medical care components of individual and group long term care contracts, such as medical care components of expenses incurred in a skilled nursing facility, subject to Insurance Code Chapter 1651."

Response: In part, the department agrees that the section can be revised to better provide consistent interpretation of §3.3502(a)(6) and (b)(7). To clarify that this new subchapter applies to the medical care components of any type of service or treatment provided under individual and group long-term care contracts, the department has changed §3.3502(a)(6) to delete the example provided in the proposal.

Comment: A commenter requests removing disability income policies from the definition of "plan" under proposed §3.3503(15)(A)(ii). The commenter explains that the limited benefit policies in 28 TAC §3.3079, referenced by proposed §3.3503(15)(A)(ii), include Basic Hospital Expense Coverage, Basic-Medical-Surgical Expense Coverage, and Disability Income Protection Coverage. The commenter states that because the purpose of disability income coverage is not to provide for medical expenses, it does not seem appropriate to include disability income protection coverage as a plan that can be coordinated against under this proposed new subchapter. The commenter further states that while the NAIC does not include or exclude disability income policies under the definition of "plan" in the COB model, in the legislative history discussion, there is an indication that disability income coverage was not included in the exclusion list because the list was "compiled based on what was typically considered health insurance."

Response: The department agrees that disability income protection coverage does not provide medical expenses and is not typically considered health insurance. The department agrees that the definition of "plan" should exclude disability income protection coverage. The department has changed the section accordingly. Because of the change to §3.3503(15)(A)(ii), the department also revises the applicability provision under §3.3502(a)(1) to exclude Disability Income Protection Coverage.

Comment: A commenter supports transparent COB policy provisions and plain language disclosures to ensure that consumers are well-informed about the health insurance products they purchase. The commenter states that proposed §3.3510(d) permits a secondary carrier to treat a primary carrier as a noncompliant plan if the primary carrier fails to provide reasonably requested information. The commenter suggests revising §3.3510(d) to include a time line for the primary carrier to comply and a noninclusive list of information that may trigger the noncompliant designation by the secondary carrier. The commenter explains that the suggested revision will ensure that carriers understand their responsibilities and reduce the risk of unnecessary payment delays for consumers.

Response: The department clarifies that the commenter's reference to §3.3510(d) applies to the informal rule proposal for the coordination of benefits. The department agrees that a carrier to which this chapter applies should provide reasonably requested information to a secondary carrier within a certain time frame after it is requested. However, a change is unnecessary because proposed §3.3509(d) includes a time frame to provide the requested information. It provides, "a carrier to which this subchapter is applicable is required to provide reasonable information to a secondary carrier that is needed to determine the benefits to be paid under this subchapter seven days after it is requested." The department also disagrees that it is necessary to make a change to provide a noninclusive list of information that may trigger the noncompliant designation by the secondary carrier. The department cannot predetermine a list of information that may trigger noncompliance when it is not provided to the secondary carrier. "Reasonable information" will vary with each claim, depending on the information available to the secondary carrier. For these reasons, the department refuses to make a change.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: American Council of Life Insurers, Health Management Systems, Office of Public Insurance Counsel, Texas Association of Health Plans, and Texas Association of Life and Health Insurers.

STATUTORY AUTHORITY. The new sections are adopted under Insurance Code §§843.151, 1201.006, 1201.101, 1251.008, 1301.007, 1651.004, 1651.051, 1701.055(b), 1701.060, and 36.001.

Section 843.151(1) provides that the commissioner may adopt reasonable rules as necessary and proper to implement Chapter 843 and §1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including rules to ensure that enrollees have adequate access to health care services.

Section 843.151(2) provides that the commissioner may adopt reasonable rules as necessary and proper to meet the requirements of federal law and regulations.

Section 1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201.

Section 1201.101(a) provides that the commissioner must adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including required disclosures in connection with the sale. Section 1201.101(b) provides that rules adopted under Chapter 1201 must establish standards for policy readability and full and fair policy disclosures. Section 1201.101(c)(10) provides that standards established under Chapter 1201 may include standards that address reductions.

Section 1251.008 provides that the commissioner may adopt rules necessary to administer Chapter 1251.

Section 1301.007 requires the commissioner to adopt rules as necessary to implement Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Section 1651.004(a) provides that in addition to other rules required or authorized by Chapter 1651, the department may adopt reasonable rules that are necessary and proper to carry out Chapter 1651. Section 1651.004(b) provides that rules adopted under this section must include requirements no less favorable than the minimum standards for long-term care benefit plans adopted in any model laws or regulations relating to minimum standards for benefits for long-term care benefit plans and under federal law.

Section 1651.051(a) requires the commissioner to establish by rule: (1) specific standards for provisions of long-term care benefit plans; and (2) standards for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of those benefit plans. Section 1651.051(b)(1) - (3) provides that the standards are in addition to and must be in accord with applicable laws of this state, including Chapter 1201; applicable federal law; and any rules, regulations, and standards required by federal law. Section 1651.051(c)(10) provides that the standards must address benefit limitations, exceptions, and reductions.

Section 1701.055(b) provides that a form filed under Chapter 1701 that contains a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children, and it further provides that an order of benefits determination provision may not be approved if the provision violates this code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive.

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under §1701.005(b); and particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

*§3.3501. Purpose.*

(a) The purpose of this subchapter is to:

(1) permit carriers to include a coordination of benefits (COB) provision in their plans;

(2) identify plans with which COB is allowed;

(3) establish an order in which plans with a COB provision must pay their claims;

(4) reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that do not have to pay their benefits first; and

(5) provide greater efficiency in the processing of claims when a person is covered under more than one plan.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

*§3.3502. Applicability.*

(a) This subchapter applies to:

(1) group, blanket, or franchise accident and health insurance policies as described by Insurance Code Chapter 1251, excluding Disability Income Protection Coverage under §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage);

(2) individual and group health maintenance organization evidences of coverage as defined by Insurance Code §843.002;

(3) individual accident and health insurance policies as defined by Insurance Code §1201.001;

(4) individual and group preferred provider benefit plans and exclusive provider benefit plans as described by Insurance Code Chapter 1301;

(5) group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care; and

(6) the medical care components of individual and group long-term care contracts.

(b) This subchapter does not apply to:

(1) the Texas Health Insurance Pool as described in Insurance Code Chapter 1506;

(2) workers' compensation insurance coverage;

(3) hospital indemnity coverage benefits or other fixed indemnity coverage;

(4) accident only coverage;

(5) specified disease or specified accident coverage;

(6) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour" or a "to and from school" basis;

(7) benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(8) Medicare supplement policies;

(9) a state plan under Medicaid;

(10) a governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan; or

(11) an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

(c) Except as provided in subsections (d) - (f) of this section, this subchapter applies to individual and group plans that are delivered, issued for delivery, or renewed on or after September 2, 2014.

(d) A contract delivered, issued for delivery, or renewed before September 2, 2014, must be brought into compliance with this subchapter on the next anniversary date or renewal date of the contract, or the expiration of any applicable collective bargaining contract under which it was written.

(e) A carrier in compliance with applicable filing requirements may comply with this subchapter prior to September 2, 2014.

(f) If there is a conflict, due to the implementation transition permitted by subsections (c) - (e) of this section, between the order of benefit provisions of different plans for purposes of determining which carriers are primary and secondary, then the order of benefit payments will be determined under the version of this subchapter that was in effect prior to September 2, 2014.

(g) This subchapter does not apply to individual policies issued before March 25, 2014 that are noncancellable or guaranteed renewable.

*§3.3503. Definitions.*

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

(1) Allowable expense--Except as otherwise provided in §3.3505 of this title (relating to Allowable Expenses), or where a statute requires a different definition, any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

(2) Allowed amount--The amount of a billed charge that a carrier determines to be covered for services provided by a noncontracted health care provider or physician. The allowed amount includes the carrier's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(3) Birthday--Refers only to the month and day in a calendar year and does not include the year in which the individual is born.

(4) Carrier--An entity authorized under the Insurance Code to provide coverage subject to this subchapter, including an insurer, health maintenance organization, group hospital service corporation, or stipulated premium company.

(5) Certificate holder--An insured or enrollee who is covered other than as a dependent under a group plan or a group-type plan.

(6) Claim--A request that benefits be provided or paid. The benefits claimed may be in the form of:

(A) services, including supplies;

(B) payment for all or a portion of the expenses incurred;

(C) a combination of subparagraphs (A) and (B) of this paragraph; or

(D) an indemnification.

(7) Closed panel plan--A plan that provides health benefits to covered persons primarily in the form of services through a panel of health care providers and physicians that have contracted with or are employed by the plan, and that excludes benefits for services provided by other health care providers or physicians, except in cases of emergency or referral by a panel member.

(8) Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)--Coverage provided under a right of continuation under federal law.

(9) Contract--Refers to an insurance policy, insurance certificate, or health maintenance organization evidence of coverage.

(10) Coordination of benefits (COB)--A provision establishing an order in which plans pay their claims and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(11) Custodial parent--

(A) the parent with the right to designate the primary residence of a child by a court order under the Family Code or other applicable law; or

(B) in the absence of a court order, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation.

(12) Group-type contract--A contract that is not available to the public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage.

(13) High-deductible health plan--A high-deductible health plan under §223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and Insurance Code Chapter 1653.

(14) Hospital indemnity benefits--Benefits not related to expenses incurred. This term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(15) Plan--A form of coverage with which coordination is allowed. For purposes of this subchapter:

(A) plan includes:

*(i)* any contract to which this subchapter applies;

*(ii)* limited benefit policies under §3.3079 of this title (relating to Minimum Standards for Limited Benefit Coverage), excluding Disability Income Protection Coverage under §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage);

*(iii)* uninsured arrangements of group or group-type coverage;

*(iv)* the medical benefits coverage in automobile insurance contracts;

*(v)* Medicare or other governmental benefits; as permitted by law; and

*(vi)* group insurance contracts, individual insurance contracts, and subscriber contracts that pay or reimburse for the cost of dental care.

(B) plan does not include:

*(i)* the Texas Health Insurance Pool as described in Insurance Code Chapter 1506;

*(ii)* workers' compensation insurance coverage;

*(iii)* hospital confinement indemnity coverage or other fixed indemnity;

*(iv)* specified disease coverage;

*(v)* supplemental benefit coverage under §3.3080 of this title (relating to Supplemental Coverage) and as described in Insurance Code Chapter 1203;

*(vi)* accident-only coverage;

*(vii)* specified accident coverage;

*(viii)* school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour basis" or on a "to and from school" basis;

*(ix)* benefits provided in long-term care insurance contracts for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

*(x)* Medicare supplement policies;

*(xi)* a state plan under Medicaid;

*(xii)* a governmental plan which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan; or

*(xiii)* an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

(16) Policyholder--The primary insured named in an individual health insurance policy or evidence of coverage.

(17) Primary plan--A plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

(A) the plan either has no order of benefit determination rules, or its rules differ from those permitted by this subchapter; or

(B) all plans that cover the person use the order of benefit determination rules required by this subchapter, and under those rules, the plan determines its benefits first.

(18) Secondary plan--A plan that is not a primary plan.

*§3.3504. General Prohibition.*

A carrier may not coordinate benefits to reduce the benefits paid under a plan regulated by this subchapter in the absence of a COB provision in the contract that meets the requirements of this subchapter. Despite §11.511(1)(B) of this title (relating to Optional Provisions), and subject to the requirements of Insurance Code Chapter 1203 and this subchapter, an HMO group plan may coordinate benefits with an individual or conversion plan.

*§3.3505. Allowable Expenses.*

(a) If a covered person advises a plan that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accord with §223 of the Internal Revenue Code of 1986, the primary high-deductible plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in §223(c)(2)(C) of the Internal Revenue Code of 1986.

(b) An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

(c) Any expense that a health care provider or physician is prohibited from charging a covered person by law or in accord with a contractual agreement is not an allowable expense.

(d) If a person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(e) If a person is covered by two or more plans that do not have negotiated fees and that compute their benefit payments on the basis of usual and customary fees, allowed amounts, relative value schedule reimbursement, or other similar reimbursement methodology, any amount charged by the health care provider or physician in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(f) If a person is covered by two or more plans that provide benefits or services based on negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

(g) If a person is covered by one plan that does not have negotiated fees and that calculates its benefits or services based on usual and customary fees, allowed amounts, relative value schedule reimbursement, or other similar reimbursement methodology and another plan that provides its benefits or services based on negotiated fees, the primary plan's payment arrangement must be the allowable expense for all plans. However, if the health care provider or physician has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the health care provider's or physician's contract permits, that negotiated fee or payment must be the allowable expense used by the secondary plan to determine its benefits.

(h) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs, or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of "allowable

expenses" in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of "allowable expense" must include similar expenses to which COB applies.

(i) When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

(j) The amount of the reduction of benefits under a primary plan may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan because:

(1) the covered person does not comply with the plan provisions concerning second surgical opinions or prior authorization of admissions or services; or

(2) the covered person has a lower benefit because the covered person did not use a preferred health care provider or preferred physician.

*§3.3506. Use of the Term "Plan" in Contracts.*

(a) Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan, and there is no COB among the separate parts of the plan.

(b) If a plan coordinates benefits, its contract must state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in this subchapter. The model COB contract provisions provide an example of how to define "plan" in §3.3510(d) of this title (relating to Model COB Contract Provisions).

(c) A contract may apply one COB provision to certain benefits, such as dental benefits, coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

*§3.3507. Rules for COB and Order of Benefits.*

(a) Coverage by two or more plans. When a person is covered by two or more plans, the rules for determining the order of benefit payments will be determined as provided in paragraphs (1) - (5) of this subsection.

(1) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

(2) A plan may take into consideration the benefits paid or provided by another plan only when, under this subchapter, it is secondary to that other plan.

(3) If the primary plan is a closed panel plan and the secondary plan is not, the secondary plan must pay or provide benefits as if it were the primary plan when a covered person uses a noncontracted health care provider or physician, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(4) When multiple contracts providing coordinated coverage are treated as a single plan under this subchapter, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan must be responsible for the plan's compliance with this subchapter.

(5) If a person is covered by more than one secondary plan, the order of benefit determination rules of this subchapter decide the order in which secondary plans' benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan, that, under the rules of this subchapter, has its benefits determined before those of that secondary plan.

(b) Exception. Except as provided by subsection (c) of this section and §3.3509(b) of this title (relating to Miscellaneous Provisions), a plan that does not contain order of benefit determination provisions that are consistent with this subchapter is always the primary plan unless the provisions of both plans state that the complying plan is primary.

(c) Coverage by membership in a group. Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage must be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(d) Order of benefit determination. Each plan determines its order of benefits using the first of the following rules that apply.

(1) Nondependent or dependent.

(A) Subject to this subparagraph and subparagraph (B) of this paragraph, the plan that covers the person other than as a dependent, for example, as an employee, member, subscriber, policyholder, certificate holder, or retiree, is the primary plan, and the plan that covers the person as a dependent is the secondary plan.

(B) If the person is a Medicare beneficiary, subparagraph (C) of this paragraph applies if, and as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is:

*(i)* secondary to the plan covering the person as a dependent; and

*(ii)* primary to the plan covering the person as other than a dependent, for example, a retired employee.

(C) Under subparagraph (B) of this paragraph, as applicable, the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder, certificate holder, or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

(2) Dependent child covered under more than one plan. Unless there is a court order stating otherwise, plans covering a dependent child must determine the order of benefits using the following rules that apply.

(A) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

*(i)* the plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

*(ii)* if both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(B) For a dependent child whose parents are divorced or are not living together, whether or not they have ever been married:

*(i)* if a court order states that one of the parents is responsible for the dependent child's health care expenses or health care coverage, and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, and that parent's spouse does, then the spouse's plan is the primary plan. This clause must not apply with respect to any plan year during which

benefits are paid or provided before the entity has actual knowledge of the court order provision.

*(ii)* if a court order states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of subparagraph (A) of this paragraph must determine the order of benefits.

*(iii)* if a court order states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of subparagraph (A) of this paragraph must determine the order of benefits.

*(iv)* if there is no court order allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows:

*(I)* the plan covering the custodial parent;

*(II)* the plan covering the custodial parent's spouse;

*(III)* the plan covering the noncustodial parent; then

*(IV)* the plan covering the noncustodial parent's spouse.

(C) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits must be determined, as applicable, under subparagraph (A) or (B) of this paragraph as if the individuals were parents of the child.

(D) For a dependent child who has coverage under either or both parents' plans and has his or her own coverage as a dependent under a spouse's plan, subsection (e) of this section applies.

(E) In the event the dependent child's coverage under the spouse's plan began on the same date as the dependent child's coverage under either or both parents' plans, the order of benefits must be determined by applying the birthday rule in subparagraph (A) of this paragraph to the dependent child's parent(s) and the dependent's spouse.

(3) Active employee, retired, or laid-off employee.

(A) The plan that covers a person as an active employee who is neither laid off nor retired, or as a dependent of an active employee, is the primary plan. The plan that covers that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(B) If the plan that covers the same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee does not conform to the requirements of subparagraph (A) of this paragraph, and as a result, the plans do not agree on the order of benefits, this paragraph does not apply.

(C) This paragraph does not apply if paragraph (1) of this subsection can determine the order of benefits.

(4) COBRA or state continuation coverage.

(A) If a person whose coverage is provided under COBRA or under a right of continuation under state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, or retiree or covering the person as a dependent of an employee, member, subscriber, or retiree is the primary plan, and the plan covering that same person under COBRA or under a right of continuation under state or other federal law is the secondary plan.

(B) If the plan that covers the same person under COBRA or under a right of continuation does not conform to the requirements of subparagraph (A) of this paragraph, and as a result, the plans do not agree on the order of benefits, this paragraph does not apply.

(C) This paragraph does not apply if paragraph (1) of this subsection can determine the order of benefits.

(e) Length of time. If subsection (d) of this section does not determine the order of benefits, the plan that has covered the person for the longer period of time is the primary plan. The plan that has covered the person for the shorter period of time is the secondary plan.

(1) To determine the length of time a person has been covered under a plan, two successive plans must be treated as one if the covered person was eligible under the second plan within 24 hours after the first plan ended.

(2) The start of a new plan does not include:

(A) a change in the amount or scope of a plan's benefits;

(B) a change in the entity that pays, provides, or administers the plan's benefits; or

(C) a change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.

(3) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group must be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

(f) Sharing equally between the plans. If subsections (a) - (e) of this section do not determine the order of benefits, the allowable expenses must be shared equally between the plans.

*§3.3508. Procedure to be Followed by Secondary Plan.*

In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan must calculate the benefits it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by the amount that, when combined with the amount paid by the primary plan, results in the total benefits paid or provided by all plans for the claim equaling 100 percent of the total allowable expense for that claim. In addition, the secondary plan must credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

*§3.3509. Miscellaneous Provisions.*

(a) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. This subsection does not require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

(b) A plan with order of benefit determination rules that comply with this subchapter may coordinate its benefits with a noncompliant plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in this subchapter on the following basis:

(1) if the complying plan is the primary plan, it must pay or provide its benefits first;

(2) if the complying plan is the secondary plan, it must pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In such a situation, the payment must be the limit of the complying plan's liability; and

(3) if the noncompliant plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan must assume that the benefits of the noncompliant plan are identical to its own, and must pay its benefits accordingly. If, within two years of payment, the complying plan receives information as to the actual benefits of the noncompliant plan, it must adjust payments accordingly.

(c) If a noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and applicable state law allows the right of subrogation, as provided in this section, then the complying plan must advance to the covered person, or to an assignee on behalf of the covered person, an amount equal to the difference. However, the complying plan may not advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of such advance, the complying plan must be subrogated to all rights of the covered person against the noncomplying plan, in accord with applicable subrogation provisions. The advance by the complying plan must also be without prejudice to any claim it may have against the noncomplying plan in the absence of subrogation.

(d) A carrier to which this subchapter is applicable is required to provide reasonable information to a secondary carrier that is needed to determine the benefits to be paid under this subchapter seven days after it is requested. Provisions for COB or subrogation may each be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(e) A plan must, in its explanation of benefits provided to covered persons, include the following language, "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

(f) If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans must immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan will be required to pay more than it would have paid had it been the primary plan.

(g) Despite the provisions of this subchapter, a carrier must comply with the prompt pay requirements of Chapter 21, Subchapter T of this title (relating to Submission of Clean Claims).

(h) A contract may not reduce benefits on the basis that:

(1) another plan exists and the covered person did not enroll in that plan;

(2) a person is or could have been covered under another plan, except with respect to Part B of Medicare; or

(3) a person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

(i) No plan may contain a provision that its benefits are "always excess" or "always secondary" to any plan as defined in this subchapter, except in accord with the rules permitted by this subchapter.

(j) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel plan health care provider or physician. COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a health care provider or physician in one of the closed panel plans because the other closed panel plan for which health care providers or physicians were not used has no liability. However, COB may occur during the plan year when the covered person receives emergency services that would have been covered by both plans, and the secondary plan must comply with §3.3508 of this title (relating to Procedure to be Followed by Secondary Plan) to determine the amount it should pay for the benefit.

(k) No plan may use a COB provision, or any other provision that allows it to reduce its benefits based on the existence of any other coverage its insured or enrollee may have that does not meet the definition of plan under this subchapter.

*§3.3510. Model COB Contract Provisions.*

(a) Subsection (d) of this section contains an optional model COB provision form for use in contracts. The use of this model form is subject to the provisions of §3.3509 of this title (relating to Miscellaneous Provisions) and the provisions of §3.3507 of this title (relating to Rules for COB and Order of Benefits).

(b) Subsection (e) of this section contains an optional model plain language description of the COB process that explains to the covered person how health plans will implement COB. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which two or more plans will pay for or provide benefits.

(c) A COB provision or a plain language description does not have to use the words and format shown in the model forms. Changes may be made to fit the language and style of the rest of the contract or to reflect the difference among plans that provide services, pay benefits for expenses incurred, and indemnify. No substantive changes are allowed.

(d) The model COB contract provisions are as follows:
Figure: 28 TAC §3.3510(d)

(e) The model COB notice publication is as follows:
Figure: 28 TAC §3.3510(e)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2014.

TRD-201401026
Sara Waitt
General Counsel
Texas Department of Insurance
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Proposal publication date: November 8, 2013
For further information, please call: (512) 463-6327

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# PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

## CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §133.2, concerning Definitions, §133.240, concerning Medical Payments and Denials, §133.250, concerning Reconsideration for Payment of Medical Bills, and §133.305, concerning MDR (medical dispute resolution) - General. These sections are adopted without changes to the proposed text published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7601). A correction of error was published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 8012) to correct errors in the proposal published November 1, 2013. There was not a request for a public hearing submitted to the Division.

In conjunction with this adoption order, the Division is adopting amendments to 28 TAC §134.110, concerning Reimbursement of Injured Employee for Travel Expenses Incurred; §134.502, concerning Pharmaceutical Services; and §134.600, concerning Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care. The adoption of amendments to §§134.110, 134.502, and 134.600 are also published in this issue of the *Texas Register.*

The Division adopts non-substantive changes throughout the text of §§133.2, 133.250, and 133.305. These non-substantive changes include renumbering subsections for clarity and changing the capitalization of the words "Division" and "Department" to conform to current agency style.

These amendments are necessary to implement Senate Bill 1322 and House Bill 3152, 83rd Legislature, Regular Session, effective September 1, 2013. These amendments are also necessary to implement House Bill 4290, 81st Legislature, Regular Session, effective September 1, 2009, which revises the definitions of "adverse determination" and "utilization review" in Insurance Code Chapter 4201 to include retrospective reviews and determinations regarding the experimental or investigational nature of a service.

These amendments are also necessary for the Division to comply with the requirement of Labor Code §402.00114 to regulate and administer the business of workers' compensation in Texas and ensure that Labor Code Title 5 and other laws regarding workers' compensation are executed. Under Labor Code §402.00116, the Division is required to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the Division.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble. The entire adoption order is part of the reasoned justification for the new sections. The following paragraphs include a detailed, section-by-section description and reasoned justification of all of the amendments necessary to harmonize the amendments with 28 TAC §19.2001 and §19.2017 (Subchapter U), concerning Utilization Reviews for Health Care Provided Under Workers' Compensation Coverage published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 892). Harmonization of these adopted sections with Subchapter U is beneficial because consistency benefits both system participants and injured employees. The adopted amendments to §§133.2, 133.240, and 133.250 are also important for reasons set out in the adoption order of Subchapter U.

The Division adopts these amendments to clarify that: (1) retrospective review of the medical necessity and appropriateness of a health care service is utilization review; (2) the insurance carrier must provide the requesting health care provider a reasonable opportunity to discuss the pending adverse determination, both before the insurance carrier issues the adverse determination on the health care service after retrospective utilization review of the health care service and after a request for reconsideration (appeal) of the adverse determination; and (3) all utilization review under Chapter 133 must be performed by a utilization review agent (URA) certified by or an insurance carrier registered with the Department to perform utilization review in accordance with Insurance Code Chapter 4201 and Subchapter U.

The Division made no changes to the proposed text in response to public comments. No changes to the proposed text materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

Section 133.2 addresses Definitions. New §133.2(1) defines "adverse determination" which corresponds with the definition of the term in 28 TAC §19.2003(b)(1) concerning Definitions. The definition of "adverse determination" clarifies that an adverse determination does not include a determination that health care services are experimental or investigational. Although this clarification is inconsistent with the statutory definition of "adverse determination" in Insurance Code §4201.002(1), it is consistent with Labor Code §408.021 and §413.014. Insurance Code §4201.054, provides that, in the event of a conflict between Insurance Code Chapter 4201 and the Labor Code Title 5, Labor Code Title 5 prevails. Although injured employees under non-network coverage are entitled to experimental or investigational health care, those services must be preauthorized under Labor Code §413.014.

New §133.2(8) defines "reasonable opportunity" which corresponds with the definition of the term in 28 TAC §19.2003(b)(28), that implements the required peer-to-peer discussion requirements under Insurance Code §4201.206.

Amended §133.2(9) defines "retrospective utilization review" which corresponds with the definition of the term in 28 TAC §19.2003(b)(31). A correction of error notice published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 8012) corrected the formatting of §133.2(9) published in the November 1, 2013, issue of the *Texas Register.*

Existing §133.2(a)(8) is deleted because its provisions have expired. Labor Code §413.0115 provides a definition for "informal network" that became obsolete with the expiration of Labor Code §413.011(d-1). Labor Code §413.0115(b) states that "not later than January 1, 2011 each informal network or voluntary network must be certified as a workers' compensation health care network under Chapter 1305, Insurance Code." Labor Code §413.0115 also contains a definition for "voluntary network" which pertains to voluntary workers' compensation health care delivery networks established by insurance carriers under former Labor Code §408.0233, as that section existed before its repeal by Chapter 265, Acts of the 79th Legislature, Regular Session. Labor Code §408.0281 also provides a definition for "informal network" and "voluntary network" which pertains to the provision of pharmaceutical services, enacted by HB 528, 82nd Legislature, Regular Session, effective June 17, 2011.

Existing §133.2(b) is deleted because its effective date is no longer necessary.

Section 133.240 addresses Medical Payments and Denials. Amendments to §133.240 implement Insurance Code §1305.153(f)-(j), harmonize the rule with Subchapter U requirements concerning adverse determinations, and update the definitions for "informal network" and "voluntary network."

Amended §133.240(e) clarifies that the insurance carrier shall send the explanation of benefits to the injured employee when payment is denied because of an adverse determination. The phrase "determined to be unreasonable and/or unnecessary" is deleted and replaced with the term "adverse determination" to correspond with Insurance Code §4201.002(1), 28 TAC §19.2003(b)(1), and new §133.2(1).

Amended §133.240(f)(16) adds the requirement to include the name of the durable medical equipment or home health care services informal or voluntary network. Existing §133.240(f)(16) requires the name of a pharmacy informal or voluntary network to be included on the bill, if applicable. The amendments also add citations to Labor Code §408.0281 and §408.0284. Labor Code §408.0281 provides a definition for "informal network" and "voluntary network" which pertains to the provision of pharmaceutical services and was enacted by HB 528, 82nd Legislature, Regular Session, effective June 17, 2011. Labor Code §408.0284 provides a definition for "informal network" and "voluntary network" which pertains to the provision of durable medical equipment and home health care services and was enacted by SB 1322, 83rd Legislature, Regular Session, effective September 1, 2013.

Amended §133.240(j) clarifies that if a request for reconsideration of an adverse determination is made, the request for reconsideration constitutes an appeal for the purposes of 28 TAC §19.2011.

Amended §133.240 corresponds with the requirements of Insurance Code §1305.153(f)-(j), enacted by HB 3152, 83rd Legislature, Regular Session, effective September 1, 2013. New §133.240(q) requires the insurance carrier to comply with 28 TAC §19.2009, concerning Notice of Determinations Made in Utilization Review, and 28 TAC §19.2010, concerning Requirements Prior to Issuing an Adverse Determination, when denying payment due to an adverse determination. The Division clarifies that for the notice for retrospective review adverse determination required by 28 TAC §19.2009 may be satisfied by including the elements required in the notice in the explanation of benefits required by §133.240(f).

These amendments are also necessary to harmonize this section with the requirements in 28 TAC §19.2010 that require insurance carriers to provide health care providers a reasonable opportunity to discuss the plan of treatment for the injured employee and the pending adverse determination before issuing the adverse determination. Because §133.240(q) pertains to retrospective utilization review, the words "billed health care" have been added to conform to the requirement that health care providers be given a reasonable opportunity to discuss the services under review with the insurance carriers since the services have already been provided.

Existing §133.240(q) is deleted because its effective date is no longer necessary.

Section 133.250 addresses Reconsideration for Payment of Medical Bills. Amended §133.250 harmonizes with Subchapter U requirements concerning requests for reconsideration following an adverse determination and the allowance of a reasonable opportunity for health care providers to discuss the billed health care. The amendments to §133.250 also clarify the requirements for oral and written requests for reconsideration.

Amended §133.250(a) is necessary to correspond with Insurance Code §4201.354, which requires that the procedures for appealing an adverse determination provide that the adverse determination may be appealed orally or in writing. Amended §133.250(a) clarifies that if the health care provider is requesting reconsideration of a bill denied based on an adverse determination, the request for reconsideration constitutes an appeal for the purposes of 28 TAC §19.2011 and may be submitted orally or in writing. Amended §133.250(a) is also necessary to harmonize with 28 TAC §19.2011.

Amended §133.250(d) adds the word "written" to clarify the requirements that apply to written requests for reconsideration and is necessary to distinguish this subsection from new §133.250(e) concerning "oral" requests for reconsideration.

New §133.250(e) is necessary to correspond with Insurance Code §4201.354 and §1305.354 which require procedures for oral appeals of adverse determinations. Section 133.250(e) provides minimum guidelines for oral requests for reconsideration following the denial of health care services based on an adverse determination. New §133.250(e) also corresponds with Insurance Code §4201.054, that requires the Commissioner of Workers' Compensation to regulate a person who performs utilization review of a medical benefit provided under Labor Code Title 5. New §133.250(e) corresponds with Labor Code §402.021(b) that provides that the workers' compensation system must minimize the likelihood of disputes and resolve them promptly and fairly when identified. New §133.250(e) is also necessary to align with 28 TAC §19.2011(a)(3) which provides that an injured employee, the injured employee's representative, or the provider of record may appeal the adverse determination orally or in writing. New §133.250(e) is also consistent with 28 TAC §10.103 concerning workers' compensation network requests for reconsideration. New §133.250(e) additionally provides for a delayed effective date to allow time for insurance carriers to update their procedures.

Amended §133.250(f) adds the word "written" to clarify the requirements that apply when an insurance carrier receives written requests for reconsideration and to distinguish this subsection from new §133.250(e) concerning "oral" requests for reconsideration.

New §133.250(k) is necessary to conform to the requirements of Insurance Code §1305.354(a)(3). New §133.250(k) requires that in any instance where the insurance carrier is questioning the medical necessity or appropriateness of the health care services, the insurance carrier shall comply with the requirements of 28 TAC §19.2010 and §19.2011. New §133.250(k) is also necessary to clarify that the reasonable opportunity to discuss a pending adverse determination required under 28 TAC §19.2011 applies to the issuance of adverse determinations on requests for reconsideration. Because new §133.250(k) pertains to retrospective utilization review, the words "billed health care" have been added to conform to the requirement that the health care providers have a reasonable opportunity to discuss the services under review with the insurance carriers since the services have already been provided. These conforming changes will enable the monitoring of whether a reasonable opportunity for discussion was offered and the collecting of information on peer-to-peer discussion results to ensure compliance with Subchapter U.

Existing §133.250(j) is deleted because its effective date is no longer necessary. With the exception of new §133.250(e), §133.250 will become effective 20 days after the date it is filed in the Office of the Secretary of State in accordance with Government Code §2001.036. New §133.250(e) will apply to oral requests made on or after six months from the effective date of §133.250.

Section 133.305 addresses MDR--General. The definition of the term "adverse determination" in §133.305(a)(1) is deleted because it is redundant to the definition in new §133.2(1).

Amended §133.305(a)(6) adds a citation to Labor Code §408.0281 that provides a definition for "informal network" and "voluntary network" which pertains to the provision of pharmaceutical services and was enacted by HB 528, 82nd Legislature, Regular Session, effective June 17, 2011. Amended §133.305(a)(6) adds a citation to Labor Code §408.0284 because it provides a definition for "informal network" and "voluntary network" which pertains to the provision of durable medical equipment and home health care services and was enacted by SB 1322, 83rd Legislature, Regular Session, effective September 1, 2013.

Amended §133.305(a)(7) adds the word "utilization" for clarity and updates the citation to §133.308 to reflect its current title.

Section 133.2 specifies the meanings of the words and terms when used in Chapter 133, unless the context clearly indicates otherwise. Section 133.240 provides requirements applicable to medical payments and denials. Section 133.250 specifies requirements for reconsideration for payments of medical bills. Section 133.305 provides requirements for medical dispute resolution.

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

General

Comment: Commenters greatly appreciate and support the amendments because they offer enhanced clarity. Commenters believe the amendments harmonize the rules to Subchapter U, promote the delivery of quality health care in a cost-effective manner, require URAs to adhere to reasonable standards for conducting utilization review, and improve communication and cooperation between a provider and URA.

One commenter supports the amendments because they clarify that utilization review includes a retrospective review of the medical necessity and appropriateness of a health care service. The commenter also supports the amendments because they require an insurance carrier to provide the physician a reasonable opportunity to discuss the pending adverse determination both before issuing the adverse determination and after an appeal of the adverse determination.

Agency Response: The Division appreciates the supportive comments.

Comment: One commenter states that the rules make utilization review more burdensome and expensive from an administrative standpoint, which is not the most effective way to satisfy the mandate to control medical costs in the workers' compensation system. The commenter thinks the rules should have been written to follow existing Division rule language and conform to the Labor Code.

Agency Response: The Division asserts that these rules are necessary to implement HB 4290; Insurance Code Chapter 4201, to the extent not in conflict with Labor Code Title 5 or Insurance Code Chapter 1305; and in order to consistently apply utilization review of health care services. Additionally, these rules promote efficient regulation of URAs through the alignment of health and workers' compensation URA certification and registration requirements, utilization review timeframes, and utilization review standards. These rules also align differences in utilization review timeframes and standards within workers' compensation for network and non-network claims.

Comment: One commenter suggests that the best way to conform the current proposed rule changes with Subchapter U is to incorporate the commenter's suggested changes to these proposed rules into Subchapter U.

The commenter objects to the references to other codes and rules and the cross-referencing to other sections of this title because they make it difficult to understand what these sections mean without consulting other material. The commenter recommends that the references be revised to specifically explain what the code or rule referred to actually means. The commenter states the proposed rules are lengthy and complex and they should be self-contained rather than reference other rule sections because this change would ensure that system participants can more readily determine their responsibilities under the rules.

Agency Response: The Division declines to make the suggested changes. Amendments to Title 28 Chapter 19, Subchapter U are outside the scope of the amendments to Chapter 133 included in this adoption. The Division declines to delete the references to other codes and rules because an entity that performs utilization review is required to comply with the cited rules and statutes, and inclusion of the entire text of other rules and statutes would be repetitive. The Division has determined that the rules are more streamlined and easier to understand by including cross-references, and also provides notice of the requirements in other rules and statutes.

§133.2

Comment: A commenter suggests that the amendments to §133.2 be effective no sooner than 45 days after adoption.

Agency Response: The Division declines to make the suggested change to the effective date. The Division has determined that giving stakeholders 20 days to comply from the date the adoption order is filed with the Secretary of State is sufficient. The sections are necessary to implement HB 4290, 81st Legislature, Regular Session, effective September 1, 2009, and to conform with Subchapter U rules adopted effective February 20, 2013.

Comment: Several commenters assert the definition of "adverse determination" in §133.2(1) conflicts with Insurance Code §4201.002(1) and the standards for health care coverage in the Workers Compensation Act. The commenters assert that Insurance Code §4201.054(c) mandates that Title 5 of the Labor Code prevail over Insurance Code Chapter 4201 when there is a conflict. The commenters assert Labor Code §408.021 states that the injured worker is entitled to "all health care reasonably required by the nature of the injury as and when needed," and that the term "health care reasonably required" is defined in Labor Code §401.011(22-a). The commenters assert the proposed language suggests that the standard for entitlement to workers' compensation medical treatment is "medically necessary or appropriate" which is not defined in the Workers' Compensation Act and is subject to an interpretation that could differ from the statutory standard of "health care reasonably required." The commenters suggest deleting the words "medically necessary or appropriate" in the definition and inserting the words "reasonably required" in their place.

Agency Response: The Division declines to make the suggested changes. The phrase "medically necessary or appropriate" is consistent with the definition of "adverse determination" under Insurance Code §4201.002, which defines "adverse determina-

tion" as a determination by a URA that health care services provided or proposed to be provided to a patient are not medically necessary or are experimental or investigational. Also, the phrase "medically necessary or appropriate" is used in 28 TAC §12.5(1), which defines "adverse determination" for purposes of independent review. Introducing the phrase "health care reasonably required" would result in inconsistent definitions of "adverse determination" in the context of utilization review and independent review. Furthermore, nothing may be construed to limit health care reasonably required under Labor Code §408.021. The Division's position is that, based on Labor Code §408.021, an injured employee under both network and non-network coverage is entitled to health care reasonably required by nature of the injury as and when needed.

Comment: A commenter supports §133.2(8)(A) which defines "reasonable opportunity."

Agency Response: The Division appreciates the supportive comment.

Comment: A commenter requests that one working day be further defined in §133.2(8)(A) as at least a 24-hour period in order to give the provider sufficient time to respond to an inquiry from the URA because this change would help ensure that the conversation between the URA and the provider actually takes place.

Agency Response: The Division declines to make the suggested change to the definition of the term "working day." "Working day" is consistent with Insurance Code §4201.002(16) which defines "working day" as "a weekday that is not a legal holiday" and is also consistent with 28 TAC §102.3, concerning Computation of Time, which states that "A working day is any day, Monday-Friday, other than a national holiday as defined by Texas Government Code, §662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th." A 24-hour period would conflict with the statutory definition as one 24-hour period could cover more than one weekday that is not a holiday.

§133.240(q) and §133.250(k)

Comment: Several commenters assert that the phrase "where the insurance carrier is questioning" in §133.240(q) and §133.250(k) is too vague. Commenters state that the Division should replace the phrase "in any instance where the insurance carrier is questioning" with the phrase "prior to the issuance of an adverse determination relating to." Commenters believe when an insurance carrier engages in utilization review, it is questioning the necessity or appropriateness of the health care services. Commenters believe §133.240 should state that prior to issuing an adverse decision, an insurance carrier shall give the health care provider a reasonable opportunity to discuss the services.

Several commenters believe the requirements of Insurance Code §4201.206 only apply to a utilization review agent before issuing an adverse determination and not when the insurance carrier is questioning the medical necessity or appropriateness of health care services. One commenter suggests modifying the language in §133.240(q) because the "reasonable opportunity" requirements of Insurance Code §4201.206 and §4201.456 do not apply to "any instance where the insurance carrier is questioning the medical necessity or appropriateness of the health care services."

Several commenters assert the Division does not have rulemaking authority to expand the reasonable opportunity requirements of the statute to "insurance carriers" or to "any instance" where there is a question of medical necessity.

A commenter suggests modifying §133.240(q) and §133.250(k) by replacing the term "insurance carrier" with "utilization review agent" and changing the language "When denying payment due to an adverse determination" to "When issuing an adverse determination."

Agency Response: The Division declines to make the suggested change. New §133.240(q) and §133.250(k) are consistent with Insurance Code §4201.026 which uses the phrase "who questions the medical necessity or appropriateness." They are also consistent with Subchapter U. The term "insurance carrier" is used in new §133.240(q) and §133.250(k) because an entity that conducts utilization review in the workers' compensation system is required to comply with the applicable statutes and regulations to conduct utilization review. The Division recognizes that the party directly responding to a request for retrospective utilization review may be the insurance carrier if the insurance carrier is a certified utilization review agent or the insurance carrier's utilization review agent. Under the definition of "agent" in §133.2, the system participant who utilizes or contracts with an agent may also be responsible for the administrative violations of that agent.

§133.250

Comment: A commenter thinks §133.250(a) should require all requests for reconsideration be in writing because there needs to be an official record of a request for reconsideration. The commenter believes that permitting oral requests, with no real standards of what is required in the oral request, is an invitation to additional confusion, misunderstandings, delays, and disputes. The commenter suggests §133.250(a) be modified to require that only written requests for reconsideration constitute an appeal for the purposes of §19.2011.

Agency Response: The Division disagrees that §133.250(a) should be modified to only allow written requests for reconsideration. Amended §133.250(a) corresponds with Insurance Code §4201.354 that provides that an adverse determination may be appealed orally or in writing. Amended §133.250(a) is also consistent with the requirements of Insurance Code §1305.354 for workers' compensation network coverage, and is necessary to harmonize with 28 TAC §19.2011.

Comment: A commenter believes that §133.250(a) and (b) are inconsistent because §19.2011 refers to Insurance Code §1305.354 and §134.600 which provide that parties may request an appeal or reconsideration within 30 days from the issuance or receipt of an adverse determination. The commenter thinks the 30-day requirement is inconsistent with §133.250(b) which allows parties up to 10 months from the date of service to submit a request for appeal or reconsideration. The commenter suggests §133.250(b) should exclude utilization review from the 10 month window.

Agency Response: The Division declines to make the suggested change because a request for reconsideration following the issuance of an adverse determination in a network is governed by other rules, including 28 TAC §19.2011(b)(1) and §10.103. Amended §133.250 pertains to retrospective utilization review, while amended §134.600 pertains to prospective and concurrent utilization review. Title 28 TAC §19.2011(b)(1) pertains to network appeals of retrospective review adverse determinations and requires compliance with the 30 day requirement of Insurance Code §1305.354. Title 28 TAC §19.2011(b)(2) pertains to

non-network appeals of retrospective review adverse determinations and requires compliance with 28 TAC §133.250.

Comment: Several commenters believe that the requirements of §133.250(e) which permits oral requests without requiring that the requests be reduced to writing will cause confusion, misunderstandings, delays, and disputes. Commenters suggest requiring that all oral requests for reconsideration be reduced to writing for proper documentation including the date the request was made, identification of the health care services subject to the request, and the documents that provide a rational basis to modify the previous denial or payment.

A commenter believes that §133.250(e) misleads health care providers into believing that the oral requests for reconsideration should go to the insurance carrier and not to the URA that issued the adverse determination. The commenter thinks that §133.250(e) fosters miscommunication between the URA and the health care provider by requiring the insurance carrier to send an acknowledgement letter and list of documents to be submitted. The commenter asserts it is the health care provider, not the URA or insurance carrier, who has superior knowledge of the scope of the request for reconsideration and the documents that provide a rational basis to modify the adverse determination.

A commenter suggests §133.250(e) should be deleted; however, if the Division believes it is necessary to allow oral requests for reconsideration, the burden should not be on the insurance carrier to file written documentation within five working days of the oral request by the medical provider. The commenter believes that placing the burden on the insurer is inappropriate and unfair because it is the medical provider, not the insurer, who is making the request for reconsideration. The commenter states that placing the burden on the carrier does not lessen the potential confusion, delays and disputes that may be generated by permitting oral requests.

A commenter questions what evidence the Division will require for a party to prove its case based on an oral request. The commenter thinks the proposed rule is burdensome as it requires carriers to send each health care provider requestor a letter acknowledging the oral request for reconsideration and when the request was received.

Agency Response: The Division declines to make the suggested changes. Amended §133.250(e) corresponds with Insurance Code §4201.355 which requires that within five working days from the date an appeal is received, a letter acknowledging the date of receipt must be sent to the appealing party with a list of the documents the appealing party must submit for review. The insurance carrier may add language specifying where and to whom the documents should be submitted to avoid miscommunication. Amended §133.250(e) also corresponds with Insurance Code §1305.354 which pertains to the reconsideration of adverse determinations by workers' compensation health care networks. Further, Insurance Code §4201.354 requires that the procedures for appealing an adverse determination must provide that the adverse determination may be appealed orally or in writing and is consistent with the requirements of Insurance Code §1305.354 for workers' compensation network coverage. Amended §133.250(e) is necessary to align with 28 TAC §19.2011(a)(3) which provides that an injured employee, the injured employee's representative, or the provider of record may appeal the adverse determination orally or in writing. Amended §133.250(e) is also consistent with 28 TAC §10.103 concerning workers' compensation network requests for reconsideration.

Comment: One commenter supports amended §133.250(e), which provides that an oral request for reconsideration of an adverse determination must include a substantive explanation in accordance with §133.3 and provide a rational basis to modify the previous denial or payment. The commenter states that this change is appropriate because it aligns the oral request for reconsideration requirements with the written request requirements.

Agency response: The Division appreciates supportive the comment.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: CID Management, Texas Medical Association, and Texas Mutual Insurance Company

For, with changes: Office of Injured Employee Counsel, Property Casualty Insurers Association of America, American Insurance Association, Insurance Council of Texas, and State Office of Risk Management

## SUBCHAPTER A. GENERAL RULES FOR MEDICAL BILLING AND PROCESSING

### 28 TAC §133.2

Amendments to §133.2 are adopted under the Labor Code §§401.011(42-a), 402.00111, 402.00114, 402.00116, 402.00128, 402.061, 408.021, 408.027, 413.011, 413.0115, 413.014; Insurance Code §§4201.002, 4201.206, 4201.054; and Government Code §2001.036.

Labor Code §401.011(42-a) provides that "utilization review" has the meaning assigned by Chapter 4201, Insurance Code. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Labor Code §402.00114 requires the Division to regulate and administer the business of workers' compensation in this state and ensure that Labor Code Title 5 and other laws regarding workers' compensation are executed. Labor Code §402.00116 requires the Commissioner of Workers' Compensation to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the Division. Section 402.00128 vests general operational powers in the commissioner of workers' compensation to conduct daily operations of TDI-DWC and implement policy, including the authority to delegate, assess, and enforce penalties and enter appropriate orders as authorized by Labor Code Title 5. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 408.021, in part, entitles an employee who sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed and specifically entitles the employee to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Section 408.027 provides requirements for payment of health care providers by insurance carriers and requires the commissioner to adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 413.0115 defines "informal network" to mean a health care provider network described by Section 413.011(d-1). Section 413.0115 also provides that "voluntary network" means a voluntary workers' compensation health care delivery network established by an insurance carrier

under former Labor Code §408.0223, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session, 2005. Section 413.014 provides, in part, that division rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for any investigational or experimental services or devices.

Insurance Code §4201.002 provides definitions related to utilization review agents, including the definition of "adverse determination", "utilization review", and "utilization review agent." Section 4201.206 provides that subject to the notice requirements of Chapter 4201, Subchapter G, before an adverse determination is issued by a utilization review agent who questions the medical necessity or appropriateness, or the experimental or investigational nature, of a health care service, the agent shall provide the health care provider who ordered the service a reasonable opportunity to discuss with a physician the patient's treatment plan and the clinical basis for the agent's determination. Section 4201.054 provides that Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201 and Title 5, Labor Code.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2014.

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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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Proposal publication date: November 1, 2013
For further information, please call: (512) 804-4703

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## SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

### 28 TAC §133.240, §133.250

Amendments to §133.240 and §133.250 are adopted under the Labor Code §§402.00111, 402.00114, 402.00116, 402.00128, 402.061, 408.0043, 408.0044, 408.0045, 408.027, 408.0281 and 408.0284; Insurance Code §§1305.153, 1305.354, 4201.354, 4201.355; and Government Code §2001.036.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Labor Code §402.00114 requires the Division to regulate and administer the business of workers' compensation in this state and ensure that Labor Code Title 5 and other laws regarding workers' compensation are executed. Labor Code §402.00116 requires the Commissioner of Workers' Compensation to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the Division. Section 402.00128 vests general operational powers in the commissioner of workers' compensation to conduct daily operations of TDI-DWC and implement policy, including the authority to delegate, assess, and enforce penalties and enter appropriate orders as authorized by Labor Code Title 5. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 408.0043 provides in part that a person, other than a chiropractor or a dentist, who performs health care services as a doctor performing a utilization review of a health care service provided to an injured employee who reviews a specific workers' compensation case must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving. Section 408.0044 provides, in part, that a dentist performing a utilization review of a dental service provided to an injured employee in conjunction with a specific workers' compensation case must be licensed to practice dentistry. Section 408.0045 provides, in part, that a chiropractor performing a utilization review of a chiropractic service provided to an injured employee in conjunction with a specific workers' compensation case must be licensed to engage in the practice of chiropractic. Section 408.027 provides requirements for payment of health care providers by insurance carriers and requires the commissioner to adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 408.0281 defines "informal network" and "voluntary network" for the provision of pharmaceutical services. Section 408.0284 defines "informal network" and "voluntary network" for the provision of durable medical equipment or home health care services.

Insurance Code §1305.153 concerns provider reimbursement in workers' compensation health care networks and provides requirements for contracts and contractual disclosures when a person is serving as both a management contractor or a third party to which the certified network delegates a function and as an agent of the health care provider. Section 1305.354 concerns reconsideration of adverse determinations by workers' compensation health care networks and provides, in part, requirements for the written reconsideration procedures that utilization review agents shall maintain and make available. Section 4201.002 provides definitions related to utilization review agents, including the definition of "adverse determination" and "utilization review agent." Section 4201.354 provides, in part, that adverse determinations may be appealed orally or in writing by an enrollee, a person acting on the enrollee's behalf, or the enrollee's physician or other health care provider. Section 4201.355 provides, in part, that the procedures for appealing an adverse determination must provide that, within five working days from the date the utilization review agent receives the appeal, the agent shall send to the appealing party a letter acknowledging the date of receipt and the letter must also include a list of the documents that the appealing party must submit for review.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state, except that if a later date is required by statute or specified in the rule, the later date is the effective date.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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## SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

### 28 TAC §133.305

Amendments to §133.305 are adopted under the Labor Code §§402.00111, 402.00128, 402.061, 408.0281, 408.0284, 413.011, 413.0115; and Government Code §2001.036.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00128 vests general operational powers in the commissioner of workers' compensation to conduct daily operations of TDI-DWC and implement policy, including the authority to delegate, assess, and enforce penalties and enter appropriate orders as authorized by Labor Code Title 5. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 408.0281 concerns reimbursement for pharmaceutical services and, in part, defines "informal network" and "voluntary network" for the provision of pharmaceutical services. Section 408.0284 concerns reimbursement for durable medical equipment and home health care services and defines, in part, "informal network" and "voluntary network" for the provision of durable medical equipment or home health care services. Section 413.011 provides requirements for reimbursement policies and guidelines, treatment guidelines and protocols, subsections (d-1)-(d-3) of this section have expired. Section 413.0115 concerns requirements for certain voluntary or informal networks and provides, in part, that "informal network" means a health care provider network described by §413.011(d-1). Section 413.0115 also provides, in part that "voluntary network" means a voluntary workers' compensation health care delivery network established by an insurance carrier under former Labor Code §408.0223, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session, 2005.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the office of the secretary of state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §134.110, concerning Reimbursement of Injured Employee for Travel Expenses Incurred; §134.502, concerning Pharmaceutical Services; and §134.600, concerning Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care. These sections are adopted with changes to the proposed text published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7611). There was not a request for a public hearing submitted to the Division.

In conjunction with this adoption order, the Division is adopting amendments to 28 TAC §133.2, concerning Definitions; §133.240, concerning Medical Payments and Denials; §133.250, concerning Reconsideration for Payment of Medical Bills; and §133.305, concerning MDR (medical dispute resolution) - General. The adoption of amendments to §§133.2, 133.240, 133.250, and 133.305 are also published in this issue of the *Texas Register.*

In response to comments on the proposal, the Division made non-substantive changes to proposed §134.600(h). The Division moved the phrase "issue an adverse determination on each request" from the end of the sentence to the middle and deleted "received by the insurance carrier" for clarity. In addition to the changes made as a result of comments, the Division made non-substantive changes including adding the word "the" and the phrase "of the health care services" to §134.600(o)(4) to be consistent with §133.240(q) and §133.250(k). None of the changes made in this adoption to the proposed text materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

In addition, the Division adopts non-substantive changes throughout the text of §§134.110, 134.502 and 134.600. These non-substantive changes include revising references from "carrier" to "insurance carrier" in §134.502; adding the term "utilization" between the terms "concurrent" and "review" in §134.600; renumbering subsections for clarity; changing the capitalization of the words "Division" and "Department"; and deleting the word "Texas" from the phrase "Texas Labor Code" to conform to current agency style.

These amendments are necessary to implement House Bill 4290, 81st Legislature, Regular Session, effective September 1, 2009, which revises the definitions of "adverse determination" and "utilization review" in Insurance Code Chapter 4201 to include retrospective reviews and determinations regarding the experimental or investigational nature of a service.

These amendments are also necessary for the Division to comply with the requirement of Labor Code §402.00114 to regulate and administer the business of workers' compensation in Texas and ensure that Labor Code Title 5 and other laws regarding workers' compensation are executed. Under Labor Code §402.00116, the Division is required to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the Division.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order,

which includes the preamble. The entire adoption order is part of the reasoned justification for the new sections. The following paragraphs include a detailed, section-by-section description and reasoned justification of all of the amendments necessary to harmonize the amendments with 28 TAC §§19.2001 - 19.2017 (Subchapter U), concerning Utilization Reviews for Health Care Provided Under Workers' Compensation Coverage published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 892). Harmonization of these adopted sections with Subchapter U is beneficial because consistency benefits both system participants and injured employees. The adopted amendments to §§134.110, 134.502, and 134.600 are also important for reasons set out in the adoption order of Subchapter U.

The Division adopts these amendments to: (1) define and incorporate current procedural requirements concerning "adverse determinations" and "reasonable opportunity" and (2) reference the requirements for compliance with 28 TAC §19.2009, concerning Notice of Determinations Made in Utilization Review. The adopted amendments to §134.110 implement Labor Code §408.004 and §408.0041. Labor Code §408.004(c) pertains to medical examinations that injured employees may be required to submit to and requires insurance carriers to pay for those examinations and the reasonable expenses incident to the employees submitting to those examinations. Labor Code §408.0041(h) requires insurance carriers to pay for designated doctor examinations described in Labor Code §408.0041(a), (f), and (f-2), unless it is otherwise prohibited by law, and the reasonable expenses incident to the employee in submitting to the examination.

Section 134.110 addresses Reimbursement of Injured Employee for Travel Expenses Incurred. Amended §134.110(a) adds a new paragraph (2) that provides that an injured employee may request reimbursement from the insurance carrier if the injured employee has incurred travel expenses when the distance traveled to attend a designated doctor examination, required medical examination, or post designated doctor treating or referral doctor examination is greater than 30 miles one-way. Amended §134.110(a)(2) is necessary to implement Labor Code §408.004 and §408.0041. Labor Code §408.004(c), in part, requires insurance carriers to pay for certain required injured employee medical examinations and the reasonable expenses incident to the employees submitting to those examinations. Labor Code §408.0041(h), in part, requires insurance carriers to pay for certain designated doctor examinations and the reasonable expenses incident to the employee in submitting to the examination.

Amended §134.110(a)(2) is also necessary to align with 28 TAC §126.6 and §126.17, concerning Required Medical Examination and Guidelines for Examination by a Treating Doctor or Referral Doctor After a Designated Doctor Examination to Address Issues Other Than Certification of Maximum Medical Improvement and the Evaluation of Permanent Impairment, respectively. Title 28 TAC §126.6 requires injured employees to submit to required medical examinations and requires insurance carriers to pay for reasonable travel expenses incurred by the employees in submitting to required medical examinations, as specified in 28 TAC Chapter 134 concerning Benefits--Guidelines for Medical Services, Charges, and Payments. Title 28 TAC §126.17 requires the insurance carriers to reimburse injured employees for all reasonable travel expenses as specified in 28 TAC Chapter 134, Subchapter B, concerning Miscellaneous Reimbursement. Amended §134.110(a)(2) is necessary to reimburse injured employees for travel expenses incurred for post designated doctor treating or referral doctor examinations more than 30 miles away.

Existing subsection (g) of §134.110 is deleted because its effective date is no longer necessary.

Section 134.502 addresses Pharmaceutical Services. Amended §134.502(b) clarifies the existing requirement that doctors shall prescribe drugs in accordance with 28 TAC §134.530 and §134.540, concerning Requirements for Use of the Closed Formulary for Claims Not Subject to Certified Networks and Requirements for Use of the Closed Formulary for Claims Subject to Certified Networks, respectively. Title 28 TAC §134.530 and §134.540 were adopted effective January 17, 2011 (35 TexReg 11344).

Amended §134.502(d) changes the term "pharmacists" to the phrase "pharmacies and pharmacy processing agents" for consistency with Labor Code §413.0111, relating to processing agents. Amended §134.502(d) is also consistent with 28 TAC §133.307, concerning MDR of Fee Disputes, and 133.10, concerning Required Billing Forms/Formats. Title 28 TAC §133.307 allows qualified pharmacy processing agents to be requestors in medical fee disputes over the reimbursement of medical bills. Title 28 TAC §133.10 contains required billing forms and formats for pharmacies and pharmacy processing agents.

Amended §134.502(d) also changes the outdated citation from 28 TAC §134.800(d) to 28 TAC Chapters 133 and 134. Title 28 TAC §134.800 pertained to required billing forms and information prior to its repeal on May 2, 2006. Required billing forms and information are now codified in 28 TAC Chapter 133, concerning General Medical Provisions and 28 TAC Chapter 134, concerning Benefits--Guidelines for Medical Services, Charges, and Payments.

Amended §134.502(e) and (g) change the term "reasonableness or medical necessity" to "adverse determination" for consistency with the definition of the term "adverse determination" in Insurance Code §4201.002(1) and the injured employee's entitlement to all healthcare reasonably required under Labor Code §408.021(a). Amended §134.502(e) and (g) also correspond with the definition for "adverse determination" in 28 TAC §19.2003(b)(1) and the definition in new §134.600(a)(1).

Amended §134.502(f) deletes the word "working" so that the prescribing doctor is required to provide a statement of medical necessity to the requesting party no later than the 14th calendar day after receipt of the request. This change is necessary because the provision of 14 working days delays the receipt of statements of medical necessity from prescribing doctors by pharmacy billing managers and pharmacy processing agents who are required to comply with timeframes contained in Division rules. System participants will be able to more easily monitor the timeframe to provide a statement of medical necessity under the rule for compliance purposes.

Amended §134.502(g) updates the citation from 28 TAC §133.304 to 28 TAC §133.240 because 28 TAC §133.304, concerning Medical Payments and Denials was repealed and re-codified as 28 TAC §133.240, concerning Medical Payments and Denials, in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3544), effective May 2, 2006.

Section 134.600 addresses Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care. Amended §134.600 adds the term "utilization" between the terms "concurrent" and "review" in the title of §134.600 and in §134.600(a)(3), (a)(5), (a)(10), (c)(1)(C), (e), (f), (i)(2), (l), (o), (o)(2)(B), (q), (r), and (t) to conform to the term "concurrent utilization review" in 28 TAC §19.2003(b)(8).

Amended §134.600 adds new (a)(1) which defines "adverse determination" to correspond with the definition in 28 TAC §19.2003(b)(1). However, the definition of "adverse determination" in 134.600(a)(1) deviates from the statutory definition of "adverse determination" in Insurance Code §4201.002(1) concerning Definitions. The Division must exclude "experimental or investigational services" from the definition of "adverse determination," because Labor Code §408.021 entitles an injured employee subject to either network coverage or non-network coverage to all medically necessary health care services, including experimental and investigational health care services. Pursuant to Insurance Code §4201.054(c), Labor Code Title 5 prevails if it conflicts with Insurance Code Chapter 4201. The Division also notes that experimental or investigational health care services for injured employees subject to non-network coverage must be preauthorized pursuant to Labor Code §413.014 and an adverse determination may not be issued solely because the health care is experimental or investigational.

Amended §134.600(a)(3) clarifies that concurrent utilization review is a form of utilization review to implement Insurance Code Chapter 4201 and to correspond with the definition for "concurrent utilization review" in 28 TAC §19.2003(b)(8).

Amended §134.600(a)(8) changes the definition of "preauthorization" in existing §134.600(a)(8) to correspond with the definition in 28 TAC §19.2003(b)(26).

Amended §134.600 adds new (a)(9) which defines "reasonable opportunity" to implement Insurance Code §4201.206 and to correspond with 28 TAC §19.2003(b)(28).

Amended §134.600(e) adds the requirement that insurance carriers and utilization review agents comply with the requirements of 28 TAC §19.2012 to clarify the combined applications of 28 TAC §134.600(e), §19.2012, and Chapter 134, Subchapter F, concerning Pharmaceutical Benefits. Title 28 TAC §19.2002(b)(3) provides that if there is a conflict between Subchapter U, including §19.2012, and rules adopted by the commissioner of workers' compensation, the rules adopted by the commissioner of workers' compensation prevail. Amended §134.600(e) applies to insurance carriers and utilization review agents who are required to have and implement procedures when responding to requests for drugs that require preauthorization if the injured employee has received or is currently receiving the requested drugs and the adverse determination could lead to a medical emergency. Amended §134.600(e) deletes the phrase "by the insurance carrier" because the Division recognizes that the party directly responding to requests for preauthorization may be the insurance carrier if the insurance carrier is a certified utilization review agent or the insurance carrier's utilization review agent.

Amended §134.600(g)(3) deletes the phrase "medical necessity and/or" to correspond with the definition of "adverse determination" in Insurance Code §4201.002(1) and Subchapter U. Amended §134.600(g)(3) - (5), (h), (i), (m), (o), (o)(1) - (2), (o)(5), and (t) add the term "adverse determination" to conform to Insurance Code §4201.002(1) and Subchapter U and delete the outdated terminology referring to denials.

Additionally, amended §134.600(g)(3), (g)(4) and (g)(5) make non-substantive changes of the term "injury/diagnosis" to "injury or diagnosis." Section 134.600(g)(3) requires that if denying the request, the insurance carrier shall indicate whether it is issuing an adverse determination, and/or whether the denial is based on an unrelated injury or diagnosis in accordance with §134.600(m) of this section.

Amended §134.600(g)(4) allows the requestor or injured employee to file an extent of injury dispute upon receipt of an insurance carrier's response which includes a denial due to an unrelated injury or diagnosis, regardless of whether an adverse determination was also issued. Amended §134.600(g)(4) is necessary for consistency with the definition of the term "adverse determination" in Insurance Code §4201.002(1) and to correspond with 28 TAC §19.2003(b)(1).

Amended §134.600(g)(5) provides that requests which include a denial due to an unrelated injury or diagnosis may not proceed to medical dispute resolution based on the denial of unrelatedness. However, requests which include the dispute of an adverse determination may proceed to medical dispute resolution for the issue of medical necessity in accordance with §134.600(o) of this section. Amended §134.600(g)(5) is necessary for consistency with the definition of the term "adverse determination" in Insurance Code §4201.002(1) and to correspond with 28 TAC §19.2003(b)(1).

Amended §134.600(h) requires the insurance carrier to "either approve or issue an adverse determination on each request based solely on the medical necessity of the health care required to treat the injury..." for consistency with the definition of the term "adverse determination" in Insurance Code §4201.002(1) and to correspond with 28 TAC §19.2003(b)(1).

Amended §134.600(i) requires the insurance carrier to contact the requestor or injured employee within the required timeframes by telephone, facsimile, or electronic transmission with its decision to approve the preauthorization or concurrent utilization review request; issue an adverse determination on the request; or deny the request under §134.600(g) because it relates to an unrelated injury or diagnosis. Amended §134.600(i) is necessary for consistency with the definition of the term "adverse determination" in Insurance Code §4201.002(1) and to correspond with 28 TAC §19.2003(b)(1). Amended §134.600(i)(1) - (2) delete the word "within" and add the language "within the following timeframes" for clarification.

Amended §134.600(j) requires the insurance carrier to send written notification of the approval of the request; adverse determination on the request; or denial of the request under §134.600(g) because of an unrelated injury or diagnosis. Amended §134.600(j) is necessary to update the terminology in §134.600(j) to correspond with the definition for "adverse determination" in Insurance Code §4201.002(1) and 28 TAC §19.2003(b)(1).

Amended §134.600(l)(4) adds a fourth requirement for insurance carrier approvals, which requires insurance carriers to include the insurance carrier's preauthorization approval number in its approval of a preauthorization request. Section 134.600(l)(4) provides that the preauthorization approval number must conform to the standards described in 28 TAC §19.2009(a)(4). Amended §134.600(l)(4) is necessary to align the requirements of this section with the medical billing requirements in 28 TAC Chapter 133, Subchapters B and G, concerning Health Care Provider Billing Procedures; and Electronic Medical Billing, Reimbursement, and Documentation; respectively, which require the inclusion of a preauthorization number on medical bills, if applicable.

Amended §134.600(m) requires insurance carriers to comply with 28 TAC §19.2010 and afford requestors a reasonable

opportunity to discuss the clinical basis for the adverse determination prior to the insurance carrier issuing the adverse determination. Further, the notice of adverse determination must comply with the requirements of 28 TAC §19.2009 and include a plain language description of the complaint and appeal process. Amendments to §134.600(m) are necessary to streamline the requirements and harmonize with Insurance Code §4201.456 and 28 TAC §§19.2010 and 19.2009. These conforming changes enable the monitoring of whether a reasonable opportunity for discussion was offered and the collecting of information on peer-to-peer discussion results to ensure compliance with utilization review requirements.

Amended §134.600 deletes existing (m)(1) - (5) which outlined the elements that were required to be included in a denial of medical necessity. The requirements in existing §134.600(m)(1) are no longer necessary because the notice of adverse determination must comply with the requirements of 28 TAC §19.2009(b). Subsection (m) continues to provide that if preauthorization is denied based on Labor Code §408.0042 because the treatment is for an injury or diagnosis unrelated to the compensable injury, the notice of adverse determination must include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with 28 TAC Chapter 141 concerning Dispute Resolution--Benefit Review Conference.

Amended §134.600(o) provides that if the initial response to preauthorization or concurrent utilization review is an adverse determination, the requestor or injured employee may request reconsideration orally or in writing. Amended §134.600(o) is necessary to conform with Insurance Code §1305.354, concerning Reconsideration of Adverse Determination. Further, amended §134.600(o) conforms to the requirement that a request for reconsideration under §134.600(o) constitutes an appeal for the purposes of 28 TAC §19.2011. The term "appeal" is defined in 28 TAC §19.2003(b)(2). Further, requests for reconsideration must be made in accordance with the requirements of amended §134.600(o) and 28 TAC §19.2011.

Amended §134.600(o)(3) adds a reference to 28 TAC §19.2011 to clarify an insurance carrier's reconsideration procedures must also comply with 28 TAC §19.2011.

Amended §134.600(o)(4) requires insurance carriers that are questioning the medical necessity or appropriateness of the health care services to comply with the requirements of 28 TAC §19.2010 and §19.2011, including the requirement that the insurance carrier afford the requestor a reasonable opportunity to discuss the proposed health care with a doctor or, in cases of a dental plan with a dentist, or in cases of a chiropractic service with a chiropractor, prior to the issuance of an adverse determination on the request for reconsideration. This change is necessary to clarify the combined application of §134.600(o)(4) and 28 TAC §19.2010 and §19.2011 to insurance carriers and utilization review agents.

Existing §134.600(v) is deleted because its effective date is no longer necessary.

Section 134.110 specifies the requirements for reimbursement of injured employees for travel expenses incurred by the injured employees, the travel rate that the expenses must be based on by the insurance carrier, and the insurance carrier's responsibility to inform the injured employee of the right to request a benefit review conference if the insurance carrier does not reimburse the full amount requested.

Section 134.502 specifies requirements for the prescription of drugs by doctors and pharmaceutical services provided to injured employees, including submission of bills for pharmacy services, statements of medical necessity by prescribing doctors, and requirements for transmittal of the explanation of benefits (EOB) to injured employees and the prescribing doctor when the insurance carrier denies payment for medications.

Section 134.600 provides the requirements applicable to preauthorization, concurrent utilization review, and voluntary certification of health care. Section 134.600 also specifies the meaning of words and terms when used in Chapter 134, unless the context clearly indicates otherwise.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

General

Comment: One commenter greatly appreciates and supports the changes because they offer enhanced clarity.

Agency Response: The Division appreciates the supportive comment.

Comment: One commenter states that the rules make utilization review more burdensome and expensive from an administrative standpoint, which is not the most effective way to satisfy the mandate to control medical costs in the workers' compensation system. The commenter thinks the rules should have been written to follow existing Division rule language and conform to the Labor Code.

Agency Response: The Division asserts that these rules are necessary to implement HB 4290. Insurance Code Chapter 4201, to the extent not in conflict with Labor Code Title 5 or Insurance Code Chapter 1305, and these provisions apply to workers' compensation utilization review. Additionally, these rules promote efficient regulation of URAs through the alignment of health and workers' compensation URA certification and registration requirements, utilization review timeframes, and utilization review standards. These rules also align utilization review timeframes and standards within workers' compensation for network and non-network claims.

Comment: One commenter suggests that the best way to conform the current proposed rule changes with Subchapter U is to incorporate the commenter's suggested changes to these proposed rules into Subchapter U.

The commenter objects to the references to other codes and rules and the cross-referencing to other sections of this title because they make it difficult to understand what these sections mean without consulting other material. The commenter recommends that the references be revised to specifically explain what the code or rule referred to actually means. The commenter states the proposed rules are lengthy and complex and they should be self-contained rather than reference other rule sections because this change would ensure that system participants can more readily determine their responsibilities under the rules.

Agency Response: The Division declines to make the suggested changes. Amendments to Title 28 Chapter 19, Subchapter U are outside the scope of the amendments to Chapter 134 included in this adoption. The Division declines to delete the references to other codes and rules because an entity that performs utilization review is required to comply with the cited rules and statutes, and inclusion of the entire text of other rules and statutes would be repetitive. The Division has determined that the rules are more streamlined and easier to understand by including cross-refer-

ences, and also provides notice to URAs that they are subject to the requirements in other rules and statutes.

§134.502

Comment: One commenter supports §134.502(b), which requires a physician who is prescribing drugs to prescribe the drugs in accordance with §134.530 and §134.540 (Closed Drug Formulary). The commenter supports this rule because it will promote the delivery of high quality health care that is reasonably required by the nature of the injury, is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence-based medicine or, if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

Agency Response: The Division appreciates the supportive comment and clarifies that amended §134.502(b) clarifies the existing requirement that doctors shall prescribe drugs in accordance with 28 TAC §134.530 and §134.540.

§134.600

Comment: Several commenters assert the definition of "adverse determination" in §134.600(a)(1) conflicts with Insurance Code §4201.002(1) and the standards for health care coverage in the Workers' Compensation Act. The commenters assert that Insurance Code §4201.054(c) mandates that Title 5 of the Labor Code prevails over Insurance Code Chapter 4201 when there is a conflict. The commenters assert Labor Code §408.021 states that the injured worker is entitled to "...all health care reasonably required by the nature of the injury as and when needed" and the term "health care reasonably required" is defined in Labor Code §401.011(22-a). The commenters assert the proposed language suggests that the standard for entitlement to workers' compensation medical treatment is "medically necessary or appropriate" which is not defined in the Workers' Compensation Act and is subject to an interpretation that could differ from the statutory standard of "health care reasonably required." The commenters suggest deleting the words "medically necessary or appropriate" in the definition and inserting the words "reasonably required" in their place.

Agency Response: The Division declines to make the suggested changes. The phrase "medically necessary or appropriate" is consistent with the definition of "adverse determination" under the Insurance Code §4201.002, which defines "adverse determination" as a determination by a URA that health care services provided or proposed to be provided to a patient are not medically necessary or are experimental or investigational. Also, the phrase "medically necessary or appropriate" is used in 28 TAC §12.5(1), which defines "adverse determination" for purposes of independent review. Introducing the phrase "health care reasonably required" would result in inconsistent definitions of "adverse determination" in the context of utilization review and independent review.

Nothing may be construed to limit health care reasonably required under Labor Code §408.021. The Division's position is that, based on Labor Code §408.021, an injured employee under both network and non-network coverage is entitled to health care reasonably required by the nature of the injury as and when needed, including experimental and investigational health care services. For this reason, the Division clarifies that the term "adverse determination" does not include a determination that health care services are experimental or investigational.

Comment: Two commenters support §134.600(a)(9) which defines the term "reasonable opportunity."

Agency Response: The Division appreciates the supportive comments.

Comment: A commenter requests that one working day be further defined in §134.600(a)(9)(A) as at least a 24-hour period in order to give the provider sufficient time to respond to an inquiry from the URA because this change would help ensure that the conversation between the URA and the provider actually takes place.

Agency Response: The Division declines to make the suggested change to the definition of the term "working day." "Working day" is consistent with Insurance Code §4201.002(16) which defines "working day" as "a weekday that is not a legal holiday" and is also consistent with 28 TAC §102.3, concerning Computation of Time, which states that "A working day is any day, Monday-Friday, other than a national holiday as defined by Texas Government Code, §662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th." A 24-hour period would conflict with the statutory definition and Division rules as one 24-hour period could cover more than one weekday that is not a holiday.

Comment: One commenter suggests a comma be added to §134.600(h) between the words "or" and "based."

One commenter seeks clarification of the meaning of §134.600(h).

Agency response: The Division declines to add a comma between the words "or" and "based" in §134.600(h). The Division agrees to a non-substantive change to clarify §134.600(h) by moving the phrase "issue an adverse determination on each request" and deleting "received by the insurance carrier" to clarify that the insurance carrier shall approve or issue an adverse determination on each request based solely on the medical necessity of the health care required to treat the injury.

Comment: One commenter suggests commas replace semicolons in §134.600(i).

Agency Response: The Division declines to make the suggested changes because the punctuation conforms to current agency style.

Comment: Two commenters think oral requests need to also be in writing to constitute an appeal for the purposes of §19.2011 in §134.600(o).

Agency Response: The Division declines to make the suggested changes. Amended §134.600(o) corresponds with Insurance Code §4201.355 which requires that within five working days from the date the utilization review agent receives the appeal, the agent must send to the appealing party a letter acknowledging the date of receipt and include a list of documents the appealing party must submit for review. Amended §134.600(o) also corresponds with Insurance Code §1305.354 which pertains to the reconsideration of adverse determinations by workers' compensation health care networks that requires that not later than the fifth calendar day after the date of receipt of the request, the network shall send to the requesting party a letter acknowledging the date of the receipt of the request that includes a reasonable list of documents the requesting party is required to submit. Further, Insurance Code §4201.354 requires that the procedures for appealing an adverse determination must provide that the adverse determination may be appealed orally or in writing and is consistent

with the requirements of Insurance Code §1305.354 for workers' compensation network coverage. Amended §134.600(o) is necessary to align this proposed section with 28 TAC §19.2011(a)(3) which provides that an injured employee, the injured employee's representative, or the provider of record may appeal the adverse determination orally or in writing. This amendment is also consistent with 28 TAC §10.103 concerning Workers' Compensation Network Requests for Reconsideration.

Comment: Two commenters assert that the phrase in §134.600(o)(4) "where the insurance carrier is questioning" is too vague and not a workable standard.

One commenter suggests changing the language in §134.600(o)(4) to provide "In any instance where an insurance carrier has determined that the insurance carrier may issue an adverse determination..."

One commenter suggests replacing "In any instance where the insurance carrier is questioning" with the language "Prior to the issuance of an adverse determination relating to" in §134.600(o)(4). The commenter believes that whenever a carrier engages in any utilization review it is questioning the necessity or appropriateness of the health care services and this is the essence of utilization review. The commenter thinks that issuance of an adverse decision is a workable standard and it may make sense for a proposed rule to state that prior to issuing an adverse decision, a carrier shall give the provider a reasonable opportunity to discuss the services; however, triggering all these requirements merely because someone is questioning the appropriateness or necessity of services is too vague and represents a misunderstanding of the purpose of utilization review.

Agency Response: The Division declines to make the suggested change. New §134.600(o)(4) is consistent with Insurance Code §4201.206 which uses the phrase "who questions the medical necessity or appropriateness." It is also consistent with Subchapter U. The term "insurance carrier" is used because an entity that conducts utilization review in the workers' compensation system is required to comply with the applicable statutes and regulations to conduct utilization review. The Division recognizes that the party directly responding to a request for retrospective utilization review may be the insurance carrier if the insurance carrier is a certified utilization review agent or the insurance carrier's utilization review agent. Under the definition of agent in §133.2, the system participant who utilizes or contracts with an agent may also be responsible for the administrative violations of that agent.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS

For: CID Management

For, with changes: Office of Injured Employee Counsel, Property Casualty Insurers

Association of America, Insurance Council of Texas, and American Insurance Association

## SUBCHAPTER B. MISCELLANEOUS REIMBURSEMENT

### 28 TAC §134.110

Amendments to §134.110 are adopted under Labor Code §§402.00111, 402.061, 408.004, and 408.0041.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 408.004 requires insurance carriers to pay for medical examinations that injured employees may be required to submit to and the reasonable expenses incident to the employees submitting to those examinations. Labor Code §408.0041 requires insurance carriers to pay for designated doctor examinations described in Labor Code §408.0041(a), (f), and (f-2), unless it is otherwise prohibited by law, and the reasonable expenses incident to the employee in submitting to the examination.

Government Code §2001.036 provides, in part, that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State.

*§134.110. Reimbursement of Injured Employee for Travel Expenses Incurred.*

(a) An injured employee may request reimbursement from the insurance carrier if the injured employee has incurred travel expenses when:

(1) medical treatment for the compensable injury is not reasonably available within 30 miles from where the injured employee lives and the distance traveled to secure medical treatment is greater than 30 miles one-way; or

(2) the distance traveled to attend a designated doctor examination, required medical examination, or post designated doctor treating or referral doctor examination is greater than 30 miles one-way.

(b) The injured employee shall submit the request for reimbursement to the insurance carrier within one year of the date the injured employee incurred the expenses.

(c) The injured employee's request for reimbursement shall be in the form and manner required by the division and shall include documentation or evidence (such as itemized receipts) of the amount of the expense the injured employee incurred.

(d) The insurance carrier shall reimburse the injured employee based on the travel rate for state employees on the date travel occurred, using mileage for the shortest reasonable route.

(1) Travel mileage is measured from the actual point of departure to the health care provider's location when the point of departure is:

(A) the employee's home; or

(B) the employee's place of employment.

(2) If the point of departure is not the employee's home or place of employment, then travel mileage shall be measured from the health care provider's location to the nearest of the following locations:

(A) the employee's home;

(B) the place of employment; or

(C) the actual point of departure.

(3) Total reimbursable mileage is based on round trip mileage.

(4) When an injured employee's travel expenses reasonably include food and lodging, the insurance carrier shall reimburse for the actual expenses not to exceed the current rate for state employees on the date the expense is incurred.

(e) The insurance carrier shall pay or deny the injured employee's request for reimbursement submitted in accordance with subsection (c) of this section within 45 days of receipt.

(f) If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a plain language explanation of the reason(s) for the reduction or denial. The insurance carrier shall inform the injured employee of the injured employee's right to request a benefit review conference in accordance with §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2014.

TRD-201401087
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General Counsel
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## SUBCHAPTER F. PHARMACEUTICAL BENEFITS

### 28 TAC §134.502

The amendments to §134.502 are adopted under the Labor Code §§402.00111, 402.00114, 402.00116, 402.061, 406.010, 408.021(a), 408.027, 408.028, 408.0281, 413.002, 413.011, 413.0111, 413.013, 413.017, and 413.031 and Insurance Code §4201.054.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00114 requires the division to regulate and administer the business of workers' compensation in this state and ensure that Labor Code, Title 5 and other laws regarding workers' compensation are executed. Section 402.00116 requires the commissioner of workers' compensation to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the division. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 406.010 authorizes the division to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section. Section 408.021(a) states that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.027 establishes the timeframe for a health care provider's claim submission, the timeframes for an insurance carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the applicability of §408.027 to all delivered health care. Section 408.028 requires health care practitioners providing care to an employee to prescribe any necessary prescription drugs in accordance with the applicable state law. Section 408.028(b) requires the commissioner by rule to adopt a closed formulary under Labor Code §413.011 and requires the rules adopted to allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee's compensable injury. Labor Code §408.028(f) requires the commissioner by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will provide reimbursement rates that are fair and reasonable, assure adequate access to medications and services for injured workers, minimize costs to employees and insurance carriers, and take into consideration the increased security of payment afforded by Labor Code Title 5. Labor Code §408.0281 provides prescription medication or services may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a contract rate in accordance with that section.

Section 413.002 requires the division to monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure compliance with division rules relating to health care, including medical policies and fee guidelines. Section 413.011 requires the commissioner to adopt health care reimbursement policies and guidelines. Section 413.0111 requires that rules adopted by the commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on the behalf of the pharmacies under terms and conditions agreed on by the pharmacies. Section 413.013(1), (2) and (3) require the division by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services, a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review under the medical policies of the division to ensure the medical policies and guidelines are not exceeded, and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the division. Section 413.017 establishes a presumption of reasonableness of medical services consistent with the medical policies and fee guidelines adopted by the division and medical services that are provided subject to prospective, concurrent, or retrospective review and required by the medical policies of the division and that are authorized by an insurance carrier. Section 413.031 entitles a party, including a health care provider, to a review of a medical service provided or for which authorization of payment is sought if a health care provider has been denied payment, paid a reduced amount for the medical service rendered, or denied authorization for the payment for the service required or performed if authorization is required or allowed by Labor Code Title 5 or division rules.

Insurance Code §4201.054 provides that Chapter 4201 applies to utilization review of a health care service provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code; the commissioner of workers' compensation shall regulate as provided by Chapter 4201 a person who performs utilization review of a medical benefit provided under Title 5, Labor Code; Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201 and Title 5, Labor Code; and the commissioner of workers' compensation may adopt rules as necessary to implement §4201.054.

*§134.502. Pharmaceutical Services.*

(a) A doctor providing care to an injured employee shall prescribe for the employee medically necessary prescription drugs and over-the-counter medication (OTC) alternatives as clinically appropriate and applicable in accordance with applicable state law and as provided by this section.

(1) It shall be indicated on the prescription that the prescription is related to a workers' compensation claim.

(2) When prescribing an OTC medication alternative to a prescription drug, the doctor shall indicate on the prescription the appropriate strength of the medication and the approximate quantity of the OTC medication that is reasonably required by the nature of the compensable injury.

(3) The doctor shall prescribe generic prescription drugs when available and clinically appropriate. If in the medical judgment of the prescribing doctor a brand-name drug is necessary, the doctor must specify on the prescription that brand-name drugs be dispensed in accordance with applicable state and federal law, and must maintain documentation justifying the use of the brand-name drug, in the patient's medical record.

(4) The doctor shall prescribe OTC medications in lieu of a prescription drug when clinically appropriate.

(b) When prescribing, the doctor shall prescribe in accordance with §134.530 and §134.540 of this title (relating to Requirements for Use of the Closed Formulary for Claims Not Subject to Certified Networks and Requirements for Use of the Closed Formulary for Claims Subject to Certified Networks, respectively).

(c) The pharmacist shall dispense no more than a 90-day supply of a prescription drug.

(d) Pharmacies and pharmacy processing agents shall submit bills for pharmacy services in accordance with Chapter 133 (relating to General Medical Provisions) and Chapter 134 (relating to Benefits--Guidelines for Medical Services, Charges, and Payments.

(1) Health care providers shall bill using national drug codes (NDC) when billing for prescription drugs.

(2) Compound drugs shall be billed by listing each drug included in the compound and calculating the charge for each drug separately.

(3) A pharmacy may contract with a separate person or entity to process bills and payments for a medical service; however, these entities are subject to the direction of the pharmacy and the pharmacy is responsible for the acts and omissions of the person or entity. Except as allowed by Labor Code §413.042, the injured employee shall not be billed for pharmacy services.

(e) The insurance carrier, injured employee, or pharmacist may request a statement of medical necessity from the prescribing doctor. If an insurance carrier requests a statement of medical necessity, the insurance carrier shall provide the sender of the bill a copy of the request at the time the request is made. An insurance carrier shall not request a statement of medical necessity unless in the absence of such a statement the insurance carrier could reasonably support a denial based upon extent of, or relatedness to the compensable injury, or based upon an adverse determination.

(f) The prescribing doctor shall provide a statement of medical necessity to the requesting party no later than the 14th day after receipt of request. The prescribing doctor shall not bill for nor shall the insurance carrier reimburse for the statement of medical necessity.

(g) In addition to the requirements of §133.240 of this title (relating to Medical Payments and Denials) regarding explanation of benefits (EOB), at the time an insurance carrier denies payment for medications for any reason related to compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons related to an adverse determination, the insurance carrier shall also send the EOB to the injured employee, and the prescribing doctor.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

### 28 TAC §134.600

The amendments to §134.600 are adopted under the Labor Code §§402.00111, 402.00114, 402.00116, 402.061, 408.021, 408.027, 413.013, 413.014, and 413.031; and Insurance Code §4201.456 and §4201.054.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00114 requires the division to regulate and administer the business of workers' compensation in this state and ensure that Labor Code, Title 5 and other laws regarding workers' compensation are executed. Section 402.00116 requires the division to administer and enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws applicable to the division. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 408.021, in part, entitles an employee who sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed and specifically entitles the employee to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Section 408.027 provides requirements for payment of health care providers by insurance carriers and requires the commissioner to adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 413.013(1), (2) and (3) require the division by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services, a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review under the medical policies of the division to ensure the medical policies and guidelines are not exceeded, and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is

required by the medical policies of the division. Section 413.014 provides, in part, that division rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for any investigational or experimental services or devices. Section 413.031 entitles a party, including a health care provider, to a review of a medical service provided or for which authorization of payment is sought if a health care provider has been denied payment, paid a reduced amount for the medical service rendered, or denied authorization for the payment for the service required or performed if authorization is required or allowed by Labor Code Title 5 or division rules.

Insurance Code §4201.054 provides that Chapter 4201 applies to utilization review of a health care service provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code; the commissioner of workers' compensation shall regulate as provided by Chapter 4201 a person who performs utilization review of a medical benefit provided under Title 5, Labor Code; Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201 and Title 5, Labor Code; and the commissioner of workers' compensation may adopt rules as necessary to implement §4201.054. Section 4201.456 provides that subject to the notice requirements of Insurance Code, Chapter 4201, Subchapter G, before an adverse determination is issued by a specialty utilization review agent who questions the medical necessity or appropriateness, or the experimental or investigational nature, of a health care service, the agent shall provide the health care provider who ordered the service a reasonable opportunity to discuss the patient's treatment plan and the clinical basis for the agents determination with a health care provider who is of the same specialty as the agent.

*§134.600. Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care.*

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

(1) Adverse determination: A determination by a utilization review agent made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. An adverse determination does not include a determination that health care services are experimental or investigational.

(2) Ambulatory surgical services: surgical services provided in a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(3) Concurrent utilization review: a form of utilization review for on-going health care listed in subsection (q) of this section for an extension of treatment beyond previously approved health care listed in subsection (p) of this section.

(4) Diagnostic study: any test used to help establish or exclude the presence of disease/injury in symptomatic individuals. The test may help determine the diagnosis, screen for specific disease/injury, guide the management of an established disease/injury, and formulate a prognosis.

(5) Division exempted program: a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited work conditioning or work hardening program that has requested and been granted an exemption by the division from preauthorization and concurrent utilization review requirements except for those provided by subsections (p)(4) and (q)(2) of this section.

(6) Final adjudication: the commissioner has issued a final decision or order that is no longer subject to appeal by either party.

(7) Outpatient surgical services: surgical services provided in a freestanding surgical center or a hospital outpatient department to patients who do not require overnight hospital care.

(8) Preauthorization: a form of prospective utilization review by a payor or a payor's utilization review agent of health care services proposed to be provided to an injured employee.

(9) Reasonable opportunity: At least one documented good faith attempt to contact the provider of record that provides an opportunity for the provider of record to discuss the services under review with the utilization review agent during normal business hours prior to issuing a prospective, concurrent, or retrospective utilization review adverse determination:

(A) no less than one working day prior to issuing a prospective utilization review adverse determination;

(B) no less than five working days prior to issuing a retrospective utilization review adverse determination; or

(C) prior to issuing a concurrent or post-stabilization review adverse determination.

(10) Requestor: the health care provider or designated representative, including office staff or a referral health care provider or health care facility that requests preauthorization, concurrent utilization review, or voluntary certification.

(11) Work conditioning and work hardening: return-to-work rehabilitation programs as defined in this chapter.

(b) When division-adopted treatment guidelines conflict with this section, this section prevails.

(c) The insurance carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (p) or (q) of this section only when the following situations occur:

(A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);

(B) preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care;

(C) concurrent utilization review of any health care listed in subsection (q) of this section that was approved prior to providing the health care; or

(D) when ordered by the commissioner;

(2) or per subsection (r) of this section when voluntary certification was requested and payment agreed upon prior to providing the health care for any health care not listed in subsection (p) of this section.

(d) The insurance carrier is not liable under subsection (c)(1)(B) or (C) of this section if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

(e) The insurance carrier shall designate accessible direct telephone and facsimile numbers and may designate an electronic transmission address for use by the requestor or injured employee to request preauthorization or concurrent utilization review during normal business hours. The direct number shall be answered or the facsimile or electronic transmission address responded to within the time limits es-

tablished in subsection (i) of this section. The insurance carrier shall also comply with any additional requirements of §19.2012 of this title (relating to URA's Telephone Access and Procedures for Certain Drug Requests and Post-Stabilization Care).

(f) The requestor or injured employee shall request and obtain preauthorization from the insurance carrier prior to providing or receiving health care listed in subsection (p) of this section. Concurrent utilization review shall be requested prior to the conclusion of the specific number of treatments or period of time preauthorized and approval must be obtained prior to extending the health care listed in subsection (q) of this section. The request for preauthorization or concurrent utilization review shall be sent to the insurance carrier by telephone, facsimile, or electronic transmission and, include the:

(1) name of the injured employee;

(2) specific health care listed in subsection (p) or (q) of this section;

(3) number of specific health care treatments and the specific period of time requested to complete the treatments;

(4) information to substantiate the medical necessity of the health care requested;

(5) accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the insurance carrier;

(6) name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting preauthorization;

(7) name, professional license number or national provider identifier of the health care provider who will render the health care if different than paragraph (6) of this subsection and if known;

(8) facility name, and the facility's national provider identifier if the proposed health care is to be rendered in a facility; and

(9) estimated date of proposed health care.

(g) A health care provider may submit a request for health care to treat an injury or diagnosis that is not accepted by the insurance carrier in accordance with Labor Code §408.0042.

(1) The request shall be in the form of a treatment plan for a 60 day timeframe.

(2) The insurance carrier shall review requests submitted in accordance with this subsection for both medical necessity and relatedness.

(3) If denying the request, the insurance carrier shall indicate whether it is issuing an adverse determination, and/or whether the denial is based on an unrelated injury or diagnosis in accordance with subsection (m) of this section.

(4) The requestor or injured employee may file an extent of injury dispute upon receipt of an insurance carrier's response which includes a denial due to an unrelated injury or diagnosis, regardless of whether an adverse determination was also issued.

(5) Requests which include a denial due to an unrelated injury or diagnosis may not proceed to medical dispute resolution based on the denial of unrelatedness. However, requests which include the dispute of an adverse determination may proceed to medical dispute resolution for the issue of medical necessity in accordance with subsection (o) of this section.

(h) Except for requests submitted in accordance with subsection (g) of this section, the insurance carrier shall either approve or issue an adverse determination on each request based solely on the medical necessity of the health care required to treat the injury, regardless of:

(1) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(2) the insurance carrier's liability for the injury; or

(3) the fact that the injured employee has reached maximum medical improvement.

(i) The insurance carrier shall contact the requestor or injured employee within the following timeframes by telephone, facsimile, or electronic transmission with the decision to approve the request; issue an adverse determination on a request; or deny a request under subsection (g) of this section because of an unrelated injury or diagnoses as follows:

(1) three working days of receipt of a request for preauthorization; or

(2) three working days of receipt of a request for concurrent utilization review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(j) The insurance carrier shall send written notification of the approval of the request, adverse determination on the request, or denial of the request under subsection (g) of this section because of an unrelated injury or diagnosis within one working day of the decision to the:

(1) injured employee;

(2) injured employee's representative; and

(3) requestor, if not previously sent by facsimile or electronic transmission.

(k) The insurance carrier's failure to comply with any timeframe requirements of this section shall result in an administrative violation.

(l) The insurance carrier shall not withdraw a preauthorization or concurrent utilization review approval once issued. The approval shall include:

(1) the specific health care;

(2) the approved number of health care treatments and specific period of time to complete the treatments;

(3) a notice of any unresolved dispute regarding the denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury; and

(4) the insurance carrier's preauthorization approval number that conforms to the standards described in §19.2009(a)(4) of this title (relating to Notice of Determinations Made in Utilization Review).

(m) In accordance with §19.2010 of this title (relating to Requirements Prior to Issuing Adverse Determination), the insurance carrier shall afford the requestor a reasonable opportunity to discuss the clinical basis for the adverse determination prior to issuing the adverse determination. The notice of adverse determination must comply with the requirements of §19.2009 of this title and if preauthorization is denied under Labor Code §408.0042 because the treatment is for an injury or diagnosis unrelated to the compensable injury the notice must include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference).

(n) The insurance carrier shall not condition an approval or change any elements of the request as listed in subsection (f) of this section, unless the condition or change is mutually agreed to by the health care provider and insurance carrier and is documented.

(o) If the initial response is an adverse determination of preauthorization or concurrent utilization review, the requestor or injured employee may request reconsideration orally or in writing. A request for reconsideration under this section constitutes an appeal for the purposes of §19.2011 of this title (relating to Written Procedures for Appeal of Adverse Determinations).

(1) The requestor or injured employee may within 30 days of receipt of a written adverse determination request the insurance carrier to reconsider the adverse determination and shall document the reconsideration request.

(2) The insurance carrier shall respond to the request for reconsideration of the adverse determination:

(A) as soon as practicable but not later than the 30th day after receiving a request for reconsideration of an adverse determination of preauthorization; or

(B) within three working days of receipt of a request for reconsideration of an adverse determination of concurrent utilization review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(3) In addition to the requirements in this section and §19.2011 of this title, the insurance carrier's reconsideration procedures shall include a provision that the period during which the reconsideration is to be completed shall be based on the medical or clinical immediacy of the condition, procedure, or treatment.

(4) In any instance where the insurance carrier is questioning the medical necessity or appropriateness of the health care services prior to the issuance of an adverse determination on the request for reconsideration, the insurance carrier shall comply with the requirements of §19.2010 and §19.2011 of this title, including the requirement that the insurance carrier afford the requestor a reasonable opportunity to discuss the proposed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor, respectively.

(5) The requestor or injured employee may appeal the denial of a reconsideration request regarding an adverse determination by filing a dispute in accordance with Labor Code §413.031 and related division rules.

(6) A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the injured employee's medical condition or that demonstrates that the injured employee has met clinical prerequisites for the requested health care that had not been previously met before submission of the previous request. The insurance carrier shall review the documentation and determine if any substantial change in the injured employee's medical condition has occurred or if all necessary clinical prerequisites have been met. A frivolous resubmission of a preauthorization request for the same health care constitutes an administrative violation.

(p) Non-emergency health care requiring preauthorization includes:

(1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay;

(2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section;

(3) spinal surgery;

(4) all work hardening or work conditioning services requested by:

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in paragraph (12) of this subsection;

(5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels:

(A) Level I code range for Physical Medicine and Rehabilitation, but limited to:

*(i)* Modalities, both supervised and constant attendance;

*(ii)* Therapeutic procedures, excluding work hardening and work conditioning;

*(iii)* Orthotics/Prosthetics Management;

*(iv)* Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code; and

(B) Level II temporary code(s) for physical and occupational therapy services provided in a home setting;

(C) except for the first six visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

*(i)* the date of injury; or

*(ii)* a surgical intervention previously preauthorized by the insurance carrier;

(6) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care;

(7) all psychological testing and psychotherapy, repeat interviews, and biofeedback, except when any service is part of a preauthorized or division exempted return-to-work rehabilitation program;

(8) unless otherwise specified in this subsection, a repeat individual diagnostic study:

(A) with a reimbursement rate of greater than $350 as established in the current Medical Fee Guideline; or

(B) without a reimbursement rate established in the current Medical Fee Guideline;

(9) all durable medical equipment (DME) in excess of $500 billed charges per item (either purchase or expected cumulative rental);

(10) chronic pain management/interdisciplinary pain rehabilitation;

(11) drugs not included in the applicable division formulary;

(12) treatments and services that exceed or are not addressed by the commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the insurance carrier. This requirement does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits);

(13) required treatment plans; and

(14) any treatment for an injury or diagnosis that is not accepted by the insurance carrier pursuant to Labor Code §408.0042 and §126.14 of this title (relating to Treating Doctor Examination to Define the Compensable Injury).

(q) The health care requiring concurrent utilization review for an extension for previously approved services includes:

(1) inpatient length of stay;

(2) all work hardening or work conditioning services requested by:

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in subsection (p)(12) of this section;

(3) physical and occupational therapy services as referenced in subsection (p)(5) of this section;

(4) investigational or experimental services or use of devices;

(5) chronic pain management/interdisciplinary pain rehabilitation; and

(6) required treatment plans.

(r) The requestor and insurance carrier may voluntarily discuss health care that does not require preauthorization or concurrent utilization review under subsections (p) and (q) of this section respectively.

(1) Denial of a request for voluntary certification is not subject to dispute resolution for prospective review of medical necessity.

(2) The insurance carrier may certify health care requested. The carrier and requestor shall document the agreement. Health care provided as a result of the agreement is not subject to retrospective utilization review of medical necessity.

(3) If there is no agreement between the insurance carrier and requestor, health care provided is subject to retrospective utilization review of medical necessity.

(s) An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims by the division in accordance with Labor Code §408.0231(b)(4) and other sections of this title.

(t) The insurance carrier shall maintain accurate records to reflect information regarding requests for preauthorization, or concurrent utilization review approval or adverse determination decisions, and appeals, including requests for reconsideration and requests for medical dispute resolution, if any. The insurance carrier shall also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the division, the insurance carrier shall submit such information in the form and manner prescribed by the division.

(u) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title (relating to Agents' Licensing). Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 53. FINANCE

### SUBCHAPTER A. FEES

### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

**31 TAC §53.14**

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted an amendment to §53.14, concerning Deer Management and Removal Permits, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6869).

The amendment establishes the fees for a three-year and a five-year deer breeder's permit renewal. In another adopted rulemaking published elsewhere in this issue of the *Texas Register,* the department creates three-year and five-year renewal options for deer breeder's permits.

Under previous rules, the department issued deer breeder's permits and renewals on a one-year basis with an annual fee of $200. The 83rd Texas Legislature (Regular Session) enacted Senate Bill (S.B.) 820, which amended Parks and Wildlife Code, §43.352 to authorize the department to issue deer breeder's permits with a three-year or five-year period of validity. The department's fee rules therefore need to reflect the longer permit terms ($600 for a three-year permit renewal and $1,000 for a five-year permit renewal).

The amendment will function by establishing the fees for a three-year and five-year deer breeder's permit renewal.

The department received one comment opposing adoption of the proposed rule. The commenter stated opposition to the practice of deer breeding. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to issue a permit to a qualified person to possess live breeder deer in captivity. No changes were made as a result of the comment.

No groups or associations commented for or against adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §43.352, which authorizes the commission to by rule establish criteria for the issuance of a deer breeder's permit with a period of validity of three years or five years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 65. WILDLIFE
## SUBCHAPTER T. DEER BREEDER PERMITS

### 31 TAC §65.603

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted an amendment to §65.603, concerning Application and Permit Issuance, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6875).

The amendment creates a three-year and a five-year deer breeder's permit renewal option, which is available to persons who have possessed a deer breeder's permit for at least the three years immediately preceding application for renewal and have been in substantial compliance with department rules governing deer breeder's permits and the provisions of Parks and Wildlife Code, Chapter 43, Subchapters L (Deer Breeder's Permit) and X (Deer Disposition Protocol).

Under current rules, the department issues deer breeder's permits and renewals on a one-year basis. The 83rd Texas Legislature (Regular Session) enacted Senate Bill (S.B.) 820, which amended Parks and Wildlife Code, §43.352 to authorize the department to issue deer breeder's permits with a three-year or five-year period of validity at the option of the permit applicant if the applicant meets certain specified criteria. Parks and Wildlife Code, §43.352, as amended by S.B. 820 provides that a three-year or five-year permit "is available only to a person who (1) has held a deer breeder's permit for the three consecutive permit years immediately preceding the date of the application for a three-year or five-year permit; (2) agrees to submit the annual reports required under this subchapter electronically; and (3) meets any other criteria established by rule of the commission." The amendment authorizes the issuance of a deer breeder's permit renewal with a three-year or five-year period of validity, provided the applicant, in addition to meeting the requirements of Parks and Wildlife Code, §43.352, has been in substantial compliance with 31 TAC Chapter 65, Subchapter T (Deer Breeder Permits), and the provisions of Parks and Wildlife Code, Chapter 43, Subchapters L (regarding Deer Breeder Permits) and X (regarding Deer Disposition Protocol) and has met the other criteria set out in §65.603(d) for the three-year period preceding the application for a three-year or five-year permit. The amendment also modifies §65.603(d) to clarify that the criteria for renewal of any deer breeder permit includes substantial compliance with the provisions of Chapter 65, Subchapter T, and Parks and Wildlife Code, Chapter 43, Subchapters L and X.

The department does not intend for "substantial compliance" to mean total or perfect compliance and does not intend for minor, non-habitual, or understandable irregularities to be an automatic bar to obtaining a three-year or five-year permit renewal. The department intends to consider a number of factors and make such determinations on a case-by-case basis; however, egregious, problematic, and repeated instances of noncompliance will constitute grounds for refusal to issue a permit renewal and/or refusal to issue a multi-year permit. The factors that may be considered by the department in determining whether to issue a permit renewal would include, but not be limited to, the number and nature of instances of noncompliance, the existence or absence of a pattern of noncompliance, and the effectiveness of good-faith efforts made by the permittee to correct or remediate deficiencies.

The amendments are for the purpose of implementing only the three-year and five-year permit options contained in S.B. 820. Any rules necessary to implement other provisions of S.B. 820 will be considered and proposed at a later date.

The amendment will function by creating a mechanism to allow deer breeder permits to be renewed for a three-year and five-year period of validity, provided certain conditions have been satisfied.

The department received one comment opposing adoption of the proposed rule. The commenter stated opposition to the practice of deer breeding. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to issue a permit to a qualified person to possess live breeder deer in captivity. No changes were made as a result of the comment.

No groups or associations commented for or against adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §43.352, which authorizes the commission to by rule establish criteria for the issuance of a deer breeder's permit with a period of validity of three years or five years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2014.

TRD-201401057
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: March 26, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 389-4775

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 3. TAX ADMINISTRATION
## SUBCHAPTER O. STATE SALES AND USE TAX

**34 TAC §3.360**

The Comptroller of Public Accounts adopts an amendment to §3.360, concerning customs brokers, with changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5843). This section is being amended to implement Senate Bill 776, 82nd Legislature, 2011 and to alert customs brokers that the $50 mandatory late filing penalty established by Senate Bill 1, 82nd Legislature, First Called Session, 2011 also applies to late reports filed by customs brokers.

Subsection (a)(1) is amended to change the term employee to authorized employee in accordance with Tax Code, §151.157. Corresponding changes have been made throughout the section for consistency of terminology. No substantive change is intended.

Subsection (a)(2) is amended to add the definition of certification identification number. The remaining paragraphs are re-numbered accordingly.

Subsection (b)(3)(B) is amended to implement Senate Bill 776, 82nd Legislature, 2011, which requires that the documentation examined under subsection (b)(3)(A) have a unique identification number, as required under Tax Code, §151.1575(a)(3)(B). Subsection (b)(3)(C) is amended to limit the number of receipts for which a single proof of export documentation may be issued in accordance with Tax Code, §151.1575(b) as amended by Senate Bill 776, 82nd Legislature, 2011.

Subsection (b)(3)(E) is amended to implement the requirement in Tax Code, §151.1575(a)(3)(G), as amended by Senate Bill 776, 82nd Legislature, 2011, that the purchaser and the customs broker or an authorized employee of the customs broker must sign the export documentation specified in subsection (b)(3)(E) in the presence of each other. Subsection (b)(3)(F)(ii) is corrected to provide that a purchaser must provide travel documentation, such as an airline or bus ticket, if the customs broker through whom the refund request is made is located in a county that does not border the United Mexican States in accordance with Tax Code, §151.1575(a)(3)(H). Subsection (b)(3)(G) is added to implement Tax Code, §151.1575(a)(3)(I) requiring the purchaser and customs broker to attest to certain information when using a power of attorney form. In addition, the amendment adds a new subsection (b)(5) regarding verification of property to be exported when the verification is not contemporaneous with the issuance of the certification of export.

Subsection (d)(2) and (3) is amended to eliminate references to a charter number and date since the term "charter" is no longer current in the Texas Business Organizations Code. Charter has been replaced with "formation/registration" in reference to a certificate of formation or certificate of registration, terms currently used in the Texas Business Organizations Code. Subsection (d)(7) and (8) is amended to change the term "association" to "entity" for consistency with other portions of the section.

Subsection (j)(3) is amended to reflect the price increase for export certification stamps to $2.10 from $1.60 as mandated by Senate Bill 776, 82nd Legislature, 2011, effective September 1, 2011.

Subsection (j)(5) is amended to reflect the increased refund value of export certification stamps to $2.10 when an out-of-business customs broker returns unused stamps. This amendment implements Tax Code, §151.158(g), which was revised in Senate Bill 776, 82nd Legislature, 2011.

Subsection (k)(2) is amended to implement the requirement in Tax Code, §151.157(a-1), as amended by Senate Bill 776, 82nd Legislature, 2011, that a licensed customs broker, or an authorized employee of the broker, must have prior approval to prepare a hard copy, or manual, export certification form if the comptroller's website is available but the customs broker is unable to use the system due to technical or communications problems experienced by the customs broker; and to clarify that if the comptroller's website is unavailable, a licensed customs broker, or an authorized employee of the customs broker, may continue to issue manual export certification forms without notifying the comptroller's office in advance. Subsection (k)(2) was also amended to change the term taxpayer identification number to taxpayer number, in conformance with Tax Code, Chapter 151.

Subsection (l)(4) is amended to alert customs brokers that the $50 mandatory late filing penalty established by Senate Bill 1, 82nd Legislature, First Called Session, 2011, also applies to late reports filed by customs brokers.

Subsection (m)(1) is amended to remove repetitive language and improve readability. Paragraph (9) is amended for clarity and to improve readability.

Subsection (n) is amended to improve readability.

Subsection (p) is amended to clarify that a maximum of six invoices may be listed on a single export certification form as provided in Tax Code, §151.1575.

Subsection (q)(1)(C) is amended to update outdated terminology related to forfeiture to that currently used in the Texas Business Organizations Code. The subsection is further updated to reflect that entities other than corporations may be taxable entities subject to forfeiture.

The amendment adds new subsection (q)(3)(X) that makes it clear that failure to properly document verification of property to be exported when the verification is not contemporaneous with the issuance of the certification of export is cause for suspension or revocation of a license.

Subsection (r) is amended to remove a phone number that is no longer valid for requesting copies of forms from the comptroller. Subsection (r) is also amended to eliminate incorrect statements indicating that the Licensed Customs Broker Export Certification is adopted by reference and available at the office of the Texas Register.

Additional amendments are made to conform the section language to Tax Code, §151.1575 and for clarity and readability. Amendments have been made throughout the section to change the terms "custom house broker", "custom broker" or "broker" to "customs broker" for consistency of terminology. No substantive change is intended. Amendments have also been made throughout the section to change Texas Customs Broker's License to Texas Customs Broker License for consistency of terminology. No substantive change is intended.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt,

and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.1575, 151.158(g), 151.157(a-1), and 151.703(d).

*§3.360. Customs Brokers.*

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

(1) Authorized employee--A person who is authorized by his employer to perform customs transactions or related services on behalf of the employer, is compensated by the employer with a regular salary or wages, is under the direct control and supervision of the employer, and from whose salary or wages the employer is required to and actually does deduct and withhold a tax under federal law. This definition applies to employees of customs brokers and employees of verification contractors.

(2) Certification identification number--The number generated by the comptroller's website used to prepare export certification forms as described in subsection (k) of this section.

(3) Licensed customs broker--A person who is licensed by the United States Customs Service to act as a customs broker and who holds a Texas Customs Broker License issued by the comptroller as provided for in this section.

(4) Purchaser Identification Number--A number issued by a purchaser's country of residence for purposes of identification. For example, a purchaser from the United Mexican States may have as a purchaser identification number either a "Registro Federal de Contribuyente" or "Registro Federal de Causante" (collectively "RFC"), or a Clave Unica de Registro de la Población (Unique Code to Register the Population or "CURP").

(5) Total value of property--The sales price, as shown on receipts and invoices, of all property for which a licensed customs broker issued export certification forms during a calendar quarter.

(6) Total amount of tax on property--The total amount of all Texas state and local sales and use taxes paid on property for which a licensed customs broker issued export certification forms during a calendar quarter.

(7) Total amount of tax refunded--The total amount of all Texas state and local sales and use taxes that retailers refunded to a customs broker during a calendar quarter.

(8) Verification contractor--An independent contractor who, for consideration and under a written contract with a licensed customs broker, monitors the export of property on behalf of a licensed customs broker as provided in subsection (b)(1) of this section. Unless the context clearly indicates otherwise, all references in this section to a verification contractor include an authorized employee of a verification contractor.

(b) Certification of exports. Only a licensed customs broker or an authorized employee of a licensed customs broker may fully or partially prepare, issue, and/or sign a valid export certification form as provided for in this section and in §3.323 of this title (relating to Imports and Exports). A retailer who receives documentation that is valid under this section certifying that delivery was made to a point outside of the territorial limits of the United States should refer to §3.323(e) of this title for information regarding refunds. A licensed customs broker, or an authorized employee of the customs broker, may issue an export certification form only if the customs broker or authorized employee:

(1) personally witnesses, or a verification contractor personally witnesses, the transportation of property across the border of the United States;

(2) personally witnesses the property being placed on a common carrier for delivery outside the territorial limits of the United States; or

(3) verifies by performing all of the following actions that the purchaser is transporting the property to a destination outside of the territorial limits of the United States:

(A) examines a passport, laser visa identification card, or picture foreign voter registration identification that proves that the purchaser of the property resides in a foreign country;

(B) requires that the documentation examined under subparagraph (A) of this paragraph have a unique purchaser identification number for that purchaser;

(C) requires that the purchaser produce the property and the original sales receipt for the property so the customs broker or authorized employee can verify that the property is the same property as described in the purchaser's sales receipt. The comptroller shall limit to six the number of receipts for which a single proof of export documentation may be issued under this section;

(D) requires that the purchaser state the foreign country of destination, which must be the foreign country in which the purchaser resides, the date and time the property is expected to arrive in the foreign country destination, the date and time the property was purchased, the name and address of the retailer from whom the purchaser bought the property, the sales price and quantity of the property, and a description of the property;

(E) requires that the purchaser and the customs broker or an authorized employee sign in the presence of each other a form prepared or approved by the comptroller:

*(i)* that states the purchaser has provided the information and documentation required in this paragraph;

*(ii)* that states "Providing false information to a customs broker is a Class B misdemeanor" clearly on the form; and

*(iii)* that contains a notice to the purchaser that property not exported to a foreign country is subject to Texas sales and use tax and the purchaser is liable for payment of an amount equal to the value of the property, as well as other possible civil liabilities and criminal penalties, if the purchaser improperly obtains a refund of taxes relating to the property;

(F) requires that the purchaser produce the following travel documentation for inspection by the customs broker or authorized employee:

*(i)* if the purchase was made in a county that does not border the United Mexican States, the purchaser's Form I-94, Arrival/Departure record, or its successor, as issued by the Bureau of Citizenship and Immigration Security of the United States Department of Homeland Security; or

*(ii)* if the customs broker is located in a county that does not border the United Mexican States, the purchaser's travel documentation, e.g., airline or bus ticket; and

(G) requires the purchaser and the customs broker or an authorized employee, when using a power of attorney form to attest, as a part of the form and in the presence of each other:

*(i)* that the purchaser has provided the information and documentation required by this paragraph; and

*(ii)* that the purchaser is on notice that tangible personal property not exported is subject to taxation under this chapter and the purchaser is liable, in addition to other possible civil liabilities and criminal penalties, for payment of an amount equal to the value of the merchandise if the purchaser improperly obtained a refund of taxes relating to the property;

(4) circles, and writes or states "exported" next to, each item to be exported on purchaser's original receipt; and

(5) if the property is verified in accordance with paragraph (3)(C) of this subsection at a time not contemporaneous with the issuance of the certification of export, the customs broker or an authorized employee, in addition to writing or stating "exported" next to each item to be exported on purchaser's original receipt, must write or state on each receipt the date and time the property was verified for export, as well as the full printed name of the person making the verification.

(c) Texas Customs Broker License; prerequisites. A person may apply to the comptroller for a Texas Customs Broker License, which is a license to issue export certification forms for the purpose of claiming exemption from Texas sales and use taxes. To obtain a license, a person must:

(1) be currently licensed by the United States Customs Service to act as a customs broker;

(2) submit an application in the form prescribed by the comptroller;

(3) pay an annual license fee of $300 for each place of business from which the customs broker intends to issue export certification forms;

(4) post a bond or security as required in subsection (h) of this section; and

(5) be current in payment of all taxes and fees administered by the comptroller.

(d) Form of application. The comptroller will prescribe an application form for a Texas Customs Broker License, which must include or be accompanied by the following:

(1) a copy of the applicant's license to act as a customs broker issued by the United States Customs Service;

(2) the applicant's name, mailing address, primary business address, business telephone number, home address, and home telephone number, and the names, home addresses, and home telephone numbers of all the general partners (if the applicant is a partnership), the formation/registration number, formation/registration date, federal Employer Identification Number, and the names, home addresses, and home telephone numbers of the officers and directors (if the applicant is a corporation), or the names, home addresses, and home telephone numbers of the members (if the applicant is an entity other than a partnership or corporation);

(3) the names, mailing addresses, primary business addresses, business telephone numbers, home addresses, and home telephone numbers of all verification contractors and all authorized employees of verification contractors, and the names, home addresses, and home telephone numbers of all the general partners (if the verification contractor is a partnership), the formation/registration number, formation/registration date, federal Employer Identification Number, and the names, home addresses, and home telephone numbers of the officers and directors (if the verification contractor is a corporation), or the names, home addresses, and home telephone numbers of the members (if the verification contractor is an entity other than a partnership or corporation), and the date of contract of all verification contractors;

(4) the names, home addresses, and home telephone numbers of all employees who are authorized to certify exports in the name of the applicant and the date of hire of all such employees;

(5) a copy of each authorized employee's power of attorney to certify exports in the name of the applicant;

(6) the trade name of the applicant's business and the address of each location where export certifications are to be fully or partially prepared;

(7) the original signature or signatures of the applicant (if the applicant is a sole proprietor), an officer or director (if the applicant is a corporation), all general partners (if the applicant is a partnership), or an authorized member (if the applicant is an entity other than a corporation or partnership), and the original signatures of all authorized employees of the customs broker;

(8) the social security number of each authorized employee, verification contractor, and authorized employee of a verification contractor, and the social security number of the applicant (if the applicant is a sole proprietor), each general partner (if the applicant is a partnership), each officer and director (if the applicant is a corporation), or each member (if the applicant is an entity other than a partnership or corporation); and

(9) any other information the comptroller requires.

(e) Annual customs broker license and fee. An annual customs brokers license issued under this section continues in effect through December 31st each year unless canceled by the customs broker or suspended or revoked by the comptroller before the expiration date. All expired, canceled, suspended, or revoked licenses must be immediately returned to the comptroller or they will be subject to confiscation. The annual license fee is non-refundable but the fee may be prorated on a $75 per-quarter basis as follows:

(1) $300 fee for a license with an effective date beginning January 1st through March 31st.

(2) $225 fee for a license with an effective date beginning April 1st through June 30th.

(3) $150 fee for a license with an effective date beginning July 1st through September 30th.

(4) $75 fee for a license with an effective date beginning October 1st through December 31st of a calendar year.

(f) Display of license. An original Texas Customs Broker License must be prominently displayed at each place of business of the customs broker where export certification forms are fully or partially prepared.

(g) Locations outside the United States. No Texas Customs Broker Licenses will be issued for locations beyond the territorial limits of the State of Texas.

(h) Bond or security. A licensed customs broker is required to post a bond or security in the amount of $5,000, plus an additional $1,000 for each place of business from which the customs broker intends to issue export certification forms.

(1) The security may be in the form of cash, a certificate of deposit, a letter of credit, or another instrument of value acceptable as security to the comptroller.

(2) The comptroller may forfeit a customs broker's bond or security and apply the amount to any liabilities due for unpaid taxes, penalties, interest, license fees, stamp fees, and other penalties imposed for any violations of the Tax Code or this section.

(3) A licensed customs broker, who has a bond or security forfeited by the comptroller, must immediately post another bond or security as required by the comptroller.

(4) A customs broker must send the comptroller a written request to obtain release of the bond or security once the broker has ceased to do business in Texas. The comptroller may release a bond or security once a customs broker has ceased doing business in Texas and the comptroller verifies that the customs broker has no outstanding liabilities or penalties due.

(i) Verification contractors. A licensed customs broker may enter into a written contract with a verification contractor to facilitate the monitoring of exports certified by the customs broker. A verification contractor may authorize by power of attorney his full-time or part-time employee to perform verification services on his behalf. A verification contractor may not fully or partially prepare, issue, and/or sign export certification forms and may not affix export certification stamps to export certification forms. A verification contractor's contract must be submitted to and approved by the comptroller before the verification contractor may perform export verification services.

(j) Export certification stamps. The comptroller will produce or have produced export certification stamps to be affixed to export certification forms.

(1) The comptroller may change the design as often as necessary for the enforcement of this section. The design will be changed at least once each calendar quarter.

(2) Only a licensed customs broker or authorized employee may receive stamps. A person obtaining stamps in person must present photo identification.

(3) There is a $2.10 fee for each stamp.

(4) The stamps are non-transferable. A stamp is void if transferred to a person other than the customs broker to whom the comptroller originally issued the stamp or to that customs broker's authorized employee. This paragraph does not apply to a stamp that is actually affixed to an export certification form that is transferred in compliance with this section.

(5) All unused, expired stamps must be returned to the comptroller within 15 working days of the end of each calendar quarter. All such stamps must be delivered to the comptroller on the same date, at the same time, and to the same location. Unused stamps must be immediately returned to the comptroller upon cancellation, suspension, or revocation of the customs broker's license or upon notification that the customs broker is out of business and may be confiscated if not returned. Unused, expired stamps may not be retained, destroyed, or disposed of except by the comptroller. The comptroller will allow a licensed customs broker credit for returned unused stamps. Such credit must be used to purchase new stamps. A licensed customs broker who ceases to do business in Texas must return all unused stamps within 15 working days of the customs broker's last day of business. The comptroller shall refund an out-of-business customs broker an amount of $2.10 for each returned unused stamp.

(6) As soon as practicable after discovery, a customs broker must report in writing to the comptroller the theft, destruction, or other loss of stamps issued to the customs broker, including the numbers assigned to the lost stamps (if the comptroller has numbered the stamps sequentially). No credit or refund will be allowed for stamps lost, destroyed, or stolen, unless the customs broker provides sufficient documentation that the stamps were stolen or destroyed.

(7) A customs broker must notify the comptroller as soon as practicable in writing if the customs broker has no remaining inventory of stamps following use, theft, and/or other loss of the stamps.

(k) Preparation of documentation. The comptroller will maintain a password-protected website that a licensed customs broker, or an authorized employee of a licensed customs broker, must use to prepare export certification forms.

(1) A licensed customs broker, or an authorized employee of a licensed customs broker, is required to use the website to prepare export certification forms and must provide all information as required by the comptroller. Failure to use the website to prepare export certification forms while the website is available is a violation under subsection (q) of this section.

(2) When the comptroller's website is available but a licensed customs broker, or an authorized employee of a licensed customs broker, is unable to use the system due to technical or communications problems, the licensed customs broker or authorized employee must notify the comptroller prior to issuing manual export certifications. The licensed customs broker, or authorized employee, may provide the notification by calling 1-888-434-5464 and following an automated menu to enter the licensed customs broker's 11-digit taxpayer number and the location number. The licensed customs broker, or authorized employee, must contact the comptroller again every 48-hours for as long as the customs broker is unable to use the website. The licensed customs broker, or authorized employee, must enter the export certification information using the website no later than 48-hours after the technical or communications problems are resolved.

(3) When the comptroller's website is unavailable due to routine maintenance by the comptroller or technical or communications problems experienced by the comptroller, a licensed customs broker, or an authorized employee of a licensed customs broker, may issue manual export certification forms without notifying the comptroller's office in advance. The licensed customs broker, or authorized employee, must enter such export certification information using the website within 48-hours after the website becomes available. Failure to enter such documentation no later than 48-hours is a violation under subsection (q) of this section.

(l) Reports required. A licensed customs broker is required to file a report quarterly on a form prescribed by the comptroller.

(1) The quarterly report must be signed by the licensed customs broker or by the licensed customs broker's duly authorized agent and must include the following information:

(A) the total value of property for which the licensed customs broker issued export certifications that quarter;

(B) the total amount of tax on property for which the licensed customs broker issued export certifications that quarter; and

(C) the total amount of tax refunded in accordance with export certifications issued by the licensed customs broker that quarter.

(2) The customs broker report is due on the 20th day of the month following the end of each calendar quarter reporting period. For example, the first quarter report period is January, February, and March, and the due date is April 20th. If the 20th is a Saturday, Sunday, or legal holiday, the report is due the next business day. To be considered timely, a report must be either postmarked or received by the comptroller on or before the due date of the report.

(3) Failure to receive the correct report form from the comptroller does not relieve a customs broker of the responsibility to file a report.

(4) A penalty of $500 is imposed for each report filed after the due date. The comptroller shall also impose an additional $50 penalty for each late report filed.

(m) Records required. A licensed customs broker must maintain books and records that include, at a minimum, the following:

(1) an exact photographic image of the export certification stamp and of each export certification form signed by the customs broker within the last two years. Carbon copies and pages from multi-page forms are acceptable in lieu of photocopies, provided the number of the export certification stamp affixed to the original is recorded on the additional copies;

(2) a ledger that:

(A) lists sequentially all export certification forms issued or voided within the last two years;

(B) identifies the person or persons who fully or partially prepared, issued, and/or signed each form; and

(C) identifies the person's or persons' relationship to the licensed customs broker;

(3) an inventory of export certification stamps and records tracking transfers of stamps between the customs broker and authorized employees, identifying the recipients and showing the dates of transfer, quantities transferred, the sequential numbers of the transferred stamps (if the comptroller has numbered the stamps sequentially), and detailed records regarding stamps that have been lost, stolen, or are otherwise unaccounted for;

(4) a current list of all employees authorized to fully or partially prepare, issue, and/or sign export certification forms and information relating to the hiring and termination of the authorized employees;

(5) all contracts executed between the customs broker and verification contractors and information relating to the termination or cancellation of such contracts;

(6) exact copies of all invoices, receipts, passports, laser visa identification cards, foreign voter registration picture identification, I-94 forms, air, land, or water travel documentation, or other documents relating to property whose export the customs broker has certified. This requirement specifically applies to documentation that must be verified by a customs broker under subsection (b)(3) of this section. The requirement also applies to other documentation if the customs broker attached such copies to the original form as provided in subsection (p)(6) of this section;

(7) a copy of a certified check, company check, or money order made payable to the purchaser, or a credit memo or cash receipt signed by the purchaser, and the purchaser's written assignment of the right to a Texas sales or use tax refund for each instance in which the customs broker obtained a refund assignment from the purchaser;

(8) detailed records showing the amount the customs broker charges clients for his export certification services and the customs broker's gross receipts from certifying exports;

(9) information described in subsection (d) of this section, updated and kept current since the date of application; and

(10) detailed records of when an authorized employee is terminated, quits, is no longer authorized to complete export certification forms, or whose power of attorney is withdrawn. A licensed customs broker is required to notify the comptroller in writing within 15 days of the date when an authorized employee is subject to such action.

(n) Examination of records. A licensed customs broker must make all required records available for examination by the comptroller. The comptroller will issue written notice of routine examination of records at least 15 days prior to the date of examination. No advance notice will be issued if the comptroller determines that notice could jeopardize the proper enforcement of the tax laws and the comptroller's rules. The examination will take place at the customs broker's principal place of business unless the comptroller agrees to examine the records at another location.

(o) Retention of records. A licensed customs broker must retain records for a period of at least two years from the date of the document, the date of completion (if the required record is a contract), or the date of final entry (if the required record is a list or ledger). Copies of export certification forms must be retained for at least two years after the date the customs broker or the customs broker's authorized employee signs the form, regardless of the date of export. For other documents with multiple dates, the two-year period for retention begins on the latest date reflected on the document.

(p) Export certification form and contents. The export certification forms issued by a licensed customs broker must be substantially in the form recommended by the comptroller. A separate form must be completed for each seller. A maximum of six invoices from a single seller may be listed on a single export certification form only if all the listed items were exported at the same place, on the same date, and at the same time. The required information must be completed in English on the face of the form, in addition to any other language in which the form is completed. The comptroller may immediately confiscate from any person an export certification form that is incomplete on its face, indecipherable, fraudulent, or otherwise in violation of this section. An export certification form must, at a minimum, reflect the following information:

(1) the name and address of the purchaser of the property, as shown on the invoice, receipt, or similar document, or the purchaser's home address if the customs broker certified the export under subsection (b)(3) of this section;

(2) the name of the seller and the seller's location from which the property was sold;

(3) the name, address of the place of business which the customs broker certified the export, and Texas Customs Broker License number of the customs broker in whose name the export is being certified;

(4) the date (and time, if available) of sale, as shown on the invoice, receipt, or similar document;

(5) the date, time and exact location where the property was exported (e.g., the name of border crossing bridge or airport), unless export was verified as set out in subsection (b)(3) of this section;

(6) a description and quantity of the property; a list of Store Keeping Unit (SKU), Harmonization Systems, Schedule B or other product identification codes; or copies of invoices securely attached to the form and signed and dated individually by the customs broker or the customs broker's authorized employee;

(7) the invoice numbers (if any) and total sales prices and taxes of all property certified for export;

(8) the original signature of the licensed customs broker or the customs broker's authorized employee, together with a certification that the customs broker or authorized employee inspected the property and the original receipt for the property and that the property has been exported or will be exported under the verification requirements of subsection (b)(3) of this section;

(9) the name of the person who signed the form, typed or legibly printed near the signature;

(10) a valid export certification stamp whose expiration date falls within the same calendar quarter as the certification date (regardless of the date of sale);

(11) a sequential export certification form number assigned by the licensed customs broker;

(12) the purchaser's original signature and date; and

(13) the certification identification number assigned by comptroller.

(q) License denial, suspension, and revocation. The comptroller may deny, suspend, or revoke a Texas Customs Broker License for cause.

(1) Grounds for denying a person's application for a Texas Customs Broker License include, but are not limited to:

(A) ineligibility for a license under subsection (c) of this section, including filing incomplete, false, or misleading information with the license application;

(B) disqualification for a license due to prior denial, United States Customs Service suspension, or revocation, as provided in this subsection;

(C) forfeiture of an entity's right to transact business or certificate of formation/registration, if the applicant is a taxable entity;

(D) failure to pay annual license fee; or

(E) failure to post bond or security as required by comptroller.

(2) A person whose application for a Texas Customs Broker License has been denied may resubmit the application not sooner than 90 days after the date on which the comptroller's decision to deny the application becomes final. However, the comptroller may authorize reapplication at an earlier date if the comptroller determines it is warranted under the circumstances.

(3) Acts or omissions of a licensed customs broker, authorized employee, verification contractor, an officer or director, a general partner, or member (as applicable) that constitute cause for suspension or revocation of a license under this section include, but are not limited to:

(A) cancellation, suspension, or revocation by the United States Customs Service of the customs broker's license to act as a customs broker or cancellation of that license by the customs broker;

(B) violation of any provision of the Tax Code or the comptroller's rules;

(C) delivering to any person a signed and/or stamped export certification form if all or a portion of the property described thereon was not actually exported at the time and place and on the date reflected on the certification form, or not properly verified as property that will be exported as required in subsection (b)(3) of this section;

(D) delivering to any person a signed and/or stamped export certification form based solely on:

*(i)* foreign import documents, bills of lading, freight forwarder's receipts, or other documents that constitute valid proof of export in and of themselves under §3.323 of this title; or

*(ii)* proof of foreign citizenship;

(E) transferring an export certification stamp to a person other than the licensed customs broker or the customs broker's authorized employee, except if, at the time of transfer, the stamp is affixed to an export certification form issued in compliance with this section;

(F) delivering to any person an export certification form with knowledge that the recipient intends to use the form to evade tax that is legally due or to assist another person in the evasion of tax that is legally due;

(G) soliciting, advertising, or promoting the unlawful evasion of tax through use of export certification forms;

(H) knowingly making a false verbal or written statement to the comptroller;

(I) fully or partially preparing export certification forms at a location for which no Texas Customs Broker License has been issued;

(J) transferring signed and/or stamped export certification forms that are otherwise blank or incomplete at the time of transfer to a person other than the licensed customs broker or the customs broker's authorized employee in the ordinary course of business;

(K) failing to exercise responsible supervision and control over the conduct of export certification business, including inadequate supervision of authorized employees and verification contractors;

(L) failing to keep current in a correct, orderly, and itemized manner the records required under this section, failing to timely provide the comptroller with information required to be provided, or failing to account for all export certification stamps received from the comptroller;

(M) refusing the comptroller access to, concealing, removing, or destroying without the comptroller's prior written consent, the whole or any part of a record required to be kept under this section, or refusing to cooperate with the comptroller's investigation;

(N) attempting to unduly influence the comptroller by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift, favor, or other thing of value;

(O) withholding information from or knowingly imparting false information to a client;

(P) failing to timely return to the comptroller unused, expired export certification stamps as required by this section, absent a showing and timely report to the comptroller of loss by theft or accident;

(Q) selling or buying export certification forms and/or export certification stamps except as consistent with this section;

(R) seeking and/or obtaining under false pretenses a tax refund from a seller, including giving a false refund assignment to the seller or otherwise representing that the customs broker has the authority to obtain a refund of tax paid by another person if the customs broker does not have such authority;

(S) failing promptly to notify the seller, in writing, that an export certification form relating to that seller is for any reason incomplete, misleading, void, or otherwise invalid;

(T) failing to file quarterly customs broker report;

(U) failing to use the website for preparing documentation while the website is available, or, if the website becomes unavailable and the comptroller provides prior authorization, failing to promptly enter documentation using the website no later than 48 hours

after website becomes available or disabling or interfering with the proper functioning of the website in any manner;

(V) failing to pay tax, penalties, or interest that become due or are imposed by the comptroller under the provisions of the Tax Code or this section;

(W) failing to request a purchaser identification number; or

(X) failing to properly document each item to be exported on purchaser's original receipt by circling, and writing or stating "exported" next to each item, or failing to write or state on each receipt the date and time the property was verified for export together with the full printed name of the person making the verification.

(4) After notice and hearing, the comptroller may suspend a license for no fewer than 60 days and no more than 120 days if the customs broker's license has not been previously suspended or revoked, for no fewer than 120 days and no more than 180 days if the customs broker's license has been previously suspended or revoked, or concurrently and for the same length of time as a suspension by the United States Customs Service of the customs broker's license to act as a customs broker. The suspension becomes effective on the date the comptroller's decision to suspend the license becomes final. Suspension of a license applies to all locations of the customs broker.

(5) After notice and hearing, the comptroller may revoke a customs broker's license indefinitely if the customs broker's license has been suspended at least twice previously or has been previously revoked, or if the customs broker's license to act as a customs broker has been revoked by the United States Customs Service. The revocation becomes effective on the date the comptroller's decision to revoke the license becomes final. Revocation of a license applies to all locations of the customs broker.

(6) A Texas Customs Broker License that has been revoked must be returned to the comptroller within 15 days of the effective date of revocation. A Texas Customs Broker License that has been suspended is reinstated automatically upon the expiration of the period of suspension, unless the licensee notifies the comptroller in writing that the license should not be reinstated. Not sooner than one year after the effective date of revocation, a person whose Texas Customs Broker License has been revoked may apply to the comptroller for reinstatement. The comptroller may reinstate the license if the person otherwise qualifies for a license as provided in this section and the comptroller is satisfied that the person has a good faith intent to comply with the tax laws and the comptroller's rules.

(7) For procedures relating to license denial, suspension, and revocation, see §3.361 of this title (relating to Practice and Procedure for Texas Customs Broker's License Denial, Suspension, and Revocation).

(8) The comptroller may require a customs broker to pay the comptroller the amount of any tax refunded if the customs broker does not comply with the Tax Code or this section. In addition to the amount of the refunded tax, the comptroller may require the customs broker pay a penalty of not less than $500 dollars nor more than $5,000. The comptroller may deduct any penalties to be paid by a customs broker from the customs broker's posted bond.

(9) A proceeding by the comptroller to require a customs broker to pay an amount under paragraph (8) of this subsection is a contested case in the same manner as a proceeding to suspend or revoke a customs broker's license under Tax Code, §151.157(f).

(r) Form of export certification. An export certification form must be substantially in the form of a Licensed Customs Broker Export Certification. Copies of the form may be obtained from the Comptroller of Public Accounts, Tax Policy Division, or be requested by calling the toll-free number 1-800-252-5555.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2014.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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Proposal publication date: September 6, 2013
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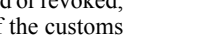

# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 341. JUVENILE PROBATION DEPARTMENT GENERAL STANDARDS

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §341.16, concerning Testing; §341.28, concerning Certification of Staff; §§341.52 - 341.56, concerning Non-Caseworker Systems; and §341.60, concerning TJPC Monthly Folder Extract, without changes to the proposal as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6886).

TJJD also adopts amendments to §§341.1, 341.2, 341.4, 341.9, 341.10, 341.29, 341.35 - 341.41, 341.47, 341.48, 341.50, 341.51, 341.65 - 341.71, 341.80, 341.81, and 341.83 - 341.90, concerning Juvenile Probation Department General Standards, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6886).

TJJD also adopts amendments to §341.3, concerning Policy and Procedures; §341.49, concerning TJJD EDI Extract; and §341.82, concerning Documentation Requirements, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6886). Changes to §341.3 consist of clarifying that it is the juvenile board, not the juvenile probation department, that is responsible for adopting policies regarding sexual abuse. Changes to §341.49 consist of clarifying that the data extract is due to TJJD *no later than* the tenth calendar day of the month, rather than *on* the tenth calendar day. Changes to §341.82 consist of correcting a minor grammatical error.

TJJD also adopts new §341.20, concerning Risk and Needs Assessment, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6886).

RULE REVIEW

In the Proposed Preamble, published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6886), TJJD published its notice of intent to review Chapter 341 as required by Texas Government Code §2001.039.

TJJD has concluded the rule review and has determined that the reasons for adopting §§341.16, 341.28, 341.52 - 341.56, and 341.60 no longer exist. Accordingly, TJJD repeals those rules. However, in some cases relevant information from those rules has been added to other rules, as explained later in this notice. TJJD has also determined that the reasons for adopting §§341.1 - 341.4, 341.9, 341.10, 341.29, 341.35 - 341.41, 341.47 - 341.51, 341.65 - 341.71, and 341.80 - 341.91 continue to exist. Accordingly, those rules are readopted with amendments as described in this notice.

JUSTIFICATION FOR CHANGES

The justification for these new, amended and repealed rules is to provide additional safeguards for the safety of youth under juvenile probation jurisdiction, additional flexibility regarding the content of juvenile boards' personnel policies, and rules that more accurately reflect current statutes and TJJD's current structure and practices.

SUMMARY OF CHANGES

The repeal of §341.16 allows for the inclusion of a broader requirement in §341.3 for juvenile boards to adopt zero-tolerance policies regarding sexual abuse.

The repeal of §341.28 allows for the content of this section to be moved to §344.800, which is a more appropriate location for information regarding positions requiring certification. The revised §344.800 is also adopted in this issue of the *Texas Register.*

The repeal of §§341.52 - 341.56, which comprised Subchapter H, Division 2, allows for the content of this division to be consolidated with Division 1.

The repeal of §341.60 allows for the requirement to submit the monthly data extract to be moved to §341.49. The precise data specifications are no longer included in the rule.

New §341.20 adds the requirement from Texas Human Resources Code §221.003(b) and (e) for juvenile probation departments to use a validated risk and needs assessment instrument provided or approved by TJJD.

The amended §341.3 no longer requires a juvenile board's personnel policies to include a salary scale for juvenile probation officers or a provision for juvenile probation officers to receive all benefits given to county employees. The amended section also includes a new requirement for policies on research studies and zero-tolerance for sexual abuse. Additionally, the amended section requires more specific documentation for volunteer and intern sign-in/out logs.

The amended §§341.47 - 341.51 no longer include references to the names of specific case management systems.

The amended §341.67 clarifies the provision that prohibits obstruction of the airway or impairing the breathing of a juvenile to include that nothing can be placed in, on, or over the juvenile's mouth or nose.

The amendment to §341.81 adds that a juvenile probation officer is not authorized to carry a firearm if he/she has been designated as a perpetrator in a TJJD abuse, neglect, or exploitation investigation. Additionally a reference to 37 TAC §221.35 has been added to reflect that a juvenile probation officer must successfully complete the Texas Commission on Law Enforcement's (TCOLE's) current firearms training program for juvenile probation officers to be authorized to carry a firearm in the course of the officer's official duties.

The amendment to §341.82 clarifies that documentation must be provided to TJJD *after* a juvenile probation officer obtains an initial or renewal firearms proficiency certificate from TCOLE. The list of documents no longer includes proof of certain facts that are attested to on TJJD's verification of eligibility form.

Throughout all amended sections in Chapter 341, non-substantive terminology updates and clarifications have also been made.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments regarding the proposal or regarding the rule review.

## SUBCHAPTER A. DEFINITIONS

### 37 TAC §341.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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## SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

### 37 TAC §§341.2 - 341.4

The amendments are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

*§341.3. Policy and Procedures.*

(a) Personnel Policies. The juvenile board must adopt written personnel policies.

(b) Department Policies. The juvenile board must adopt written department policies and procedures. These policies must include, at a minimum, the following provisions:

(1) Deferred Prosecution. The deferred prosecution policy must, at a minimum, include the following provisions:

(A) The maximum supervision fee for deferred prosecution cases is $15.00 per month.

(B) The monthly fee must be determined after obtaining a financial statement from the parent or guardian.

(C) The fee schedule must be based on total parent/guardian income.

(D) The chief administrative officer or his/her designee must approve in writing the fee assessed for each child including any waiver of deferred prosecution fees.

(E) A deferred prosecution fee must not be imposed if the juvenile board does not adopt a fee schedule and rules for waiver of the deferred prosecution fee.

(2) Volunteers and Interns. If a juvenile probation department has or develops a volunteer or internship program, the juvenile board must, at a minimum, adopt the following policies for the volunteer and internship program:

(A) a description of the authority, responsibility, and accountability of volunteers and interns who work with the department;

(B) a requirement for criminal history searches in accordance with the requirements set forth in Chapter 344 of this title;

(C) selection and termination criteria, including disqualification based on criminal history;

(D) orientation and training requirements including training on reporting abuse, exploitation, and neglect;

(E) a requirement that volunteers and interns meet minimum professional requirements if serving in a professional capacity; and

(F) a provision requiring all volunteer and intern activity involving contact with juveniles to be documented through the use of a log which identifies:

*(i)* the name of the volunteer/intern;

*(ii)* the date and time (beginning and ending) of the activity;

*(iii)* the name of the juvenile(s) contacted/served; and

*(iv)* general description of the activity/service the volunteer/intern provided.

(3) Experimentation. The juvenile board must adopt a policy that, at a minimum, prohibits a department or juvenile justice program from using juveniles for medical, pharmaceutical, or cosmetic experiments.

(4) Research Studies. Participation by juveniles in medical, psychological, pharmaceutical, or cosmetic research is prohibited unless the research study is approved in writing by the juvenile board subject to the following requirements:

(A) The juvenile board must promulgate approved policies that govern all authorized research studies. Studies that include medically invasive procedures must be prohibited.

(B) Approved research studies must adhere to all applicable policies of the authorizing juvenile board.

(C) Research studies approved by the juvenile board must be reported to TJJD in a format prescribed by TJJD prior to commencement of the study.

(D) After receiving a request from TJJD, the juvenile board chair or the chief administrative officer must provide TJJD with the written results of a completed research study.

(E) Policies governing research studies must adhere to all federal requirements governing human subjects and confidentiality.

(5) Zero-Tolerance for Sexual Abuse. The juvenile board must adopt zero-tolerance policies and procedures regarding sexual abuse. The policies and procedures must:

(A) strictly prohibit all sexual abuse of juveniles under the jurisdiction of the department by department staff;

(B) establish the actions department staff must take in response to allegations of sexual abuse and TJJD-confirmed incidents of sexual abuse; and

(C) provide for administrative and/or criminal disciplinary sanctions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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## SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

### 37 TAC §341.9, §341.10

The amendments are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. TREATMENT AND SAFETY

### 37 TAC §341.16

The repeal is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. ASSESSMENT AND SCREENING

**37 TAC §341.20**

The new section is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new section is also adopted under Texas Human Resources Code §221.003(b) and (e), which requires TJJD to adopt rules requiring juvenile probation departments to use a validated risk and needs assessment instrument that has been provided or approved by TJJD.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS

**37 TAC §341.28**

The repeal is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide certification standards for probation officers and minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. REQUIREMENTS FOR CERTIFIED OFFICERS

**37 TAC §341.29**

The amendment is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide certification standards for probation officers and minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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## SUBCHAPTER G. CASE MANAGEMENT STANDARDS

**37 TAC §§341.35 - 341.41**

The amendments are adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. DATA COLLECTION STANDARDS

**37 TAC §§341.47 - 341.51**

The amendments are adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

*§341.49. TJJD EDI Extract.*

(a) The TJJD EDI Extract must be sent to the TJJD via the Internet.

(b) The extract is due to the TJJD no later than the tenth calendar day of each month following the reporting period.

(c) The TJJD EDI Extract data must include all data fields required by the EDI Specifications. TJJD staff must discuss any proposed changes to the specifications with juvenile probation departments' designated representatives before making substantive changes to the specifications to minimize any disruption and/or resource issues that may be associated with the changes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brett Bray
General Counsel
Texas Juvenile Justice Department
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## SUBCHAPTER H. DATA COLLECTION STANDARDS
## DIVISION 2. NON-CASEWORKER SYSTEMS

**37 TAC §§341.52 - 341.56**

The repeals are adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brett Bray
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## SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

**37 TAC §341.60**

The repeal is adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. RESTRAINTS

**37 TAC §§341.65 - 341.71**

The amendments are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER K. CARRYING OF WEAPONS

**37 TAC §§341.80 - 341.90**

The amendments are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

*§341.82. Documentation Requirements.*

(a) Documents Required after Obtaining an Initial Firearms Proficiency Certificate. Within five workdays after obtaining the initial firearms proficiency certificate from TCOLE, the chief juvenile probation officer or the supervising officer of the juvenile probation officer who received the certificate must provide the following documents to TJJD:

(1) a copy of the Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE; and

(2) a completed, signed, and notarized copy of TJJD's Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form, including the following required attachments:

(A) appropriate documentation that the applicant has been subjected to a complete search of local, state, and national records to disclose any criminal record or criminal history;

(B) written documentation from each chief juvenile probation officer who has authorized the applicant's participation in the juvenile probation officer firearms proficiency training program that the applicant has been examined by a psychologist who was selected by the current employing department and who is licensed by the Texas State Board of Examiners of Psychologists;

(C) a written declaration from the examining psychologist that the officer possesses the requisite psychological and emotional health to carry a firearm in the course of the officer's official duties;

(D) documentation of successful completion of TCOLE's current firearms training program for juvenile probation officers;

(E) documentation of successful completion of at least 20 hours of training in the use of an empty-hand defense tactic, as required by §341.84 of this chapter; and

(F) documentation of successful completion of adequate training in the use of at least one intermediate weapon, as required by §341.84 of this chapter.

(b) Documents Required after Obtaining Renewed Firearms Proficiency Certificate. Within five workdays after receiving a renewal of a firearms proficiency certificate from TCOLE, the chief juvenile probation officer or the supervising officer of the juvenile probation officer who receives the certificate must provide the following documents to TJJD:

(1) a copy of the renewed Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE;

(2) a completed, signed, and notarized copy of TJJD's Renewal of Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form; and

(3) verification of successful completion of 20 hours of continuing education, as required in §341.89 of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brett Bray
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# CHAPTER 342. STANDARDS FOR HOUSING NON-TEXAS JUVENILES IN TEXAS DETENTION AND CORRECTIONAL FACILITIES

**37 TAC §§342.1 - 342.3**

The Texas Juvenile Justice Department (TJJD) adopts amendments to §342.1, concerning Authority to House Out-of-State Juveniles, and §342.2, concerning Registration and Standards Compliance, without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8552). The text will not be republished.

TJJD also adopts amendments to §342.3, concerning Contracts with Other States for Housing Non-Texas Juveniles, with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8553). Changes to the proposed text consist of clarifying that it is the out-of-state entity, and not the contract itself, that must provide additional documentation before transferring a juvenile to a Texas facility.

RULE REVIEW

In the Proposed Preamble, published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8552), TJJD published its notice of intent to review Chapter 342 as required by Texas Government Code §2001.039. In accordance with Texas Government Code §2001.039, TJJD has concluded the rule review for Chapter 342 and has determined that the reasons for adopting §§342.1 - 342.3 continue to exist. Accordingly, these rules are readopted with amendments.

SECTION-BY-SECTION SUMMARY

The amended §342.1 includes minor terminology updates and clarifications.

The amended §342.2 clarifies that the requirements in Texas Family Code §§51.12, 51.125, and 51.126 to register with TJJD and to possess a written certification of suitability apply to facilities housing out-of-state juveniles.

The amended §342.3 requires the authorizing governmental unit to ensure the contract with the out-of-state sending entity includes provisions requiring the sending entity to fully disclose a juvenile's record of suicidal and self-harming behaviors and sexually aggressive behaviors, provide all appropriate and available mental health information for the juvenile, and provide all appropriate and available education information for the juvenile.

JUSTIFICATION FOR CHANGES

The justification for these amended rules is the promotion of public safety by ensuring that juvenile correctional facilities in Texas are fully aware of a juvenile's criminal history, prior institutional behavior, and mental health and educational needs.

PUBLIC COMMENTS

TJJD did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amended sections are adopted under Human Resources Code §221.053(b), which authorizes TJJD to develop rules applicable to county or private correctional facilities housing out-of-state juvenile inmates.

*§342.3. Contracts with Other States for Housing Non-Texas Juveniles.*

The authorizing governmental unit must ensure that there is a written and fully executed annual contract with each out-of-state entity that sends juveniles to the Texas facility. At a minimum, the contract must:

(1) require that all juveniles confined pursuant to the contract be released within the jurisdiction of the sending entity;

(2) require the out-of-state entity to provide the following information before transferring the juvenile:

(A) the juvenile's record of institutional violence, escape, attempted escape, suicidal and self-harming behaviors, and sexually aggressive behaviors;

(B) all appropriate medical information of the juvenile, including certification for tuberculosis screening or treatment;

(C) all appropriate and available mental health information for the juvenile; and

(D) all appropriate and available education information for the juvenile.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brett Bray
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## CHAPTER 344. EMPLOYMENT, CERTIFICATION, AND TRAINING
## SUBCHAPTER H. CERTIFICATION

**37 TAC §344.800**

The Texas Juvenile Justice Department (TJJD) adopts amendments to §344.800, concerning Positions Requiring Certification, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6899).

The amended section includes language that was deleted from §341.28 of this title. Chapter 344 is a more appropriate location for information regarding positions that require certification.

The justification for this amendment is the availability of rules that reflect a more logical arrangement of information.

TJJD did not receive any comments regarding the proposed rule.

The amended section is adopted under Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide certification standards for probation and detention officers and minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
## SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE AND DISCHARGE

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.8571, concerning Home Placement; §380.8575, concerning Temporary Admission Awaiting Permanent Placement; and §380.8579, concerning Parole of Undocumented Foreign Nationals, without changes to the proposal as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8553).

TJJD also adopts new §380.8533, concerning Temporary Admission Awaiting Permanent Placement; and §380.8535, concerning Undocumented Foreign Nationals, without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8553).

TJJD also adopts new §380.8539, concerning Home Placement, with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8553). Changes to the proposed text consist of replacing the term "surveillance and supervision" with "parole supervision" to be consistent with other TJJD rules.

TJJD also adopts amendments to §380.8503, concerning Intake and Admission Process; §380.8505, concerning Initial Assessment; §380.8521, concerning Facility Assignment System; §380.8524, concerning Assessment for Safe Housing Placement; §380.8527, concerning Program Restriction Levels; §380.8531, concerning Temporary Admission Awaiting Transportation; §380.8557, concerning Release Review Panel; §380.8559, concerning Program Completion for Sentenced Offenders; §380.8565, concerning Discharge of Sentenced Offenders upon Transfer to TDCJ or Expiration of Sentence; and §380.8569, concerning Transfer of Sentenced Offenders Adjudicated for Capital Murder, without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8553).

TJJD also adopts amendments to §380.8501, concerning Definitions; §380.8502, concerning Legal Requirements for Admission; §380.8525, concerning Minimum Length of Stay/Minimum Period of Confinement; §380.8545, concerning Movement Before Program Completion; §380.8555, concerning Program Completion for Non-Sentenced Offenders; and §380.8595, concerning Parole Completion and Discharge, with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8553).

Changes to the proposed text of §380.8501 consist of clarifying that use or possession of weapons, in addition to firearms, is considered an aggravating factor when determining the severity of the committing offense. Additionally, a definition for the term "Conditional Placement" has been added to the rule.

Changes to the proposed text of §380.8502 consist of replacing the term "undocumented aliens" with "undocumented foreign nationals" to be consistent with terminology used throughout the chapter. Additionally, a minor grammatical correction was made in subsection (f).

Changes to the proposed text of §380.8525 consist of clarifying that time a youth spends in a conditional placement will count towards his/her minimum length of stay.

Changes to the proposed text of §380.8545 consist of adding new subsection (h), relating to conditional placements. This new subsection establishes the criteria and approval process for allowing certain youth to be placed in medium restriction facilities or approved home placements on a trial basis before they have met all program completion requirements.

Changes to the proposed text of §380.8555 consist of correcting the section number in a cross-reference to another section in this chapter.

Changes to the proposed text of §380.8595 consist of replacing the term "surveillance and supervision" with "parole supervision" to be consistent with terminology used elsewhere in this chapter.

RULE REVIEW

In the Proposed Preamble, published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8553), TJJD published its notice of intent to review Chapter 380, Subchapter A, as required by Texas Government Code §2001.039.

TJJD has concluded the rule review and has determined that three rules should be renumbered within the subchapter. Specifically, §380.8571 has been readopted as new §380.8539, §380.8575 has been readopted as new §380.8533, and §380.8579 has been readopted as new §380.8535.

TJJD has also determined that the reasons for adopting all remaining rules in this subchapter continue to exist. Accordingly, §§380.8501, 380.8502, 380.8503, 380.8505, 380.8521, 380.8524, 380.8525, 380.8527, 380.8531, 380.8545, 380.8555, 380.8557, 380.8559, 380.8565, 380.8569, and 380.8595 are readopted with amendments as described in this notice

JUSTIFICATION FOR CHANGES

The justification for these new, amended, and repealed rules is the availability of rules that more accurately reflect current statutes and regulations and TJJD's current structure and practices. The revised rules will also promote public safety through increased coordination with warrant-issuing agencies.

SUMMARY OF CHANGES

Throughout this subchapter, minor grammar and punctuation changes and terminology updates have been made. Various sections have been reorganized to promote clarity. Specific changes made throughout the subchapter are listed in the following paragraphs.

The repeal of §§380.8571, 380.8575, and 380.8579 allowed for the content of these sections to be moved to Division 3 of this subchapter, which is a more appropriate location.

The amended §380.8501 deletes unnecessary definitions and clarifies that the committing offense determines more than just minimum length of stay, such as facility restriction level, type of approval needed for release, and length of time on parole.

The amended §380.8502 now refers to Texas Human Resources Code §243.005 for a listing of required commitment documents rather than specifying them in the rule. The amended section no longer requires the progressive sanctions deviation worksheet to be included in the commitment documents.

The amended §380.8503 establishes that TJJD will accept youth from counties between 8:00 a.m. - 7:00 p.m., rather than from 8:00 a.m. - 8:00 p.m. The amended section deletes the committing court, prosecuting attorney, and chief probation officer from the list of people notified when a youth is moved from the Orientation Unit to the first placement.

The amended §380.8505 includes minor terminology updates.

The amended §380.8521 adds that youth may be assigned to a co-ed facility during orientation and assessment.

The amended §380.8524 requires TJJD's housing assignment system to take into consideration gender non-conforming appearance or manner, or identification as lesbian, gay, bisexual, transgender, or intersex (LGBTI). The amended section also prohibits placing LGBTI youth in a particular housing unit, bed, or other program assignment based solely on the basis of such identification or status.

The amended §380.8525 clarifies that youth will be referred to the Release Review Panel if they have determinate and indeterminate commitment orders and the minimum length of stay has already passed when the determinate sentence is completed. The amended section also clarifies that youth who have more than one indeterminate commitment receive a minimum length of stay for each commitment and these will run concurrently.

The amended §380.8527 includes minor terminology updates and clarifications.

The amended §380.8531 clarifies that the division director over residential services or his/her designee, not the facility superintendent, approves temporary admission to a high restriction facility.

New §380.8533 republishes the content of §380.8575 and clarifies that the section applies to youth on parole. The new section also specifies who may approve extensions to a temporary admission and for how long.

New §380.8535 republishes the content of §380.8579 and requires TJJD to contact United States Immigration and Customs Enforcement if TJJD does not have documentation identifying residency status of a committed youth.

New §380.8539 republishes the content of §380.8571. The new section no longer limits background and criminal history checks to the primary caregiver as a prerequisite to placing a youth in the home of a close family friend. These checks may now be conducted on any individual over the age of 14 in the home.

The amended §380.8545 allows the facility superintendent, rather than division director in the Austin Office, to approve transitioning youth to medium restriction facilities when the youth have low- or moderate-severity committing offenses and are past their minimum length of stay, but meet all other transition criteria. The amended section requires TJJD to notify any agency that has an active warrant for a youth at least 10 days before the youth's release or transition. The amended section also deletes redundant provisions covered by other sections.

The amended §380.8555 reduces the deadline from 30 days to 15 days for TJJD to notify the youth, family members, victims, and designated advocates of the release review conducted by local facility staff. However all parties still receive 30-day notice

if the youth's case is referred to the Release Review Panel in the Austin Office. The amended section requires TJJD to notify any agency that has an active warrant for a youth at least 10 days before the youth's release. The amended section also deletes redundant provisions covered by other sections.

The amended §380.8557 no longer allows decisions by the Release Review Panel to release or discharge youth with high severity committing offenses to be subject to final approval by the executive director. The amended section also clarifies that requests for reconsideration should relate to the reasons given for the extension or be based on relevant information concerning the youth's programming and treatment progress.

The amended §380.8559 reduces the deadline to release a sentenced offender on TJJD parole from 120 days to 60 days after program completion criteria are met. The amended section removes the 120-day deadline for moving sentenced offenders to the Texas Department of Criminal Justice - Parole Division after program completion criteria are met. Youth will be moved on or before the 19th birthday. The amended section requires TJJD to notify any agency that has an active warrant for a youth at least 10 days before the youth's release. The amended section also deletes obsolete provisions and redundant provisions covered by other sections.

The amended §380.8565 and §380.8569 require TJJD to notify any agency that has an active warrant for a youth at least 10 days before the youth's transfer to the Texas Department of Criminal Justice. The amended sections also delete redundant provisions covered by other sections.

The amended §380.8595 requires TJJD to notify any agency that has an active warrant for a youth at least 10 days before the youth is discharged.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments regarding the proposal or regarding the rule review.

## DIVISION 1. DEFINITIONS

**37 TAC §380.8501**

STATUTORY AUTHORITY

The amended section is adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

*§380.8501. Definitions.*

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

(1) Assessment Rating--a score derived from evidence-based criminogenic factors in a youth's history used to assess the danger a youth poses to the community.

(2) Committing Offense--the most serious of the relevant offenses found at the youth's commitment proceeding and any probated offense(s) modified by the commitment order. If a committing offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal offense. The committing offense is a significant factor in determining the restriction level of the initial placement, initial minimum length of stay, transition criteria, approvals needed for release, and length of time on parole.

(3) Community Re-entry/Transition Plan (CRP-T)--an individual case plan that includes conditions of parole or placement for youth who are moving to a less restrictive environment. The CRP-T summarizes the youth's progress to date, identifies risk factors and protective factors, provides referrals to community services and supports, and identifies objectives for the youth to complete at the next placement.

(4) Community Re-Integration Plan--a workbook-style document that a youth revises over the course of his/her rehabilitation program based on feedback from the case manager, group, family members, and multi-disciplinary team. The document demonstrates the youth's understanding of his/her risk and protective factors; development of skills, abilities, and knowledge to reduce risk factors and increase protective factors; identification of goals and a plan of action to achieve goals; and identification of obstacles that may hinder successful community re-entry and plans to deal with those obstacles.

(5) Conditional Placement--a trial living arrangement at a lower restriction level without changing the youth's currently assigned placement. Conditional placements may be to medium restriction facilities or approved home placements. Continued placement at the lower restriction level is dependent on meeting pre-established conditions.

(6) Discharge--an action that ends the Texas Juvenile Justice Department's (TJJD's) jurisdiction over a youth.

(7) Exit Review--a process by which staff determines whether the youth meets transition criteria or program completion criteria and whether the community re-entry/transition plan adequately addresses the youth's identified risk factors for re-offending. As part of the exit review, a face-to-face interview is required for sentenced offenders and youth with a committing offense of high severity, along with review and approval of the release documents.

(8) High Restriction and Medium Restriction--see definitions in §380.8527 of this title.

(9) Home Placement--a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or in an independent living arrangement (excluding contract independent living programs), for youth who have earned parole status.

(10) Home Substitute Placement--a program placement in the community that is not high restriction for youth who have earned parole status.

(11) Indicator--tasks that clarify and show evidence of completing the stage objective. These tasks are completed by the youth and involve discussion with the youth's case manager, group, multi-disciplinary team, and/or family/adult mentor. To complete an objective, all indicators must be completed.

(12) Initial Placement--a placement to which youth are assigned following a period of assessment at a TJJD orientation and assessment unit upon being committed to TJJD.

(13) Minimum Length of Stay--the predetermined minimum period of time established by TJJD that a youth will be assigned to live in a high or medium restriction placement before being placed on parole status.

(14) Minimum Period of Confinement--the predetermined minimum period of time established by law that a youth committed to TJJD on a determinate sentence must remain confined in a high restriction placement.

(15) Most Serious of the Relevant Offenses--the offense that carries the most severe consequences, which are, from most to least severe:

(A) an offense which carries a determinate sentence;

(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TJJD;

(C) the offense which requires the highest level of restriction in placement;

(D) the offense which carries the most severe criminal penalty; and

(E) the most recently adjudicated offense.

(16) Multi-Disciplinary Team (MDT)--a group of staff in TJJD-operated residential facilities who partner with the youth to facilitate his/her progress in the rehabilitation program. In high restriction facilities, the MDT consists of, at a minimum, the youth's assigned educator, the youth's case manager, and a juvenile correctional officer IV, V, or VI familiar with the youth. In medium restriction facilities, the MDT includes an administrator, the youth's case manager, and a juvenile correctional officer. The youth's family, along with other relevant staff members (psychologist, program specialist, principal, medical staff, etc.) involved in the youth's treatment and rehabilitation are encouraged to attend and participate in MDT meetings.

(17) Non-Sentenced Offender--a youth who is committed to TJJD for an indeterminate period of time, not to exceed age 19.

(18) Objective--the most important concepts or skills necessary to earn a stage and to progress in the rehabilitation program. Each objective has one or more indicators of completion.

(19) Offense Severity--a rating of high, moderate, or low based on the degree of the committing or revocation offense as defined by the Texas Penal Code or relevant federal statute and any of the following applicable aggravating factors:

(A) sex offense as identified in §62.001 of the Texas Code of Criminal Procedure;

(B) felony against a person;

(C) possession or use of a weapon or firearm during the commission of the committing offense.

(20) Parole status--a status assigned to a youth when program completion criteria have been met or the Release Review Panel orders the youth's release under supervision. Parole status qualifies the youth for placement in the home or a home substitute and ensures that the youth may not be moved to a high restriction placement without the highest level of due process afforded to TJJD youth.

(21) Program Completion--occurs when a youth has met specific requirements established by rule in order to earn release from a residential program.

(22) Release Under Supervision (or Release)--the act of placing a youth on parole status. The youth remains under the jurisdiction of TJJD and is subject to the conditions of parole supervision.

(23) Revocation Offense--the offense on which a youth's minimum length of stay is based following a parole revocation hearing. It is the most serious of the relevant offenses found at a parole revocation hearing.

(24) Risk and Protective Factors--risk factors are aspects of a youth's environment, behavior, and mental processes that contribute to potential for further delinquent activity. Protective factors are positive aspects of individual youth situations that keep a youth away from delinquent activity. These factors are used as the foundation to design individual rehabilitation plans so that youth can learn to reduce their risk factors and increase their protective factors.

(25) Sentenced Offender--a youth committed to TJJD pursuant to Family Code §54.04(d)(3) or §54.05(f) with a fixed sentence assigned by the committing court. Depending on the length of the sentence, a youth may be transferred to the Texas Department of Criminal Justice (TDCJ) to complete the sentence.

(26) Stage--measure of progress through TJJD's rehabilitation program. The youth's stage assignment reflects the stage objectives he/she is currently working on.

(27) Transfer--a movement of a sentenced offender to the TDCJ - Institutional Division or TDCJ - Parole Division.

(28) Transition--the act of moving a youth from a high restriction facility to a medium restriction facility without placing the youth on parole status. Transitions are used to facilitate the youth's adjustment to the community.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 2. COMMITMENT AND RECEPTION

**37 TAC §§380.8502, 380.8503, 380.8505**

The amended sections are adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

*§380.8502. Legal Requirements for Admission.*

(a) The purpose of this rule is to establish documentation required and requested by the Texas Juvenile Justice Department (TJJD) from each juvenile court committing youth to TJJD.

(b) The committing court must submit all documents referenced in Texas Human Resources Code §243.005.

(c) TJJD requests the following additional documents from the committing court:

(1) detention order(s) (initial and subsequent) for offense(s) that resulted in commitment to TJJD;

(2) for sentenced offenders, the amount of time spent in detention in connection with the offense for which the youth was sentenced. It is preferable for the detention information to be included in the Order of Commitment; and

(3) education records, including any special education records.

(d) No youth, under any circumstance, will be admitted to TJJD without immunization records (except for undocumented foreign nationals) and a certified copy of the order of commitment. All other documents may be received after admission.

(e) Before TJJD admits the youth, TJJD intake staff will review the commitment order to determine if, on its face, it meets all requirements for a proper commitment. TJJD will not look beyond the document itself for determining whether a commitment is proper.

(f) Upon a youth's acceptance to TJJD, TJJD will issue a written receipt to the entity delivering the youth.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 3. PLACEMENT PLANNING

### 37 TAC §§380.8521, 380.8524, 380.8525, 380.8527, 380.8531, 380.8533, 380.8535, 380.8539

The new and amended sections are adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. New §380.8539 is also adopted under Human Resources Code §245.051 which authorizes TJJD to place a released child in the child's home or in any situation or family approved by TJJD.

*§380.8525. Minimum Length of Stay/Minimum Period of Confinement.*

(a) Purpose. This rule establishes a minimum period of time youth will spend in high or medium restriction facilities.

(b) Applicability.

(1) This policy applies only to:

(A) youth committed to the Texas Juvenile Justice Department (TJJD) or Texas Youth Commission (a predecessor agency to TJJD) on or after February 1, 2009; and

(B) youth whose parole is revoked on or after February 1, 2009, regardless of the commitment date.

(2) Youth who were committed to the Texas Youth Commission and/or whose parole was revoked prior to February 1, 2009, remain subject to provisions of this rule in effect at the time of the commitment or revocation.

(c) Minimum Length of Stay.

(1) Minimum Length of Stay Assigned upon Commitment. The initial minimum length of stay applies only to non-sentenced offenders. The initial minimum length of stay is calculated based on the severity of the committing offense and an assessment of the danger the youth poses to the community.

(A) Youth whose committing offense is of high severity are assigned the following minimum length of stay:

*(i)* 24 months, for youth with a high assessment rating;

*(ii)* 18 months, for youth with a medium assessment rating; or

*(iii)* 15 months, for youth with a low assessment rating.

(B) Youth whose committing offense is of moderate severity are assigned the following minimum length of stay:

*(i)* 15 months, for youth with a high assessment rating;

*(ii)* 12 months, for youth with a medium assessment rating; or

*(iii)* 12 months, for youth with a low assessment rating.

(C) Youth whose committing offense is of low severity are assigned the following minimum length of stay:

*(i)* 12 months, for youth with a high assessment rating;

*(ii)* 9 months, for youth with a medium assessment rating; or

*(iii)* 9 months, for youth with a low assessment rating.

(2) Minimum Length of Stay Assigned upon Parole Revocation.

(A) Sentenced and non-sentenced offender youth whose parole is revoked are assigned the following minimum length of stay:

*(i)* 9 months, for youth found to have engaged in felony level conduct;

*(ii)* 6 months, for youth found to have broken a federal, state, or other law that is not a felony grade offense; or

*(iii)* 3 months, for youth found to have violated a condition of parole that is not also a violation of law.

(B) At the parole revocation hearing, the designated minimum length of stay may be reduced by the presiding staff attorney if extenuating circumstances to the offense are found.

(d) Minimum Period of Confinement. The minimum period of confinement applies only to sentenced offenders. The minimum period of confinement is:

(1) ten years for youth sentenced for capital murder;

(2) three years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree;

(3) two years for a felony of the second degree; or

(4) one year for a felony of the third degree.

(e) Creditable Time for Non-Sentenced Offenders.

(1) When a youth is admitted, the minimum length of stay is counted from the first day the youth reaches any TJJD-operated or assigned facility.

(2) When a youth is recommitted, the minimum length of stay is counted from the first day the youth reaches any TJJD-operated

or assigned facility and runs concurrently with any incomplete minimum length-of-stay requirements.

(A) A youth who is recommitted for the same conduct following an appeal of the original commitment is given credit toward completion of the new minimum length of stay for any time spent in TJJD custody as a result of the original commitment.

(B) A youth who is recommitted for the same conduct for which a Level I hearing has already been held is given credit toward completion of the new minimum length of stay for the time already served as a result of that hearing.

(3) After the count begins, all time spent in program, on furlough as defined in §380.8707 of this title, on a conditional placement, or in detention or jail (except as a disposition in a criminal case) is counted toward meeting a minimum length of stay requirement.

(4) Time spent as an escapee from a TJJD placement, in jail, or in a court-ordered placement in an adult correctional residential program as disposition in a criminal case is not counted toward meeting the minimum length-of-stay requirement.

(f) Creditable Time for Sentenced Offenders.

(1) For sentenced offenders committed prior to June 9, 2007, the minimum period of confinement is counted from the first day a youth reaches any TJJD residential facility.

(2) For sentenced offenders committed on or after June 9, 2007, TJJD applies any credit granted in the commitment order toward completion of the minimum period of confinement. This type of credit is for time spent in a secure detention facility in connection with the committing case prior to admission to TJJD.

(3) Regardless of the date of commitment:

(A) once a youth reaches a TJJD facility and is credited with any applicable time in detention, only time spent in a TJJD residential facility is credited toward completion of the minimum period of confinement; and

(B) credit is granted toward completion of the sentence for time spent in a secure detention facility in connection with the committing case prior to admission to TJJD.

(g) Multiple Commitments.

(1) Multiple Indeterminate Commitments. If a youth is committed to TJJD under more than one indeterminate commitment, a minimum length of stay is assigned for each commitment. The minimum lengths of stay will run concurrently.

(2) Concurrent Indeterminate and Determinate Commitments. If a youth is committed to TJJD under determinate and indeterminate commitment orders, the minimum period of confinement and minimum length of stay will run concurrently.

(A) The youth is managed as a sentenced offender until he/she is discharged from the determinate commitment.

(B) If a youth completes the determinate sentence before he/she meets discharge criteria for the indeterminate commitment, the youth:

*(i)* is discharged from the determinate commitment; and

*(ii)* is:

*(I)* required to serve any remaining minimum length of stay associated with the indeterminate commitment; or

*(II)* referred to the Release Review Panel under §380.8557 of this title if the minimum length of stay associated with the indeterminate commitment has already been completed.

(h) Reductions to Minimum Length of Stay.

(1) The minimum length of stay requirement may be reduced by the TJJD executive director or his/her designee when it is determined that the minimum length of stay is not justified because of the nature of the offense and offense history or when it is determined that the youth has made sufficient progress in treatment programs.

(2) Upon a recommendation by the facility administrator, the division director over residential services or his/her designee may reduce a youth's minimum length of stay up to three months due to positive progress in treatment programs so long as the youth serves at least nine months in a residential placement.

*§380.8539. Home Placement.*

(a) Purpose. The Texas Juvenile Justice Department (TJJD) recognizes that positive contact with parents, family members, guardians, and other significant persons can greatly enhance a youth's successful re-entry into the community. TJJD considers the totality of the home environment when making decisions regarding an appropriate home placement for youth. The purpose of this rule is to establish criteria and procedures to identify a suitable parole placement for youth who have completed residential program requirements.

(b) Applicability.

(1) This policy applies to youth who will be placed on parole prior to age 19.

(2) This policy does not apply to sentenced offenders whose minimum period of confinement will expire within two months prior to the youth's 19th birthday or after the 19th birthday, because the youth, if released to parole, will be under the supervision of the Texas Department of Criminal Justice-Parole Division.

(c) Definitions. As used in this rule, the following terms have the following meanings, unless the context clearly indicates otherwise.

(1) Close Family Friend--a person at least 21 years of age who has a longstanding, significant relationship with the youth. Examples may include a godparent or someone considered to be an aunt or uncle even though not related to the youth.

(2) Guardian--has the meaning assigned in Chapter XIII, Section 601 of the Probate Code.

(3) Parent--an individual who has established a parent-child relationship under §160.201 of the Family Code. Parent does not include an individual whose parental rights have been terminated.

(4) Relative--any person at least 21 years of age, other than a parent, who is:

(A) currently related to the youth in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once-removed (the child of one's first cousin), second cousin (the child of the first cousin of one's parent), great uncle, or great aunt;

(B) the spouse of the youth or a person listed in subparagraph (A) of this paragraph; or

(C) the youth's step-father, step-mother, or adult stepsibling.

(d) General Provisions.

(1) TJJD attempts to place paroled youth in the home of the youth's custodial parent(s) or legal guardian whenever possible. All

parole placements are made consistent with the best interests, safety, rehabilitative needs, and special needs of the youth.

(2) TJJD may place a youth at the following placements:

(A) home of the custodial parent(s) or legal guardian;

(B) home of the non-custodial parent;

(C) home of a relative;

(D) home of a close family friend;

(E) program placement such as a halfway house, subsidized independent living, or foster home; or

(F) if the youth meets required parole supervision levels, an unsupervised home location such as an apartment, dormitory, or homeless shelter.

(3) TJJD considers input from the youth, the youth's parents/guardian, and relatives when determining the parole placement that is in the youth's best interest.

(4) For youth under supervision of both the Department of Family and Protective Services (DFPS) and TJJD, TJJD collaborates with DFPS to determine the appropriate home placement.

(5) TJJD will conduct home placement assessments for youth referred for parole supervision through the Texas Interstate Compact for Juveniles Office according to the rules of the Interstate Commission for Juveniles.

(6) TJJD may conduct background and criminal history checks of individuals over the age of 14 as a prerequisite to placing a youth in the home of a close family friend. Confidential criminal history record information will not be released or disclosed except on court order or with the consent of the individual who is the subject of the criminal history record information. Criminal records obtained pursuant to this rule will be destroyed after completion of the home placement decision.

(7) For youth under age 18 whose parents cannot be located or refuse to allow the youth to return home and TJJD is unable to locate a placement with a relative, TJJD will refer the matter to DFPS.

(8) Based on a consideration of the youth's best interests and public safety, the executive director or his/her designee may make exceptions to provisions of this rule on a case-by-case basis.

(e) Placement Assessment.

(1) The assigned parole officer must evaluate the parole placement options of each youth upon commitment to TJJD. If it is determined that the home of the custodial parent/legal guardian is not available for a parole placement, alternative placement options will be identified in consultation with the youth's case manager, the youth, and when possible, the youth's parent/guardian.

(2) The assigned parole officer must assess the home of each youth in his/her jurisdiction, provide a parent/parole orientation, and determine whether the home is approved or disapproved for placement. The home placement assessment will be completed in the home where the youth will be placed.

(3) The home placement assessment status may be changed but only as a result of a follow-up home placement assessment by the assigned parole officer.

(4) A completed home placement assessment is considered current for 12 months. Home placement re-assessments are conducted annually.

(5) Any time new evidence or special circumstances warrant, a follow-up home placement assessment must be conducted.

(f) Disapproval Criteria for Home Placements.

(1) A home may be disapproved if one or more of the following criteria exists and can be documented:

(A) physical abuse;

(B) sexual abuse;

(C) physical absence of parent caretaker due to criminal incarceration or physical/psychiatric hospitalization;

(D) serious physical/survival neglect;

(E) legal termination of parental rights for youth under 18 years of age;

(F) the youth is a sex offender, the victim or a potential victim resides in the home, and requirements for family reintegration have not been met;

(G) the legal head of household cannot or will not supervise the youth and/or the youth is not welcome in the home; or

(H) the home being assessed is that of a close family friend and there is documented evidence that an individual in the home has a criminal or other background that would present or has presented a negative and/or unsafe influence or impact on the youth.

(2) If a home is disapproved, parole staff must provide supports and services to the family that will assist with addressing safety or other issues identified as disapproval criteria. A disapproved home may later be approved as a placement if the assigned parole staff determines specific actions have been taken to address the identified issues.

(3) If a home is not approved, parole staff must provide the parent(s) or legal head of household with written notice of the disapproval, the reasons for the disapproval, any action that may be taken to correct a deficiency, and information concerning the right to file a grievance concerning the decision.

(g) Non-Relative Placements.

(1) Youth under 18 years of age may only be placed with a close family friend or in an unsupervised home location if approved by the executive director or his/her designee, and for placements with a close family friend, only if appropriate criminal history checks have been conducted.

(2) If a parent/guardian objects to a non-relative placement, the objection will be considered in the final decision.

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## DIVISION 4. MOVEMENT BEFORE PROGRAM COMPLETION

**37 TAC §380.8545**

The amended section is adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

*§380.8545. Movement Before Program Completion.*

(a) Purpose. The purpose of this rule is to establish criteria and procedures for moving youth who have not met program completion requirements to placements of equal or lesser restriction.

(b) General Provisions. Prior to a transition, a youth may request and in doing so will be granted a Level II hearing.

(c) Transition Movements Before Initial or Revocation Minimum Length of Stay.

(1) Eligibility. The following youth are not eligible for transition movement before completion of the initial or revocation minimum length of stay:

(A) sentenced offenders; and

(B) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(2) Transition Movement Criteria. Youth in a high restriction facility may be eligible for transition to a medium restriction facility before completion of the initial or revocation minimum length of stay when the following criteria have been met:

(A) no major rule violations confirmed through a Level II due process hearing:

*(i)* within 60 days before the exit review or during the approval process, for youth with committing offenses of low or moderate severity; or

*(ii)* within 120 days before the exit review or during the approval process, for youth with committing offenses of high severity; and

(B) completion of the following:

*(i)* for youth who have not completed the initial minimum length of stay:

*(I)* youth with a committing offense of low severity must complete six months of the initial minimum length of stay in high restriction facilities; or

*(II)* youth with a committing offense of moderate severity must complete nine months of the initial minimum length of stay in high restriction facilities; or

*(III)* youth with a committing offense of high severity must complete all but six months of the initial minimum length of stay in high restriction facilities; or

*(ii)* for youth placed in a high restriction facility following revocation of parole, the youth must complete at least 2/3 of the revocation minimum length of stay; and

(C) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this title; and

(D) completion of the following rehabilitation program requirements:

*(i)* for TJJD-operated facilities, assignment by the multi-disciplinary team to the second highest stage in the assigned rehabilitation program as described in §380.8703 of this title, which reflects that the youth is currently:

*(I)* consistently participating in academic and/or workforce development programs commensurate with abilities as reflected in the youth's educational plan; and

*(II)* consistently participating in skills development groups, as reflected in the youth's individual case plan; and

*(III)* consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; or

*(ii)* for facilities operated under contract with TJJD, completion of requirements for transition to a community residential placement as defined in the TJJD-approved approved rehabilitation program; and

(E) completion of a draft community reintegration plan (or equivalent in a contract facility), to be finalized at the medium restriction facility, that demonstrates the youth's:

*(i)* understanding of his/her risk and protective factors; and

*(ii)* development of skills, abilities, and knowledge to reduce risk factors and increase protective factors; and

*(iii)* identification of goals and a plan of action to achieve goals in the medium restriction placement; and

*(iv)* identification of obstacles that may hinder successful community re-entry and plans to deal with those obstacles in the medium restriction placement; and

(F) completion of a criminal street gang intervention program, if required by court order.

(3) Decision Authority for Approval of Transition. The final decision authority ensures, before approving the transition, that the youth meets all transition criteria and the community re-entry/transition plan adequately addresses risk factors.

(A) For youth with committing offenses of low or moderate severity, the final decision authority is the:

*(i)* facility administrator if the youth is assigned to a TJJD-operated facility; or

*(ii)* division director over residential services or his/her designee if the youth is assigned to a facility operated under contract with TJJD.

(B) For youth with a committing offense of high severity, the final decision authority is the division director over residential services or his/her designee.

(d) Transition Movements after Completion of Initial or Revocation Minimum Length of Stay.

(1) Eligibility. The following youth are not eligible for transition movement after completion of the initial or revocation minimum length of stay:

(A) sentenced offenders; and

(B) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(2) Transition Movement Criteria. Youth in a high restriction facility may be eligible for transition to a medium restriction fa-

cility after completion of the initial or revocation minimum length of stay when the following criteria have been met:

(A) no major rule violations confirmed through a Level II due process hearing within 30 days before the exit review or during the approval process;

(B) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this title; and

(C) completion of a criminal street gang intervention program, if required by court order.

(3) Decision Authority for Approval of Transition. The final decision authority ensures, before approving the transition, that the youth meets all transition criteria and the community re-entry plan adequately addresses risk factors. The final decision authority for approving transitions after completion of the initial or revocation minimum length of stay is:

(A) the staff member identified in subsection (c)(3) of this section if the youth meets all criteria in subsection (c)(2) of this section but is past his/her minimum length of stay; or

(B) the division director over residential services or his/her designee for all other youth.

(e) Population Control Movements.

(1) When overpopulation occurs in a high restriction facility and other remedial actions are not successful in managing facility populations, non-sentenced offender youth who do not otherwise qualify may be released or transitioned. In such cases, the executive director establishes the criteria, taking into account factors including, but not limited to, the following:

(A) progress in the rehabilitation program;

(B) amount of the minimum length of stay completed;

(C) severity of the committing offense;

(D) completion of required specialized treatment programs;

(E) participation in or completion of any statutorily required rehabilitation programming; and

(F) current risk assessment.

(2) Youth will be transitioned to a suitable TJJD-operated medium restriction placement or contract care facility or will be released to a suitable home or home substitute.

(f) Administrative Transfers. Administrative transfers may be made for non-disciplinary, programmatic purposes among facilities of equal restriction without a due process hearing. An administrative transfer may not be made in lieu of a disciplinary transfer for which a due process hearing is mandatory.

(g) Reassignment of Youth Initially Eligible for Placement in a Medium Restriction Facility.

(1) A youth may be reassigned to a medium restriction facility if the youth was initially eligible for such placement under §380.8521 of this title but was placed in a high restriction facility in order to address one or more placement system factors that could not be appropriately addressed in a medium restriction facility. Such youth are not required to meet transition criteria set forth in subsection (c) or (d) of this section.

(2) The division director over residential services or his/her designee is the final decision authority for approving the facility reassignment.

(h) Conditional Placements.

(1) Eligibility. The following youth are not eligible for conditional placement:

(A) sentenced offenders; and

(B) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(2) Criteria for Conditional Placement.

(A) Before the Initial Minimum Length of Stay. To be considered for a conditional placement before completing the initial minimum length of stay, a youth must meet all program completion criteria set forth in §380.8555 of this title, with the exception of the requirement to complete the minimum length of stay.

(B) After the Initial Minimum Length of Stay. A youth may be considered for a conditional placement after completing the initial minimum length of stay when the following criteria have been met:

*(i)* the youth's treatment team has determined that, due to the youth's treatment needs, the conditional placement would be in the youth's best interests;

*(ii)* the youth has participated in or completed assigned specialized treatment as required under §380.8751 of this title; and

*(iii)* the youth has completed a criminal street gang intervention program, if required by court order.

(3) Decision Authority for Approval of Conditional Placement. The division director over residential services or his/her designee is the final decision authority for approving the conditional placement.

(4) Conclusion of Conditional Placement. A conditional placement ends when:

(A) the youth is assigned to a medium restriction facility or home placement because the youth:

*(i)* earns parole status under §380.8555 of this title or is placed on parole status under §380.8557 of this title;

*(ii)* is transitioned to a medium restriction facility under subsection (c) or (d) of this section; or

*(iii)* is reassigned to a medium restriction facility under subsection (g) of this section;

(B) the youth is discharged under §380.8557 or §380.8595 of this title; or

(C) the youth is returned to the sending facility through a Level II due process hearing held in accordance with §380.9555 of this title for reasons including, but not limited to:

*(i)* commission of a rule violation listed in §380.9503 or §380.9504 of this title;

*(ii)* violation of the conditional placement agreement; or

*(iii)* the conditional placement is no longer viable.

(i) Hardship Cases. In hardship cases, the executive director or his/her designee may approve placing a non-sentenced offender youth on parole status without meeting program completion criteria.

(j) Youth with Mental Illness or Mental Retardation. Pursuant to §380.8779 of this title, certain youth may be discharged following application for appropriate services to address their mental illness or mental retardation.

(k) Notification.

(1) TJJD provides the committing juvenile court a copy of the youth's community re-entry/transition plan and a report concerning the youth's progress while committed to TJJD no later than 30 days before the date of the youth's release. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TJJD provides the community re-entry/transition plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.

(2) TJJD notifies the following at least ten calendar days before the youth's release or transition:

(A) the committing juvenile court;

(B) the prosecuting attorney;

(C) the youth's parole officer;

(D) the chief juvenile probation officer in the county to which the youth is being moved; and

(E) any entity that has issued an active warrant for the youth.

(l) Individual Exceptions. The executive director or his/her designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

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## DIVISION 5. PROGRAM COMPLETION AND RELEASE

**37 TAC §§380.8555, 380.8557, 380.8559, 380.8565, 380.8569**

The amended sections are adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. The amendment to §380.8557 is also adopted under Human Resources Code §245.104, which authorizes TJJD to adopt rules establishing a process to request the reconsideration of an extension order issued by the Release Review Panel.

*§380.8555. Program Completion for Non-Sentenced Offenders.*

(a) Purpose. The purpose of this rule is to establish criteria and the approval process for release of youth upon program completion.

(b) Applicability.

(1) This rule does not apply to sentenced offenders.

(2) This rule does not apply to decisions by the Release Review Panel. See §380.8557 of this title for more information on the Release Review Panel.

(c) General Provisions. A detainer or bench warrant is not an automatic bar to earned release. The Texas Juvenile Justice Department (TJJD) releases youth to authorities pursuant to a warrant.

(d) Program Completion Criteria. Youth in high or medium restriction facilities are eligible for release to TJJD parole when the following criteria have been met:

(1) no major rule violations confirmed through a Level I or II due process hearing within 30 days before the exit review or during the approval process; and

(2) completion of the minimum and/or extension length of stay; and

(3) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this title; and

(4) completion of the following rehabilitation program requirements:

(A) for TJJD-operated facilities, assignment by the multi-disciplinary team to the highest stage in the assigned rehabilitation program as described in §380.8703 of this title, which reflects that the youth is currently:

*(i)* consistently participating in academic and workforce development programs commensurate with abilities as reflected in the youth's educational plan;

*(ii)* consistently participating in skills development groups, as reflected in the youth's individual case plan;

*(iii)* consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; or

(B) for facilities operated under contract with TJJD, completion of requirements for release to parole as defined in the TJJD-approved rehabilitation program; and

(5) completion of a community re-integration plan (or equivalent in a contract facility), approved by the youth's treatment team, that demonstrates the youth's:

(A) understanding of his/her risk and protective factors;

(B) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors;

(C) identification of goals and a plan of action to achieve those goals; and

(D) identification of obstacles that may hinder successful re-entry and plans to deal with those obstacles; and

(6) participation in or completion of any statutorily required rehabilitation programming, including but not limited to:

(A) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this title;

(B) participation in a positive behavioral interventions and supports system to the extent required under §380.9155 of this title; and

(C) completion of at least 12 hours of a gang intervention education program, if required by court order.

(e) Review and Approval Process.

(1) Treatment Team Review.

(A) Before the expiration of a youth's minimum length of stay, the youth's treatment team reviews and determines whether the youth meets program completion criteria.

(B) The review and determination must occur at least:

*(i)* 30 days before the expiration of the minimum length of stay for youth with a committing offense of low or moderate severity; or

*(ii)* at least 90 days in advance for youth classified as Type A violent offenders before February 1, 2009, or youth with a committing or revocation offense of high severity.

(C) If the treatment team determines the youth does not meet program completion criteria, the youth's case is referred to the Release Review Panel for decision in accordance with §380.8557 of this title.

(D) If the treatment team determines the youth does meet program completion criteria, the youth's case is referred to the final decision authority.

(2) Final Decision Authority for Approval of Release.

(A) The final decision authority will ensure the youth meets all release criteria and the community re-entry/transition plan adequately addresses risk factors prior to approving the release.

(B) The final decision authority for youth classified as Type A violent offenders before February 1, 2009, and youth with a committing offense of high severity is the executive director or his/her designee.

(C) The final decision authority for all other non-sentenced offender youth is:

*(i)* the facility administrator for youth assigned to a TJJD-operated facility; or

*(ii)* the division director over residential services or his/her designee for youth assigned to a facility operated under contract with TJJD.

(D) If the final decision authority approves the release, the youth must be placed on parole or parole status no later than 15 calendar days after the minimum length of stay date.

(E) If the final decision authority does not approve the release, or if the youth loses release eligibility before the minimum length of stay date and the treatment team confirms that the youth no longer meets program completion criteria, the youth's case is referred to the Release Review Panel.

(f) Notifications.

(1) TJJD notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of the treatment team's pending release review at least 15 days before the date of the review.

(2) TJJD notifies the youth, the youth's parent/guardian, and any designated advocate for the youth of the review decision at least 30 days before the expiration of the minimum length of stay.

(3) TJJD provides the committing juvenile court a copy of the youth's community re-entry/transition plan and a report concerning the youth's progress while committed to TJJD no later than 30 days before the date of the youth's release. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TJJD provides the community re-entry/transition plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.

(4) TJJD notifies the following at least ten calendar days before the youth's release:

(A) the committing juvenile court;

(B) the prosecuting attorney;

(C) the youth's parole officer;

(D) the chief juvenile probation officer in the county to which the youth is being moved; and

(E) any entity that has issued an active warrant for the youth.

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## DIVISION 6. PAROLE PLACEMENT AND DISCHARGE

**37 TAC §§380.8571, 380.8575, 380.8579**

The repeals are adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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## DIVISION 6. DISCHARGE

### 37 TAC §380.8595

The amended section is adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

*§380.8595. Parole Completion and Discharge.*

(a) Purpose. The purpose of this rule is to establish criteria for discharging youth from the jurisdiction of the Texas Juvenile Justice Department (TJJD).

(b) Applicability. This rule applies only to non-sentenced offenders. Refer to §380.8565 of this title for information relating to discharge of sentenced offenders.

(c) Discharge Criteria.

(1) Discharge Due to Successful Completion of Parole.

(A) Youth who have never been classified as a Type A Violent offender and whose committing offense(s) are of moderate or low severity may qualify for discharge upon completion of the following criteria:

*(i)* successful completion of the pre-discharge level of parole supervision;

*(ii)* compliance with the youth's conditions of parole, based on the individual needs assessment;

*(iii)* no pending delinquency petitions or criminal charges;

*(iv)* completion of 60 hours of community service as specified in the youth's conditions of parole (credit is granted for community service performed while in a medium restriction facility, if applicable); and

*(v)* completion of 40 hours of constructive activities as defined on the conditions of parole each week for at least 30 days. Constructive activity includes, but is not limited to, time spent working, attending school, attending treatment/counseling, completing community service, actively searching for employment, and providing direct supervision to a child.

(B) The executive director or his/her designee may approve the discharge of a youth prior to completion of the requirements in subparagraph (A) of this paragraph when consideration of a youth's committing offense, behavior, history, and progress towards completion of parole conditions justifies an earlier discharge.

(2) Direct Discharge from Residential Facility by Release Review Panel. Pursuant to §380.8557 of this title, the Release Review Panel may discharge a youth directly from a residential placement upon a finding that the youth is no longer in need of rehabilitation or that TJJD is no longer the most suitable location to provide the needed rehabilitation.

(3) Discharge Due to Age.

(A) Youth committed to TJJD before February 1, 2009, who were ever classified as Type A Violent offenders or youth committed to TJJD on or after February 1, 2009, with committing or revocation offenses of high severity are discharged on:

*(i)* the day before the 19th birthday, if the youth is assigned to a residential facility; or

*(ii)* the last working day prior to the 19th birthday, if the youth is assigned to a non-residential placement.

(B) Any youth who has not previously been discharged due to successful completion of parole or by the Release Review Panel is discharged on:

*(i)* the day before the 19th birthday, if the youth is assigned to a residential facility; or

*(ii)* the last working day prior to the 19th birthday, if the youth is assigned to a non-residential placement.

(C) A youth on parole status who is discharged due to age is considered to have successfully completed parole if the youth:

*(i)* is not in jail or on abscond status;

*(ii)* has no pending delinquency petitions or criminal charges; and

*(iii)* has substantially complied with all parole requirements.

(4) Discharge due to Special Circumstances.

(A) Youth who have never been classified as a Type A Violent offender and do not have a committing offense of high severity may be discharged prior to completion of parole requirements to enlist in the military. Only the executive director may approve such a discharge.

(B) Youth placed out of state may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state. Only the executive director may approve such a discharge.

(C) Youth who have completed length-of-stay requirements and who are unable to progress in the agency's rehabilitation program because of mental illness or mental retardation may be discharged as specified in §380.8779 of this title.

(D) Youth who have never been classified as a Type A Violent offender and do not have a committing offense of high severity who are age 18 or older may be discharged prior to completion of parole requirements in order to obtain appropriate services. Only the executive director may approve such a discharge.

(E) Youth may be discharged for special circumstances other than those addressed in subparagraphs (A) - (D) of this paragraph upon the executive director's approval.

(5) Other Types of Discharges. TJJD discharges youth when:

(A) the youth is placed on actively supervised adult probation for conduct that occurred while on TJJD parole status;

(B) the youth is sentenced for a minimum of 180 days in a state or county jail as part of the disposition of a criminal case;

(C) the court orders a reversal of the commitment;

(D) records are closed following a youth's death; or

(E) the youth is sentenced to the Texas Department of Criminal Justice - Institutional Division.

(d) Notification.

(1) TJJD immediately notifies the youth of the discharge and provides the youth and the parent/guardian a written explanation of procedures for sealing records.

(2) TJJD notifies the following at least ten calendar days before the youth's discharge or as soon as practicable:

(A) the committing juvenile court;

(B) the prosecuting attorney;

(C) the youth's parole officer;

(D) the county chief juvenile probation officer in the county to which the youth is being moved; and

(E) any entity that has issued an active warrant for the youth.

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# SUBCHAPTER C. PROGRAM SERVICES
# DIVISION 4. HEALTH CARE SERVICES

## 37 TAC §380.9198

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9198, concerning Four-Point Restraints for Medical and Mental Health Purposes, with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8578).

Changes to the proposed text consist of replacing the term "trained staff" with "healthcare staff" in subsection (g)(4)(C)(ii). Additionally, the adopted text corrects a numbering error in subsection (f)(4).

Mike Meyer, Chief Financial Officer, has determined that the change in subsection (g)(4)(C)(ii) requiring a healthcare staff member to conduct the 15-minute checks will likely have a fiscal impact on state government. If the number of four-point restraints remains consistent with the most recent year for which TJJD has data, up to one additional nursing shift per week may be required to implement the rule as amended. Based on these assumptions, the additional cost to the state may be up to $10,000 in each year of the first five years the rule is in effect.

The amended rule makes several changes to the process for approving and implementing four-point restraints.

For medical four-point restraints, a medical provider must now determine that transfer to an emergency room is not immediately feasible before he or she may authorize four-point restraints. If restraint is needed beyond one hour, the rule now requires the development of a treatment plan that includes transfer to an emergency room or other appropriate facility.

For mental health four-point restraints, a specially trained, on-site staff member will now be assigned to manage the entire restraint incident, to ensure policy and procedure are followed, and to ensure continuous supervision of the youth. The rule now requires the first face-to-face evaluation of the youth by a mental health professional before the end of the second hour, rather than the end of the first hour. If continued restraint is needed beyond four hours, the psychiatric provider must now be notified at that point. The requirement for the psychiatric provider to consult with facility staff will now apply before the end of the eighth hour of restraint, rather than the 12th hour. Finally, if continued restraint is needed beyond 12 hours, a doctoral-level mental health provider must now directly observe the youth and provide written instructions for continued assessments and monitoring. The psychiatric provider will no longer be required to directly observe the youth before the end of the 12th hour of restraint.

The justification for the amended rule is clarification of roles and responsibilities for safely managing a four-point restraint incident and ensuring appropriate and ongoing monitoring, assessment, documentation, and treatment of youth involved in four-point restraints.

TJJD did not receive any public comments regarding the proposed amendments.

The amended section is adopted under Human Resources Code §242.003, which authorizes TJJD to make rules appropriate to the proper accomplishment of its functions and to govern the schools, facilities, and programs operated by TJJD.

*§380.9198. Four-Point Restraints for Medical and Mental Health Purposes.*

(a) Purpose. This rule establishes the criteria, procedures, and limitations for use of four-point restraints when used for medical or mental health purposes.

(b) Applicability.

(1) This rule applies to all residential facilities operated by the Texas Juvenile Justice Department (TJJD) that are authorized to administer four-point restraints.

(2) This rule applies only to four-point mechanical restraints. For all other types of restraint used for medical or mental health purposes, provisions of §380.9723 of this title apply.

(c) Additional References. For criteria and procedures on administering a psychotropic drug in a psychiatric emergency when a youth will not give consent for the administration, see §380.9192 of this title.

(d) Definitions.

(1) Designated Mental Health Professional--has the meaning assigned by §380.9187 of this title.

(2) Four-Point Restraint--a professionally manufactured and commercially available restraint chair or bed designed to secure both arms and both legs to the chair or bed with cloth or leather straps.

(3) Medical Provider--a:

(A) Texas-licensed physician; or

(B) Texas-licensed mid-level practitioner, such as a nurse practitioner or physician assistant, acting under the authorization of a physician.

(4) Mental Health Professional--has the meaning assigned by §380.9187 of this title.

(5) Psychiatric Provider--a:

(A) Texas-licensed psychiatrist; or

(B) Texas-licensed psychiatric physician assistant or psychiatric nurse practitioner acting under the authorization of a psychiatrist.

(e) General Provisions.

(1) Four-point restraints may only be used for medical or mental health purposes as described by this rule. Four-point restraints may not be used for any other purpose.

(2) Restraint equipment used for medical or mental health purposes must be used only in a manner consistent with its intended design and purpose.

(3) Only restraint equipment approved by the executive director or designee may be used in TJJD facilities.

(4) TJJD staff who may be expected to participate in application of four-point restraints or monitoring, managing, or approving the restraint must receive special training and may not participate in its implementation until the training has been received. The training will include proper use and application of restraint devices and applicable TJJD policies and guidelines regarding the implementation, documentation, and possible continuation of the restraint.

(5) If facility resources are not sufficient to support the procedural requirements specified in this rule, four-point restraints must not be used.

(6) A medical provider must be consulted prior to placing a youth in a four-point restraint device if the youth is pregnant or has a seizure disorder or any other medical condition that contraindicates such restraint.

(7) The facility administrator or designee must ensure that the parent/guardian of a youth placed in a four-point restraint is notified within 24 hours after the restraint is initiated.

(f) Four-Point Restraints for Medical Purposes.

(1) Authorized Facilities. Four-point medical restraints are authorized only at high restriction facilities that:

(A) operate an on-site infirmary; and

(B) have been authorized by the executive director or designee to administer four-point restraints.

(2) Criteria for Use. Medical restraints may be used only to administer medical treatment to a resistant youth when failure to administer the treatment could have serious health implications as determined by a physician or mid-level practitioner (such as a nurse practitioner or physician assistant).

(3) Authorization for Use.

(A) Only a medical provider may order a medical restraint. The order must be based upon a determination that:

*(i)* all appropriate, less restrictive interventions have proved unsuccessful in controlling the youth's behavior to a degree that would allow the medical treatment to be administered; and

*(ii)* transfer to a local emergency room or other appropriate facility is not immediately feasible.

(B) An order for medical restraint must specify the type of restraint to be used, duration of the restraint, any special instructions, and justification for the restraint.

(C) Prior to the expiration of the first hour, a registered nurse must contact the medical provider to develop a treatment plan, if the restraint is still needed. The treatment plan must include transfer to a local emergency room or other appropriate facility if the need for restraint exceeds one hour.

(4) Procedural Requirements.

(A) A medical provider or nurse must be present during the application of restraints.

(B) Youth are provided:

*(i)* 15-minute checks by healthcare staff to assess the youth's condition, including circulation, position, and open airway. Such checks must be documented in the youth's medical record;

*(ii)* range-of-motion exercises performed by a nurse at least every 30 minutes for a period of at least five minutes;

*(iii)* regularly scheduled meals and drinks;

*(iv)* continuous visual supervision by staff; and

*(v)* opportunities for elimination of bodily waste as needed.

(C) A medical restraint must be terminated upon a determination by the medical provider that the youth's behavior no longer justifies application of medical restraints or expiration of the provider's order, whichever occurs first.

(g) Four-Point Restraints for Mental Health Purposes.

(1) Authorized Facilities. Four-point mental health restraints are authorized only at facilities designated by the executive director or designee.

(2) Criteria for Use.

(A) Four-point restraints for mental health purposes are authorized for use only when the restraint is necessary to prevent serious self-injury and all appropriate, less restrictive interventions have proven unsuccessful in controlling the youth's self-injurious behavior, as determined by a designated mental health professional or a psychiatric provider.

(B) The restraint must be terminated as soon as the youth's behavior indicates the threat of imminent self-injury is absent, as determined by a designated mental health professional or psychiatric provider.

(3) Authorization to Initiate and Continue Restraint.

(A) Only a designated mental health professional or a psychiatric provider may authorize the initiation of a mental health restraint.

(B) At least one staff member trained specifically in mental health restraint techniques must be involved in the application of the restraint. If at least one trained staff member is not available, the restraint may not be used.

(C) Before the end of the first hour of restraint, the designated mental health professional or psychiatric provider must determine whether to continue the restraint.

(D) Before the end of the second hour of restraint:

*(i)* a mental health professional must conduct a face-to-face assessment of the youth; and

*(ii)* the designated mental health professional or psychiatric provider must determine whether to continue the restraint.

(E) Before the end of the fourth hour of restraint and at least once every four hours thereafter:

*(i)* a mental health professional must conduct a face-to-face assessment of the youth;

*(ii)* the designated mental health professional and psychiatric provider must be notified of the youth's status; and

*(iii)* the designated mental health professional or psychiatric provider must determine whether to continue the restraint.

(F) No order or approval for mental health restraint may be in force for longer than eight hours without consultation with a psychiatric provider.

(G) No order or approval for mental health restraint may be in force for longer than 12 hours without:

*(i)* direct observation of the youth by the designated mental health professional;

*(ii)* a written order to extend the restraint from the psychiatric provider; and

*(iii)* written instructions from the designated mental health professional regarding continued assessments and monitoring.

(4) Procedural Requirements.

(A) A specially trained, on-site staff member must manage the entire restraint incident. Duties of this staff member include:

*(i)* ensuring policy and procedure are followed;

*(ii)* notifying the designated mental health professional or psychiatric provider of any significant changes in the youth's behavior;

*(iii)* ensuring required documentation and notifications are completed; and

*(iv)* assigning one or more staff members to:

*(I)* provide continuous supervision of the youth for the duration of the incident;

*(II)* document the youth's behavior and emotional state; and

*(III)* facilitate communication between all staff members involved in the restraint.

(B) Staff must ensure the youth's personal dignity by providing a protected environment and as much privacy as possible.

(C) Youth must be provided:

*(i)* regular checks, performed by a nurse, of the physical condition of the youth and the placement of the restraints within the first 30 minutes and every hour during the restraint;

*(ii)* an assessment of circulation, position, and open airway checks at least every 15 minutes by healthcare staff;

*(iii)* opportunity for range of motion exercises at least every 30 minutes for a period of at least five minutes by trained staff;

*(iv)* regularly scheduled meals and drinks;

*(v)* opportunity for elimination of bodily waste at least once every two hours; and

*(vi)* continuous visual supervision by staff.

(D) The designated mental health professional, in consultation with a psychiatric provider if indicated, must develop a detailed plan for clinical follow-up, which may include referral to a TJJD stabilization unit or state hospital if the youth meets criteria in §380.8767 or §380.8769 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2014.

TRD-201401036
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: April 1, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 490-7014

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## SUBCHAPTER F. SECURITY AND CONTROL

### 37 TAC §380.9723

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9723, concerning Use of Force, with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8581). Changes to the proposed text consist of a requirement in subsection (c)(9) for medical staff to be consulted as soon as reasonably possible after a manual restraint in a medium restriction facility. This additional text was described in the preamble for the proposed text, but was inadvertently omitted from the actual text of the proposed section.

The amended section requires TJJD staff member to be exposed to Oleoresin Capsicum (OC) spray during their first OC training, unless such exposure is medically contraindicated.

Concerning mechanical restraints, the section now requires approval to extend the restraint after the first 30 minutes (rather than 15 minutes) and every two hours thereafter (rather than every 30 minutes). These time frames will not apply to restraints used for medical reasons, in which case the medical provider's order will govern the duration of the restraint. The section also requires youth in mechanical restraints to be provided regularly scheduled meals and be offered opportunities for elimination of bodily waste.

The amended section no longer requires a medical assessment of the youth after each manual restraint occurring in a medium restriction facility. Staff members at medium restriction facilities are required to consult with medical staff as soon as reasonably possible after each manual restraint.

Clarification has been added to show that the section does not apply to the use of four-point restraints, which are addressed in §380.9198 of this title. Clarification has also been added to show that a medical provider's order is required before staff will use force to allow for the administration of medical treatment.

The justification for the amended rule is the promotion of safety and security in TJJD facilities by ensuring staff are familiar with the effects of exposure to OC spray and by requiring approvals to extend restraints at more practical intervals. An additional public benefit is the provision of an up-to-date rule that accounts for procedural differences when restraints are used for medical or mental health purposes.

TJJD did not receive any public comments regarding the proposed amendments.

The amended section is adopted under Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

*§380.9723. Use of Force.*

(a) Purpose. This rule establishes the procedures for staff intervention when youth behavior threatens safety and order.

(b) Applicability.

(1) This rule applies to all facilities, offices, and programs operated by the Texas Juvenile Justice Department (TJJD), unless specifically stated otherwise in this rule.

(2) This rule does not apply to peace officers employed and commissioned by TJJD or the TJJD Office of Inspector General.

(3) This rule does not apply to the use of four-point mechanical restraints for medical or mental health purposes. See §380.9198 of this title.

(c) General Provisions.

(1) Non-physical interventions are preferred and must be used to the extent practical to manage youth behavior.

(2) TJJD authorizes its staff to use reasonable force as a last resort to maintain safety and order. Only staff who are trained in agency-approved techniques are authorized to use force.

(3) The use of force as punishment or for convenience of staff is strictly prohibited.

(4) Approved use of force techniques are those determined by TJJD to minimize risk of harm to youth and staff.

(5) Staff must release youth from manual or mechanical restraint as soon as the purpose for the restraint has been achieved.

(6) If a staff member observes a use of force in violation of policy, he/she must take action, as practical, to protect the youth from harm.

(7) Staff must report any violations of this policy as soon as possible, but no later than the end of the current shift.

(8) Violations of this policy may result in disciplinary action up to and including termination of employment.

(9) After any manual restraint or use of oleoresin capsicum (OC) spray in a high restriction facility, a youth must be assessed by medical staff as soon as reasonably possible under the totality of the circumstances. After any manual restraint in a medium restriction facility, medical staff must be consulted as soon reasonably possible. Any injuries must be documented in the medical record along with an explanation from the youth describing how the injuries occurred. Photographs must be taken of all injuries.

(10) Only restraint equipment approved by the executive director or his/her designee may be used in TJJD facilities. All restraint equipment must be used in a manner consistent with its design and intended purpose.

(d) References.

(1) For riot control procedures, see §380.9727 of this title.

(2) For procedures and programs designed to allow youth time to regain self-control, see §§380.9520, 380.9739, and 380.9740 of this title.

(3) For criteria and procedures on administering a psychotropic drug in a psychiatric emergency when a youth will not give consent for the administration, see §380.9192 of this title.

(4) For procedures relating to youth searches, see §380.9709 of this title.

(e) Definitions.

(1) Handle With Care®--an agency-trained physical intervention system.

(2) Imminent Harm--a reasonable belief that harm to persons or property is about to occur, unless immediate action is taken.

(3) Medical Provider--has the meaning assigned by §380.9198 of this title.

(4) Positional Asphyxia--the reduction in oxygen in the bloodstream and tissues due to an impairment of a person's respiratory system caused by body positioning or the application of external weight/pressure.

(5) Practical--a reasonable belief that something is capable of being done.

(6) Reasonable Belief--a belief that would be held by a similarly trained staff considering the totality of the circumstances.

(7) Reasonable Force--the least amount of force which a trained staff, in like circumstances, would reasonably believe to be necessary to maintain order and safety as authorized under this rule.

(8) Serious Bodily Injury--an injury that creates a substantial risk of death, serious permanent disfigurement, or extended loss or impairment of the function of any bodily member or organ.

(9) Substantial Property Damage--at least $500 in damage to state property or another's personal property.

(10) Totality of the Circumstances--facts and circumstances known by the actor at the time of the incident.

(11) Use of Force--physical measures used to direct, compel, or restrain bodily movement of a non-compliant youth.

(f) Non-Physical Interventions. Alternatives to force must be used whenever practical to assist a youth in maintaining or regaining self-control. Staff are prohibited from using profanity or slang based on race, gender, sexual orientation, or ethnicity to manage youth behavior. Staff will be trained in the use of the following non-physical intervention techniques:

(1) Staff presence--this includes mere presence of staff to include non-verbal gestures made with eyes, hands, head, or body utilizing proximity, standing, eye contact and/or facial expressions; and/or involving additional staff to intervene.

(2) Verbal de-escalation--this includes verbal prompting, directive statements, and redirecting youth attention and/or behavior.

(3) Use of problem-solving groups.

(g) Physical Interventions. When reasonable force is necessary, staff are authorized to use the following methods:

(1) Physical Escort--touching of the arm, elbow, shoulder, or back for the purpose of directing the youth from one location to another.

(2) Mechanical Restraint--use of a mechanical device applied to a youth as a means of restricting a youth's freedom of action.

(3) Manual Restraint--use of hands-on techniques as a means of restricting a youth's freedom of action.

(4) Planned Team Restraint--restraint of a youth who is in a locked or barricaded room by a pre-assembled team.

(5) OC Spray--oleoresin capsicum spray, also known as pepper spray. Oleoresin capsicum is a mixture of essential oil and resin found in nature and derived from any plant of the genus capsicum, such as jalapeño, cayenne, or habanero.

(h) Criteria for Use of Force. Except as otherwise indicated in this rule, reasonable force is authorized under the following circumstances:

(1) protection of youth from imminent self-harm;

(2) protection of self from imminent harm;

(3) protection of other youth or third parties from imminent harm;

(4) protection of property from imminent, substantial damage;

(5) prevention of escape or fleeing apprehension;

(6) movement of a youth referred to the security unit, other temporary isolation room, or alternative classroom;

(7) movement of a resistant youth within the security unit when the youth's behavior is substantially disruptive and the youth refuses to stop the behavior;

(8) movement of a resistant youth from a dangerous situation;

(9) to conduct a search of a resistant youth reasonably believed to be in possession of a weapon, an item that can be adapted for use as a weapon, a controlled substance, or other item(s) that breach the security of the facility;

(10) to conduct a search of a resistant youth entering the security unit; or

(11) a medical provider orders a restraint for the purpose of administering medical treatment to a resistant youth when failure to do so could have serious health implications.

(i) Determining the Intervention or the Reasonable Force to be Used. In determining the type of intervention or the reasonable force to be used, staff must consider whether action needs to be taken immediately or can be delayed until additional staff can organize a team response. However, only a medical provider may determine the type of intervention or the reasonable force to be used in administering medical treatment to a resistant youth.

(j) Approved Use of Force Techniques. Use of force techniques that may be used are limited to:

(1) agency-trained:

(A) physical escort;

(B) Handle With Care® methods of manual restraint;

(C) mechanical restraints;

(D) OC spray, under certain limited circumstances; and

(2) other non-prohibited methods of manual restraint that under the totality of circumstances existing at the time:

(A) are more practical than the agency-trained Handle With Care® methods of restraint, taking into account the youth's and staff's particular vulnerability to harm;

(B) involve a use of force that is measured and progressive to a degree no greater than that reasonably believed necessary to achieve the objective; and

(C) do not unduly risk serious harm or needless pain to the youth or staff.

(k) Prohibited Restraint Techniques.

(1) Prohibited restraint techniques include the following:

(A) restricting respiration in any way, such as applying a chokehold or pressure to a youth's back or chest or placing a youth in a position that is capable of causing positional asphyxia;

(B) using any method that is capable of causing loss of consciousness or harm to the neck;

(C) pinning down with knees to torso, head, and/or neck;

(D) slapping, punching, kicking, or hitting;

(E) using pressure point, pain compliance, and joint manipulation techniques, other than an approved Handle With Care® method for release of a chokehold, bite, or hair pull;

(F) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(G) dragging or lifting of the youth by the hair or ear or by any type of mechanical restraints;

(H) lifting a youth's arms behind the back, while in mechanical restraints, in a manner that is capable of causing injury to the shoulder;

(I) using other youth or untrained staff to assist with the restraint;

(J) securing a youth to another youth or to a fixed object, other than to an agency-approved full-body restraint device; or

(K) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the youth's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional.

(2) A physical contact that would otherwise be prohibited under the above paragraph does not include one that is only accidental and momentary.

(l) Requirements for Planned Team Restraint Situations.

(1) Criteria for Use. Planned team restraint is authorized only to:

(A) stop the youth from engaging in self-harm;

(B) prevent substantial property damage; or

(C) recover a weapon or item that has been adapted for use as a weapon and is capable of causing death or serious bodily injury.

(2) Requirements for Use.

(A) Prior to approval of planned team restraint, the facility administrator or administrative duty officer must personally observe the situation. Only the facility administrator or administrative duty officer may authorize a planned team restraint.

(B) All planned team restraints must be videotaped when practical, including a recording of a verbal description of the youth's conduct and all warnings provided the youth according to the agency-approved script.

(C) Only staff trained in planned team restraint may participate in the team that is assembled for the room entry.

(D) The youth must be warned to discontinue the misconduct at least two times after the team is assembled and before the room entry. The team must provide continuous opportunities for compliance during the room entry.

(E) Use of the riot shield during a planned team restraint is limited to cases in which a youth has a weapon or a youth's behavior indicates there is a significant risk of harm to the staff members involved in the restraint.

(m) Requirements for Use of Mechanical Restraints.

(1) Guidelines for Use.

(A) Mechanical restraint equipment must not be secured so tightly as to interfere with circulation or so loosely as to permit chafing of the skin.

(B) When mechanical restraints are employed on a youth in a prone position, the youth is placed on his/her side as soon as practical in order to help ensure adequate respiration and circulation. The youth must be allowed to sit up as soon as his/her behavior is under control.

(C) A mechanical restraint for other than transportation, riot control, or medical purposes must be terminated as soon as the purpose for which the youth was restrained under subsection (h) of this section has been achieved, but in any event within 30 minutes, unless an extension is granted. Extensions may be granted by the facility administrator or designee for up to two-hour intervals, until termination of restraint.

(D) A mechanical restraint for medical purposes must be terminated as soon as the purpose for which the youth was restrained has been achieved or upon expiration of the medical provider's order, whichever occurs first.

(E) When mechanical restraints are applied, staff must:

*(i)* check the youth for adequate respiration and circulation every 15 minutes;

*(ii)* provide regularly scheduled meals and drinks;

*(iii)* provide opportunity for elimination of bodily waste at least once every two hours; and

*(iv)* provide continuous visual supervision and appropriate assistance until the mechanical restraint is terminated.

(F) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth to a security unit, within a security unit, and from a security unit in order to prevent harm to the youth or others. These restraints may not be attached in a manner that prevents the youth from being able to stand upright. Mechanical restraints may remain on the youth for the duration of the activity, if circumstances warrant such restraints.

(2) Restrictions on Use During or After Childbirth.

(A) TJJD staff may not use mechanical restraints to control the movement of a youth who is in labor, during delivery, or during recovery from delivery unless the executive director or designee determines that the use of restraints is necessary to:

*(i)* ensure the safety and security of the youth, the infant, a staff member, or a member of the public; or

*(ii)* prevent a substantial risk that the youth will attempt to escape.

(B) If restraint is approved by the executive director or designee, staff must use the least restrictive type and method of restraint necessary to achieve the purpose of the restraint.

(3) Mechanical Restraint Use by TJJD Transportation Staff. Mechanical ankle and wrist restraints attached to a waist belt by a lead chain must be used during secure transportation by designated TJJD transportation staff. Exceptions may be made for youth being transported following release on parole from a residential program or when medically necessary.

(4) Mechanical Restraint Use by Other Transporters.

(A) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain must be used during transportation when a youth is being transported to a high restriction program.

(B) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth off-campus.

(n) Requirements for Use of OC Spray.

(1) Authorization and Training for Use of OC Spray.

(A) OC spray is permitted only in TJJD-operated high restriction institutions.

(B) Unless reasonably believed necessary to prevent loss of life or serious bodily injury, authorization to use OC spray must be obtained from the facility administrator, assistant superintendent, or administrative duty officer prior to each use.

(C) The only staff authorized to routinely carry OC spray on-person are the facility administrator, assistant superintendent, administrative duty officer, juvenile correctional officer shift supervisor (one per shift), program supervisor, and security personnel whose primary responsibility is to patrol the campus and respond to security-related incidents. Any staff positions in addition to those listed must be authorized in writing by the executive director or his/her designee.

(D) Only staff who have been trained by TJJD in the use of OC spray are authorized to use it. TJJD's OC spray training curriculum must include a requirement that each staff member be sprayed with OC if:

*(i)* the staff member is receiving his/her first OC spray training as a TJJD employee; and

*(ii)* exposure to OC is not medically contraindicated.

(2) Criteria for Use.

(A) Except as provided in subparagraph (B) of this paragraph, OC spray is authorized for use only when non-physical interventions and other physical interventions have failed or are not practical, and it is reasonably believed necessary to:

*(i)* quell a riot or major campus disruption;

*(ii)* resolve a hostage situation;

*(iii)* remove youth from behind a barricade in a riot or self-harm situation;

*(iv)* secure an object that is being used as a weapon and that is capable of causing serious bodily injury;

*(v)* protect youth, staff, or others from imminent serious bodily injury; or

*(vi)* prevent escape.

(B) Unless reasonably believed necessary to prevent loss of life or serious bodily injury, OC spray is not authorized for use on a youth when a medical provider has diagnosed the youth with a chronic, serious respiratory problem or other serious health condition identified by TJJD (e.g., significant eye problems, known history of severe allergic reaction to OC, or severe dermatological problems).

(3) Guidelines for Use.

(A) OC spray canisters must be carefully controlled at all times.

(B) Any youth affected by OC spray will be decontaminated with cool water as soon as the purpose of the restraint has been achieved.

(C) Immediately following decontamination from OC spray, medical staff will be contacted to examine and, if necessary, treat and monitor all youth and staff affected by OC spray.

(D) Each individually assigned canister of OC must be weighed at the time it is assigned and after each use.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2014.

TRD-201401040
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: April 1, 2014
Proposal publication date: November 29, 2013
For further information, please call: (512) 490-7014

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*Mariana Lopez*
*4th Grade*

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

### Office of Consumer Credit Commissioner

**Title 7, Part 5**

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders. Chapter 83, Subchapter A contains Division 1, concerning General Provisions; Division 2, concerning Authorized Activities; Division 3, concerning Application Procedures; Division 4, concerning License; Division 5, concerning Interest Charges on Loans; Division 6, concerning Alternate Charges for Consumer Loans; Division 7, concerning Interest and Other Charges on Secondary Mortgage Loans; Division 8, concerning Refunds for Precomputed Loans; Division 9, concerning Insurance; Division 10, concerning Duties and Authority of Authorized Lenders; and Division 11, concerning Prohibitions on Authorized Lenders.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this subchapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201401119
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 10, 2014

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### State Board for Educator Certification

**Title 19, Part 7**

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 227, Provisions for Educator Preparation Candidates, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 227 are organized under the following subchapters: Subchapter A, Admission to Educator Preparation Programs, and Subchapter B, Preliminary Evaluation of Certification Eligibility.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 227, Subchapters A and B, continue to exist. The comment period begins March 21, 2014, and ends following receipt of public comments on the rule review of 19 TAC Chapter 227 at the next regularly scheduled SBEC meeting to be held on May 2, 2014.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201401080
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: March 10, 2014

♦ ♦ ♦

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 228, Requirements for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 228 continue to exist. The comment period begins March 21, 2014, and ends following receipt of public comments on the rule review of 19 TAC Chapter 228 at the next regularly scheduled SBEC meeting to be held on May 2, 2014.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201401081
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: March 10, 2014

♦ ♦ ♦

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 229, Accountability System for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 229 continue to exist. The comment period begins March 21, 2014, and ends following receipt of public comments on the rule review of 19 TAC Chapter 229 at the next regularly scheduled SBEC meeting to be held on May 2, 2014.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201401083
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: March 10, 2014

♦ ♦ ♦

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 247, Educators' Code of Ethics, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 247 continue to exist. The comment period begins March 21, 2014, and ends following receipt of public comments on the rule review of 19 TAC Chapter 247 at the next regularly scheduled SBEC meeting to be held on May 2, 2014.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201401084
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: March 10, 2014

♦ ♦ ♦

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 250, Administration, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 250 are organized under the following subchapters: Subchapter A, Purchasing, and Subchapter B, Rulemaking Procedures.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 250, Subchapters A and B, continue to exist. The comment period begins March 21, 2014, and ends following receipt of public comments on the rule review of 19 TAC Chapter 250 at the next regularly scheduled SBEC meeting to be held on May 2, 2014.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201401085
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: March 10, 2014

♦ ♦ ♦

## Adopted Rule Reviews

### Texas State Board of Pharmacy

**Title 22, Part 15**

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.51 - 291.55) concerning Nuclear Pharmacy (Class B), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9067).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201401053
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Filed: March 6, 2014

♦ ♦ ♦

The Texas State Board of Pharmacy adopts the review of Chapter 305 (§305.1 and §305.2) concerning Educational Requirements, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9068).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201401054
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Filed: March 6, 2014

♦ ♦ ♦

The Texas State Board of Pharmacy adopts the review of Chapter 309 (§§309.1 - 309.4 and §§309.6 - 309.8) concerning Substitution of Drug Products, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9068).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201401055

Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Filed: March 6, 2014

♦ ♦ ♦


Andre Garcia
4th Grade

# 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: 16 TAC §25.211(p)

## AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION OF DISTRIBUTED GENERATION

This Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, ____, by _____, ("Company"), and _____ ("Customer"), a _____ [specify whether corporation, and if so name state, municipal corporation, cooperative corporation, or other], each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties." In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. **Scope of Agreement** -- This Agreement is applicable to conditions under which Company and Customer agree that one or more generating facility or facilities of ten megawatts or less and related interconnecting facilities to be interconnected at less than 60 kilovolts ("Facilities") may be interconnected to Company's facilities, as described in Exhibit A.

2. **Establishment of Point(s) of Interconnection** -- Company and Customer agree to interconnect Facilities at the locations specified in this Agreement, in accordance with Public Utility Commission of Texas ("Commission") Substantive Rules §25.211, relating to Interconnection of Distributed Generation, and §25.212, relating to Technical requirements for Interconnection and Parallel Operation of On-Site Distributed Generation (16 Texas Administrative Code §25.211 and §25.212) (the "Rules") or any successor rule addressing distributed generation and as described in the attached Exhibit A (the "Point(s) of Interconnection").

3. **Responsibilities of Company and Customer** -- Customer shall, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for, Facilities specified on Exhibit A. Customer shall conduct operations of Facilities in compliance with all aspects of the Rules, and Company shall conduct operations on its facilities in compliance with all aspects of the Rules, and as further described and mutually agreed to in the applicable Facility Schedule. Maintenance of Facilities shall be performed in accordance with the applicable manufacturer's recommended maintenance schedule. Customer agrees to cause Facilities to be constructed in accordance with specifications equal to or greater than those provided by the National Electrical Safety Code, approved by the American National Standards Institute, in effect at the time of construction.

Each Party covenants and agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of, its facilities so as to reasonably minimize the likelihood of a disturbance, originating in the facilities of one Party, affecting or impairing the facilities of the other Party, or other facilities with which Company is interconnected.
Company shall notify Customer if there is evidence that operation of Facilities causes disruption or deterioration of service to other utility customers or if the operation of Facilities causes damage to Company's facilities or other facilities with which Company is interconnected. Company and Customer shall work cooperatively and promptly to resolve the problem.
Customer shall notify Company of any emergency or hazardous condition or occurrence with Facilities which could affect safe operation of Company's facilities or other facilities with which Company is interconnected.

Customer shall provide Company at least 14 days' written notice of a change in ownership or cessation of operations of one or more Facilities.

*4. **Limitation of Liability and Indemnification***

*a. **Notwithstanding any other provision in this Agreement, with respect to Company's provision of electric service to Customer other than the interconnections service addressed by this Agreement, Company's liability to Customer shall be limited as set***

*forth in _____ of Company's Commission-approved tariffs, which are incorporated herein by reference.*

b. *Neither Company nor Customer shall be liable to the other for damages for anything that is beyond such Party's control, including an act of God, labor disturbance, act of a public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, a curtailment, order, or regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, or the making of necessary repairs upon the property or equipment of either party.*

c. *Notwithstanding Paragraph 4.b of this Agreement, Company shall assume all liability for and shall indemnify Customer for any claims, losses, costs, and expenses of any kind or character to the extent that they result from Company's negligence in connection with the design, construction, or operation of its Facilities as described on Exhibit A; provided, however, that Company shall have no obligation to indemnify Customer for claims brought by claimants who cannot recover directly from Company. Such indemnity shall include, but is not limited to, financial responsibility for: (a) Customer's monetary losses; (b) reasonable costs and expenses of defending an action or claim made by a third person; (c) damages related to the death or injury of a third person; (d) damages to the property of Customer; (e) damages to the property of a third person; (f) damages for the disruption of the business of a third person. In no event shall Company be liable for consequential, special, incidental, or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of production. The Company does not assume liability for any costs for damages arising from the disruption of the business of Customer or for Customer's costs and expenses of prosecuting or defending an action or claim against Company. This paragraph does not create a liability on the part of Company to Customer or a third person, but requires indemnification where such liability exists. The limitations of liability provided in this paragraph do not apply in cases of gross negligence or intentional wrongdoing.*

*d. Please check the appropriate box.*

☐ **Private Entity**

***Notwithstanding Paragraph 4.b of this Agreement, Customer shall assume all liability for and shall indemnify Company for any claims, losses, costs, and expenses of any kind or character to the extent that they result from Customer's negligence in connection with the design, construction, or operation of Facilities as described on Exhibit A; provided, however, that Customer shall have no obligation to indemnify Company for claims brought by claimants who cannot recover directly from Customer. Such indemnity shall include, but is not limited to, financial responsibility for: (a) Company's monetary losses; (b) reasonable costs and expenses of defending an action or claim made by a third person; (c) damages related to the death or injury of a third person; (d) damages to the property of Company; (e) damages to the property of a third person; (f) damages for the disruption of the business of a third person. In no event shall Customer be liable for consequential, special, incidental, or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of production. The Customer does not assume liability for any costs for damages arising from the disruption of the business of Company or for Company's costs and expenses of prosecuting or defending an action or claim against Customer. This paragraph does not create a liability on the part of Customer to Company or a third person, but requires indemnification where such liability exists. The limitations of liability provided in this paragraph do not apply in cases of gross negligence or intentional wrongdoing.***

☐ **Federal Agency**

***Notwithstanding Paragraph 4.b of this Agreement, the liability, if any, of Customer relating to this Agreement, for injury or loss of property, or personal injury or death shall be governed exclusively by the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 1346, and 2671-2680). Subject to applicable federal, state, and local laws, each Party's liability to the other for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement shall be limited to the amount of direct damages actually***

*incurred, and in no event shall either Party be liable to the other for any indirect, special, consequential, or punitive damages.*

*e. Company and Customer shall each be responsible for the safe installation, maintenance, repair, and condition of their respective facilities on their respective sides of the Points of Interconnection. Company does not assume any duty of inspecting Customer's Facilities.*

*f. For the mutual protection of Customer and Company, only with Company prior authorization are the connections between Company's service wires and Customer's service entrance conductors to be energized.*

5. **Right of Access, Equipment Installation, Removal & Inspection** -- Upon reasonable notice, Company may send a qualified person to the premises of Customer at or immediately before the time Facilities first produce energy to inspect the interconnection, and observe Facilities' commissioning (including any testing), startup, and operation for a period of up to three days after initial startup of Facilities.

Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, Company shall have access to Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

6. **Disconnection of Facilities** -- Customer retains the option to disconnect from Company's facilities. Customer shall notify Company of its intent to disconnect by giving Company at least thirty days' written notice. Such disconnection shall not be a termination of this Agreement unless Customer exercises rights under Section 7.

Customer shall disconnect Facilities from Company's facilities upon the effective date of any termination under Section 7.

Subject to Commission Rule, for routine maintenance and repairs of Company's facilities, Company shall provide Customer with seven business days' notice of service interruption.

Company shall have the right to suspend service in cases where continuance of service to Customer will endanger persons or property. During the forced outage of Company's facilities serving Customer, Company shall have the right to suspend service to effect immediate repairs of Company's facilities, but Company shall use its best efforts to provide Customer with reasonable prior notice.

7. **Effective Term and Termination Rights** -- This Agreement becomes effective when executed by both Parties and shall continue in effect until terminated. The Agreement may be terminated for the following reasons: (a) Customer may terminate this Agreement at any time, by giving Company sixty days' written notice; (b) Company may terminate upon failure by Customer to generate energy from Facilities in parallel with Company's facilities within twelve months after completion of the interconnection; (c) either Party may terminate by giving the other Party at least sixty days' written notice that the other Party is in default of any of the material terms and conditions of the Agreement, so long as the notice specifies the basis for termination and there is reasonable opportunity to cure the default; or (d) Company may terminate by giving Customer at least sixty days' written notice if possible in the event that there is a material change in an applicable rule or statute that necessitates termination of this Agreement.

8. **Governing Law and Regulatory Authority** -- *Please check the appropriate box.*

☐ **Private Entity:** This Agreement was executed in the State of Texas and must in all respects be governed by, interpreted, construed, and enforced in accordance with the laws thereof. This Agreement is subject to, and the Parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, state, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.

☐ **Federal Agency:** This Agreement was executed in the State of Texas and, to the extent not inconsistent with all applicable federal law (including, but not limited to: (a) the Anti-Deficiency Acts, 31 USC §§1341, 1342 and 1501-1519; (b) the Tort Claims Act, 28 USC Chapter 171, §§2671-2680, and 28 CFR Part 14; and (c) the Contract Disputes Act of 1978, as amended, 41 USC §§601-613), must in all respects be governed by, interpreted, construed, and enforced in accordance with the laws thereof. This Agreement is subject to, and the Parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, state, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.

9. **Amendment** -- This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties.

10. **Entirety of Agreement and Prior Agreements Superseded** -- This Agreement, including the attached Exhibit A and Facility Schedules, which are expressly made a part hereof for all purposes, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the facilities of the Parties at the Points of Interconnection expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. This Agreement replaces all prior agreements and undertakings, oral or written, between the Parties with regard to the subject matter hereof, including without limitation _____ [specify any prior agreements being superseded], and all such agreements and undertakings are agreed by the Parties to no longer be of any force or effect. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement.

11. **Written Notices** -- Written notices given under this Agreement are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

(a) If to Company:

_____

_____

_____

_____

(b) If to Customer:

_____

_____

_____

_____

The above-listed names, titles, and addresses of either Party may be changed by written notification to the other, notwithstanding Section 10.

12. **Invoicing and Payment** -- Invoicing and payment terms for services associated with this agreement shall be consistent with applicable Substantive Rules of the Commission.

13. **No Third-Party Beneficiaries** -- This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

14. **No Waiver** -- The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties.

15. **Headings** -- The descriptive headings of the various parts of this Agreement have been inserted for convenience of reference only and are to be afforded no significance in the interpretation or construction of this Agreement.

16. **Multiple Counterparts** -- This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives.

| | |
|---|---|
| [COMPANY NAME] | [CUSTOMER NAME] |
| BY:_____ | BY:_____ |
| PRINTED NAME | PRINTED NAME |
| _____ | _____ |
| TITLE:_____ | TITLE:_____ |
| DATE:_____ | DATE:_____ |

**AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION OF DISTRIBUTED GENERATION**

**EXHIBIT A**

**LIST OF FACILITY SCHEDULES AND POINTS OF INTERCONNECTION**

| Facility Schedule No. | Name of Point of Interconnection |
|---|---|

[Insert Facility Schedule number and name for each Point of Interconnection]

## FACILITY SCHEDULE NO.

[The following information is to be specified for each Point of Interconnection, if applicable.]

1. Customer Name:

2. Premises Owner Name:

3. Facility location:

4. Delivery voltage:

5. Metering (voltage, location, losses adjustment due to metering location, and other):

6. Normal Operation of Interconnection:

7. One line diagram attached (check one): _____ Yes /_____ No

If Yes, then the one-line drawing should show the most current drawing(s) available as of the signing of this Schedule. Company and Customer agree drawing(s) may be updated to meet as-built or design changes that occur during construction. Customer understands and agrees that any changes that substantially affect the protective or functional requirements required by the Company will need to be reviewed and accepted by Company.

8. Equipment to be furnished by Company:

(This section is intended to generally describe equipment to be furnished by Company to effectuate the interconnection and may not be a complete list of necessary equipment.)

9. Equipment to be furnished by Customer:

(This section is intended to describe equipment to be furnished by Customer to effectuate the interconnection and may not be a complete list of necessary equipment.)

10. Cost Responsibility and Ownership and Control of Company Facilities:

Unless otherwise agreed or prescribed by applicable regulatory requirements or other law, any payments received by Company from Customer will remain the property of Company. Company shall at all times have title and complete ownership and control over facilities installed by Company.

11. Modifications to Customer Facilities.

Customer understands and agrees that, before making any modifications to its Facilities that substantially affect the protective or interconnection parameters or requirements used in the interconnection process (including in an Pre-interconnection Study performed by Company), Customer will both notify Company of, and receive approval by Company for, such modifications. Customer further understands and agrees that, if required pursuant to Commission Substantive Rule §25.211(m)(5), it will submit a new Application for Interconnection and Parallel Operation request for the desired modifications.

12. Supplemental terms and conditions attached (check one): _____ Yes / _____ No

| [COMPANY NAME] | [CUSTOMER NAME] |
|---|---|
| BY:_____ | BY:_____ |
| TITLE:_____ | TITLE:_____ |
| DATE:_____ | DATE:_____ |

**Figure: 16 TAC §25.211(q)**

TARIFF FOR INTERCONNECTION AND
PARALLEL OPERATION OF DISTRIBUTED GENERATION

X.X Distributed Generation Interconnection — Sheet: __
Applicable: Retail Distribution Service — Revision: __
Effective Date: _____ — Page __

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## INTERCONNECTION AND

## PARALLEL OPERATION OF DISTRIBUTED GENERATION

Company shall interconnect distributed generation pursuant to Public Utility Commission of Texas Substantive Rules §25.211 and §25.212.

A customer seeking interconnection and parallel operation of distributed generation with Company must complete and submit the Application for Interconnection and Parallel Operation of Distributed Generation with the Utility System.

### Prescribed Form for the Application for Interconnection and Parallel Operation of Distributed Generation

Customers seeking to interconnect distributed generation with the utility system will complete and file with the company the following Application for Parallel Operation:

X.X Distributed Generation Interconnection
Applicable: Retail Distribution Service
Effective Date: _____

Sheet: __
Revision: __
Page __

**APPLICATION FOR INTERCONNECTION AND**

**PARALLEL OPERATION OF DISTRIBUTED GENERATION**

Return Completed Application to:

[Utility name] _____

Attention: [applicable name and/or job title]

_____

[Address] _____

_____

Customer's Name: _____

Address: _____

Contact Person: _____

Email Address: _____

Telephone Number: _____

X.X Distributed Generation Interconnection
Applicable: Retail Distribution Service
Effective Date: _____

Sheet: __
Revision: __
Page __

Service Point Address: _____

Information Prepared and Submitted By: _____

(Name and Address) _____

Signature _____

The following information shall be supplied by the Customer or Customer's designated representative. All applicable items must be accurately completed in order that the Customer's generating facilities may be effectively evaluated by the _____(Company) for interconnection with the utility system.

**GENERATOR**

Number of Units: _____

Manufacturer: _____

Type (Synchronous, Induction, or Inverter): _____ _____

TARIFF FOR INTERCONNECTION AND
PARALLEL OPERATION OF DISTRIBUTED GENERATION

X.X Distributed Generation Interconnection
Applicable: Retail Distribution Service
Effective Date: _____

Sheet: __
Revision: __
Page __

---

Fuel Source Type (Solar, Natural Gas, Wind, etc.): _____

Kilowatt Rating (95 F at location) _____

Kilovolt-Ampere Rating (95 F at location): _____

Power Factor: _____

Voltage Rating: _____

Number of Phases: _____

Frequency: _____

Do you plan to export power: _____Yes / _____No /

If Yes, maximum amount expected: _____

Do you wish [utility name] to report excess generation to your REP? _____Yes / _____No

Pre-Certification Label or Type Number (e.g., UL-1741 Utility Interactive or IEEE 1547.1):

_____

Expected Energization and Start-up Date: _____

Normal operation of interconnection: (examples: provide power to meet base load, demand management, standby, back-up, other (please describe))_____

One-line diagram attached: _____Yes

For systems not using pre-certified inverters (e.g., inverters certified to UL-1741 or IEEE 1547.1), does [utility name] have the dynamic modeling values from the generator manufacturer? _____Yes _____No

If not, please explain: _____

(Note: For pre-certified equipment, the answer is Yes. Otherwise, applicant must provide the dynamic modeling values if they are available.)

Layout sketch showing lockable, "visible" disconnect device is attached: _____Yes

X.X Distributed Generation Interconnection
Applicable: Retail Distribution Service
Effective Date: _____

Sheet: __
Revision: __
Page __

**Authorized Release of Information List**

By signing this Application in the space provided below, Customer authorizes [utility name] to release Customer's proprietary information to the extent necessary to process this Application to the following persons:

| | **Name** | **Phone Number** | **Email Address** |
|---|---|---|---|
| Project Manager | | | |
| Electrical Contractor | | | |
| Consultant | | | |
| Other | | | |

[COMPANY NAME]

BY: _____

PRINTED NAME

_____

TITLE: _____

DATE: _____

[CUSTOMER NAME]

BY: _____

PRINTED NAME

_____

TITLE: _____

DATE: _____

Figure: 16 TAC §82.53(b)

| Tier | Criteria | Total Inspection Frequency (includes both periodic and risk-based inspections) |
|---|---|---|
| (1) Tier 1 | Barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops having:<br>(A) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or<br>(B) significant or repeated violation(s) relating to unlicensed practice. | Once each year |
| (2) Tier 2 | Barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops having:<br>(A) serious or repeated violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or<br>(B) serious or repeated violation(s) relating to unlicensed practice. | Twice each year |
| (3) Tier 3 | (A) Barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops having:<br>(i) repeated, serious violations of sanitation rules determined by the department to pose a threat for the spread of infectious or contagious disease; or<br>(ii) repeated, serious violations related to unlicensed practice.<br>(B) Barber schools having:<br>(i) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease;<br>(ii) significant or repeated violation(s) relating to unlicensed practice;<br>(iii) violation(s) relating to the improper awarding of hours to students; or<br>(iv) violation(s) relating to compromised security of department examinations. | Four times each year |

Figure: 16 TAC §82.120(m)

**Hair Braiding Specialty Instructor Curriculum - 50 Hours**

| | |
|---|---|
| Instruction in Theory, consisting of: | 50 hours |
| (A) Lesson planning | 5 hours |
| (B) Student learning principles | 10 hours |
| (C) Principles of teaching | 10 hours |
| (D) Basic teaching methods | 15 hours |
| (E) Teaching adults | 5 hours |
| (F) Classroom management | 5 hours |

Figure: 16 TAC §83.53(b)

| Tier | Criteria | Total Inspection Frequency (includes both periodic and risk-based inspections) |
|---|---|---|
| (1) Tier 1 | Beauty salons, specialty salons, mini-salons, dual shops and mini-dual shops having:<br>(A) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or<br>(B) significant or repeated violation(s) relating to unlicensed practice. | Once each year |
| (2) Tier 2 | Beauty salons, specialty salons, mini-salons, dual shops and mini-dual shops having:<br>(A) serious or repeated violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or<br>(B) serious or repeated violation(s) relating to unlicensed practice. | Twice each year |
| (3) Tier 3 | (A) Beauty salons, specialty salons, mini-salons, dual shops and mini-dual shops having:<br>(i) repeated, serious violations of sanitation rules determined by the department to pose a threat for the spread of infectious or contagious disease; or<br>(ii) repeated, serious violations related to unlicensed practice.<br>(B) Beauty culture schools having:<br>(i) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease;<br>(ii) significant or repeated violation(s) relating to unlicensed practice;<br>(iii) violation(s) relating to the improper awarding of hours to students; or<br>(iv) violation(s) relating to compromised security of department examinations. | Four times each year |

Figure: 28 TAC §3.3510(d)

**FORM COB TX**

**COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS**

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one plan. Plan is defined below.

The order of benefit determination rules govern the order in which each plan will pay a claim for benefits. The plan that pays first is called the primary plan. The primary plan must pay benefits in accord with its policy terms without regard to the possibility that another plan may cover some expenses. The plan that pays after the primary plan is the secondary plan. The secondary plan may reduce the benefits it pays so that payments from all plans equal 100 percent of the total allowable expense.

**DEFINITIONS**

(a) A "plan" is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

(1) Plan includes: group, blanket, or franchise accident and health insurance policies, excluding disability income protection coverage; individual and group health maintenance organization evidences of coverage; individual accident and health insurance policies; individual and group preferred provider benefit plans and exclusive provider benefit plans; group insurance contracts, individual insurance contracts and subscriber contracts that pay or reimburse for the cost of dental care; medical care components of individual and group long-term care contracts; limited benefit coverage that is not issued to supplement individual or group in-force policies; uninsured arrangements of group or group-type coverage; the medical benefits coverage in automobile insurance contracts; and Medicare or other governmental benefits, as permitted by law.

(2) Plan does not include: disability income protection coverage; the Texas Health Insurance Pool; workers' compensation insurance coverage; hospital confinement indemnity coverage or other fixed indemnity coverage; specified disease coverage; supplemental benefit coverage; accident only coverage; specified accident coverage; school accident-type coverages that cover students for accidents only, including athletic injuries, either on a "24-hour" or a "to and from school" basis; benefits provided in long-term care insurance contracts for non-medical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services; Medicare supplement policies; a state plan under Medicaid; a governmental plan that, by law, provides benefits that are in excess of those of any private insurance plan; or other nongovernmental plan; or an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

Each contract for coverage under (a)(1) or (a)(2) is a separate plan. If a plan has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate plan.

(b) "This plan" means, in a COB provision, the part of the contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one COB provision to certain benefits, such as dental benefits, coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

The order of benefit determination rules determine whether this plan is a primary plan or secondary plan when the person has health care coverage under more than one plan. When this plan is primary, it determines payment for its benefits first before those of any other plan without considering any other plan's benefits. When this plan is secondary, it determines its benefits after those of another plan and may reduce the benefits it pays so that all plan benefits equal 100 percent of the total allowable expense.

(c) "Allowable expense" is a health care expense, including deductibles, coinsurance, and copayments, that is covered at least in part by any plan covering the person. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid. An expense that is not covered by any plan covering the person is not an allowable expense. In addition, any expense that a health care provider or physician by law or in accord with a contractual agreement is prohibited from charging a covered person is not an allowable expense.

The following are examples of expenses that are not allowable expenses:

(1) The difference between the cost of a semi-private hospital room and a private hospital room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(2) If a person is covered by two or more plans that do not have negotiated fees and compute their benefit payments based on the usual and customary fees, allowed amounts, or relative value schedule reimbursement methodology, or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an allowable expense.

(3) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an allowable expense.

(4) If a person is covered by one plan that does not have negotiated fees and that calculates its benefits or services based on usual and customary fees, allowed amounts, relative value schedule reimbursement methodology, or other similar reimbursement methodology, and another plan that provides its benefits or services based on negotiated fees, the primary plan's payment arrangement must be the allowable expense for all plans. However, if the health care provider or physician has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the health care provider's or physician's contract permits, the negotiated fee or payment must be the allowable expense used by the secondary plan to determine its benefits.

(5) The amount of any benefit reduction by the primary plan because a covered person has failed to comply with the plan provisions is not an allowable expense. Examples of these types of plan provisions include second surgical opinions, prior authorization of admissions, and preferred health care provider and physician arrangements.

(d) "Allowed amount" is the amount of a billed charge that a carrier determines to be covered for services provided by a nonpreferred health care provider or physician. The allowed amount includes both the carrier's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(e) "Closed panel plan" is a plan that provides health care benefits to covered persons primarily in the form of services through a panel of health care providers and physicians that have contracted with or are employed by the plan, and that excludes coverage for services provided by other health care providers and physicians, except in cases of emergency or referral by a panel member.

(f) "Custodial parent" is the parent with the right to designate the primary residence of a child by a court order under the Texas Family Code or other applicable law, or in the absence of a court order, is the parent with whom the child resides more than one-half of the calendar year, excluding any temporary visitation.

**ORDER OF BENEFIT DETERMINATION RULES**

When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

(a) The primary plan pays or provides its benefits according to its terms of coverage and without regard to the benefits under any other plan.

(b) Except as provided in (c), a plan that does not contain a COB provision that is consistent with this policy is always primary unless the provisions of both plans state that the complying plan is primary.

(c) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage must be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(d) A plan may consider the benefits paid or provided by another plan in calculating payment of its benefits only when it is secondary to that other plan.

(e) If the primary plan is a closed panel plan and the secondary plan is not, the secondary plan must pay or provide benefits as if it were the primary plan when a covered person uses a noncontracted health care provider or physician, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(f) When multiple contracts providing coordinated coverage are treated as a single plan under this subchapter, this section applies only to the plan as a whole, and coordination

among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan must be responsible for the plan's compliance with this subchapter.

(g) If a person is covered by more than one secondary plan, the order of benefit determination rules of this subchapter decide the order in which secondary plans' benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan that, under the rules of this contract, has its benefits determined before those of that secondary plan.

(h) Each plan determines its order of benefits using the first of the following rules that apply.

(1) Nondependent or Dependent. The plan that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber, or retiree, is the primary plan, and the plan that covers the person as a dependent is the secondary plan. However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the plan covering the person as a dependent and primary to the plan covering the person as other than a dependent, then the order of benefits between the two plans is reversed so that the plan covering the person as an employee, member, policyholder, subscriber, or retiree is the secondary plan and the other plan is the primary plan. An example includes a retired employee.

(2) Dependent Child Covered Under More Than One Plan. Unless there is a court order stating otherwise, plans covering a dependent child must determine the order of benefits using the following rules that apply.

(A) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(i) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(ii) If both parents have the same birthday, the plan that has covered the parent the longest is the primary plan.

(B) For a dependent child whose parents are divorced, separated, or not living together, whether or not they have ever been married:

(i) if a court order states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. This rule applies to plan years commencing after the plan is given notice of the court decree.

(ii) if a court order states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of (h)(2)(A) must determine the order of benefits.

(iii) if a court order states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of (h)(2)(A) must determine the order of benefits.

(iv) if there is no court order allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child are as follows:

(I) the plan covering the custodial parent;
(II) the plan covering the spouse of the custodial parent;
(III) the plan covering the noncustodial parent; then
(IV) the plan covering the spouse of the noncustodial parent.

(C) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the provisions of (h)(2)(A) or (h)(2)(B) must determine the order of benefits as if those individuals were the parents of the child.

(D) For a dependent child who has coverage under either or both parents' plans and has his or her own coverage as a dependent under a spouse's plan, (h)(5) applies.

(E) In the event the dependent child's coverage under the spouse's plan began on the same date as the dependent child's coverage under either or both parents' plans, the order of benefits must be determined by applying the birthday rule in (h)(2)(A) to the dependent child's parent(s) and the dependent's spouse.

(3) Active, Retired, or Laid-off Employee. The plan that covers a person as an active employee, that is, an employee who is neither laid off nor retired, is the primary plan. The plan that covers that same person as a retired or laid-off employee is the secondary plan. The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the plan that covers the same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply. This rule does not apply if (h)(1) can determine the order of benefits.

(4) COBRA or State Continuation Coverage. If a person whose coverage is provided under COBRA or under a right of continuation provided by state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber, or retiree or covering the person as a dependent of an employee, member, subscriber, or retiree is the primary plan, and the COBRA, state, or other federal continuation coverage is the secondary plan. If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply. This rule does not apply if (h)(1) can determine the order of benefits.

(5) Longer or Shorter Length of Coverage. The plan that has covered the person as an employee, member, policyholder, subscriber, or retiree longer is the primary plan, and the plan that has covered the person the shorter period is the secondary plan.

(6) If the preceding rules do not determine the order of benefits, the allowable expenses must be shared equally between the plans meeting the definition of plan. In addition, this plan will not pay more than it would have paid had it been the primary plan.

EFFECT ON THE BENEFITS OF THIS PLAN

(a) When this plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans are not more than the total allowable expenses. In determining the amount to be paid for any claim, the secondary plan will calculate the benefits it would have paid in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may then reduce its payment by the amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal 100 percent of the total allowable expense for that claim. In addition, the secondary plan must credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

(b) If a covered person is enrolled in two or more closed panel plans and if, for any reason, including the provision of service by a nonpanel provider, benefits are not payable by one closed panel plan, COB must not apply between that plan and other closed panel plans.

COMPLIANCE WITH FEDERAL AND STATE LAWS CONCERNING CONFIDENTIAL INFORMATION

Certain facts about health care coverage and services are needed to apply these COB rules and to determine benefits payable under this plan and other plans. [Organization responsible for COB administration] will comply with federal and state law concerning confidential information for the purpose of applying these rules and determining benefits payable under this plan and other plans covering the person claiming benefits. Each person claiming benefits under this plan must give [Organization responsible for COB administration] any facts it needs to apply those rules and determine benefits.

FACILITY OF PAYMENT

A payment made under another plan may include an amount that should have been paid under this plan. If it does, [Organization responsible for COB administration] may pay that amount to the organization that made that payment. That amount will then be treated as though it were a benefit paid under this plan. [Organization responsible for COB administration] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means the reasonable cash value of the benefits provided in the form of services.

RIGHT OF RECOVERY

If the amount of the payments made by [Organization responsible for COB administration] is more than it should have paid under this COB provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid or any other person or organization that may be responsible for the benefits or services provided for the covered person. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

Figure: 28 TAC §3.3510(e)

**FORM COB NOTICE TX**

**CONSUMER EXPLANATORY BOOKLET**
**COORDINATION OF BENEFITS (COB)**

**IMPORTANT NOTICE**

This is a summary of only a few of the provisions of your health plan to help you understand COB, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

**Double Coverage**

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits your insurers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses.

COB is complicated and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact the Texas Department of Insurance.

**Primary or Secondary?**

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim. Any plan that does not contain Texas' COB rules will always be primary unless the provisions of both plans state that the complying plan is primary.

**When This Plan is Primary**

If you or a family member is covered under another plan in addition to this one, we will be primary when:

**Your Own Expenses**

- the claim is for your own health care expenses, unless you are covered by Medicare and both you and your spouse are retired.

**Your Spouse's Expenses**

- the claim is for your spouse, who is covered by Medicare, and you are not both retired.

**Your Child's Expenses**

- the claim is for the health care expenses of your child who is covered by this plan and

    - you are married and your birthday is earlier in the year than your spouse's, or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule"; or
    - you are separated or divorced and you have informed us of a court order that makes you responsible for the child's health care expenses; or
    - there is no court order, but you have custody of the child.

**Other Situations**

We will be primary when any other provisions of state or federal law require us to be.

**How We Pay Claims When We Are Primary**

When we are the primary plan, we will pay the benefits in accord with the terms of your contract, just as if you had no other health care coverage under any other plan.

**When This Plan is Secondary**

We will be secondary whenever the rules do not require us to be primary.

**How We Pay Claims When We Are Secondary**

When we are the secondary plan, we do not pay until after the primary plan has paid its benefits. We will then pay part or all of the allowable expenses left unpaid, as explained below. An "allowable expense" is a health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

If there is a difference between the amount the plans allow, we will usually base our payment on the higher amount. However, if one plan has a contract with the health care provider or physician and the other does not, our combined payments will not be more than the contracted amount. Health maintenance organizations and preferred provider organizations usually have contracts with their providers.

We may reduce our payment by any amount so that, when combined with the amount paid by the primary plan, the total benefits paid equal 100 percent of the total allowable expense for your claim. We will credit any amount we would have paid in the absence of your other health care coverage toward our own plan deductible.

We will not pay an amount the primary plan did not cover because you did not follow its rules and procedures. For example, if your plan has reduced its benefit because you did not obtain prior authorization as required by that plan, we will not pay the amount of the reduction, because it is not an allowable expense.

**Questions About COB?**
**Contact the Texas Department of Insurance**
**1-800-252-3439**
**In Austin Call 512-463-6515**

Figure: 37 TAC §359.100

## MEMORANDUM OF UNDERSTANDING

Between
The Texas Commission on Law Enforcement and
The Texas Juvenile Justice Department

### I.
### Parties

The parties to this Memorandum of Understanding (MOU) are the Texas Commission on Law Enforcement, a regulatory agency of the state of Texas, hereinafter called the "Commission" and the Texas Juvenile Justice Department, a regulatory agency of the state of Texas, hereinafter referred to as "TJJD."

### II.
### Background and Purpose

WHEREAS, TJJD represents that juvenile probation officers are not "peace officers" as defined under Section 1701.001 of the Texas Occupations Code and Article 2.12 of the Code of Criminal Procedure, respectively; and

WHEREAS, the 81st Texas Legislature enacted Section 142.006 of the Human Resources Code to authorize juvenile probation officers to carry a firearm in the course of their duties and sets forth other specific qualifying requirements; and

WHEREAS, Section 1701.259 of the Occupations Code was amended to require the Commission and TJJD (formerly the Texas Juvenile Probation Commission) to adopt an MOU to establish a basic training program in the use of firearms by juvenile probation officers; and

WHEREAS, this agreement, entered into pursuant to Section 1701.259 of the Texas Occupations Code, represents a mutual understanding and sets forth each agency's respective responsibilities in developing a basic training program and fulfilling the related statutory mandates;

NOW THEREFORE, know all men by these presents; that in consideration of mutual covenants, agreements and benefits of both parties, it is agreed as follows:

### III. Responsibilities of Both Parties

By entering this agreement, the Commission and TJJD agree to:

1. Establish a program to provide instruction in:
    a. legal limitations on the use of firearms and on the powers and authority of juvenile probation officers;
    b. range firing and procedure, and firearms safety and maintenance; and
    c. other topics determined by the Commission and TJJD to be necessary for the responsible use of firearms by juvenile probation officers.

## IV.
## Specific Roles and Responsibilities of Each Party (Commission)

The Commission, as a signatory to this memorandum, agrees to:

1. Coordinate the development of a training curriculum in the use of firearms by juvenile probation officers based upon the training needs assessment conducted by TJJD and/or a designated representative;

2. Administer the training program and issue a certificate of firearms proficiency to each juvenile probation officer the Commission determines has successfully completed the program, contingent upon the authorization of the local chief juvenile probation officer of the department that employs the juvenile probation officer;

3. Ensure that each local chief juvenile probation officer submits a report of training and other required documentation for each course conducted in accordance with the Commission's rules;

4. Establish, at its discretion, reasonable and necessary fees for the administration of the training program; and

5. Establish or adopt, at its discretion, administrative policies, procedures and rules necessary to fully implement and comply with this legislative mandate.

## V.
## Specific Roles and Responsibilities of Each Party (TJJD)

TJJD, as a signatory to this memorandum, agrees to:

1. Coordinate the development of the juvenile probation officer training curriculum based upon the training needs assessment conducted by TJJD and/or a designated representative;

2. Conduct a juvenile probation officer training needs assessment to be utilized by the Commission in the development of the firearms curriculum; and

3. Provide technical assistance to the Commission during the development of the training curriculum.

## VI.
## Psychological Assessment and Criminal History Background Check

In compliance with the terms of this memorandum of understanding, each chief administrative officer that authorizes participation in the juvenile probation officer firearms proficiency training program shall:

1. Ensure that all officers making application for the certificate of firearms proficiency training program undergo a psychological assessment and other applicable requirements or administrative rules of the Commission; and

2. Conduct, a complete criminal history search submitted through the Texas Department of Public Safety electronic clearinghouse and subscription service and Fingerprint Applicant Services of Texas (FAST) system to determine whether the applicant meets the minimum eligibility requirements to participate in the firearms training program established by the Commission.

## VII.
## Administrative Department Suspension and Officer Disqualification

The Commission and TJJD, to the extent possible, further agree to the following:

1. The Commission may suspend the local juvenile probation department's administrative number with the Commission if the local juvenile probation department is found to be unsatisfactory under the risk assessment process, as defined by Chapter 1701, Occupations Code. The Commission shall reinstate the administrative number upon reasonable evidence that the local juvenile probation department has made the necessary changes as directed by the Commission;

2. The Commission shall regularly provide notification to TJJD regarding all juvenile probation departments and/or chief juvenile probation officers whose identifying number has been administratively suspended under the Commission's rules; and

3. Notwithstanding the provisions of Section 1701.259 and the terms of this agreement, TJJD reserves the right to disqualify a juvenile probation officer who has been issued a certificate of firearms proficiency by the Commission, in accordance with the provisions set forth in Section 142.006 of the Human Resources Code.

4. TJJD shall regularly provide notification to the Commission of any action by TJJD to disqualify a juvenile probation officer who has been issued a certificate of firearms proficiency by the Commission, in accordance with the provisions set forth in Section 142.006 of the Human Resources Code.

## VIII. Effective Date

This Memorandum of Understanding is effective on the date of the last agency signature and has no expiration date. Amendments will be made as deemed necessary and agreed to by the signing parties or as mandated by statute.

## IX.
## Execution of Agreement

For the faithful performance of the terms of this Memorandum of Understanding, the parties hereto in their capacities execute this agreement, affix their signatures and bind themselves.

**Texas Commission on Law Enforcement**

By: _____
**KIM VICKERS**
**EXECUTIVE DIRECTOR**

Date: 2-20-14

**Texas Juvenile Justice Department**

By: _____
**MIKE GRIFFITHS**
**EXECUTIVE DIRECTOR**

Date: 1-28-14

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.

## Texas State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by Texas State Affordable Housing Corporation (TSAHC) to Certified Public Accounting firms that can provide auditing and tax services for TSAHC. Firms interested in providing auditing and tax services must submit all of the materials listed in the RFP which can be found on the Corporation's website at www.tsahc.org.

The deadline for submissions in response to this RFP is Wednesday, April 30, 2014. No proposal will be accepted after 3:00 p.m. on that date. Responses should be emailed to Melinda Smith at msmith@tsahc.org. Faxed responses will not be accepted. For questions or comments, please contact Melinda Smith at (512) 904-1399 or by email at msmith@tsahc.org.

TRD-201401139
David Long
President
Texas State Affordable Housing Corporation
Filed: March 12, 2014

♦ ♦ ♦

## Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - February 2014

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period February 2014 is $71.98 per barrel for the three-month period beginning on November 1, 2013, and ending January 31, 2014. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of February 2014 from a qualified low-producing oil lease is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period February 2014 is $3.30 per mcf for the three-month period beginning on November 1, 2013, and ending January 31, 2014. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2014 from a qualified low-producing well is eligible for a 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of February 2014 is $100.68 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of February 2014 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of February 2014 is $5.16 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from gas produced during the month of February 2014 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201401077
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: March 10, 2014

♦ ♦ ♦

Local Sales Tax Rate Change Notice Effective April 1, 2014

A 1 1/4 percent local sales and use tax that includes the 1 percent city sales and use tax, and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2014 in the city listed below.

| CITY NAME | LOCAL CODE | NEW RATE | TOTAL RATE |
|---|---|---|---|
| Coupland (Williamson Co) | 2246120 | .012500 | .075000 |

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government code, Type A Corporations (4A) will be abolished, effective March 31, 2014 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Palmview (Hidalgo Co) | 2108163 | .020000 | .082500 |

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government code, Type B Corporations (4B) will be abolished, effective March 31, 2014 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Malone (Hill Co) | 2109037 | .020000 | .082500 |

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government code, Type B Corporations (4B) will become effective April 1, 2014 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Josephine (Collin Co) | 2043107 | .015000 | .077500 |

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2014 in the city listed below. There will be no change in the local rate or total rate.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Big Sandy (Upshur Co) | 2230039 | .020000 | .082500 |

An additional 3/4 percent city sales and use tax that includes the adoption of a 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code and an additional 1/2 percent as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will become effective April 1, 2014 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Kosse (Limestone Co) | 2147059 | .017500 | .080000 |

A 1/8 percent special purpose district sales and use tax will become effective April 1, 2014 in the special purpose district listed below.

| SPD NAME | LOCAL CODE | NEW RATE | TOTAL RATE |
|---|---|---|---|
| Leon Valley Crime Control District | 5015575 | .001250 | SEE NOTE 1 |

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2014 in the special purpose districts listed below.

| SPD NAME | LOCAL CODE | NEW RATE | TOTAL RATE |
|---|---|---|---|
| Hays County Emergency Services District No. 5 | 5105585 | .005000 | SEE NOTE 2 |
| Malone Municipal Development District | 5109509 | .005000 | SEE NOTE 3 |
| Palmview Municipal Development District | 5108546 | .005000 | SEE NOTE 4 |

A one percent special purpose district sales and use tax will become effective April 1, 2014 in the special purpose districts listed below.

| SPD NAME | LOCAL CODE | NEW RATE | TOTAL RATE |
|---|---|---|---|
| Fort Bend County Assistance District No. 6 | 5079550 | .010000 | SEE NOTE 5 |
| Fort Bend County Improvement District No. 24 | 5079569 | .010000 | SEE NOTE 6 |

A two percent special purpose district sales and use tax will become effective April 1, 2014 in the special purpose districts listed below.

| SPD NAME | LOCAL CODE | NEW RATE | TOTAL RATE |
|---|---|---|---|
| Burnet County Emergency Services District No. 8 | 5027526 | .020000 | SEE NOTE 7 |
| Galveston County Emergency Services District No. 2 | 5084517 | .020000 | SEE NOTE 8 |
| Travis County Emergency Services District No. 4-A | 5227686 | .020000 | SEE NOTE 9 |

NOTE 1: The boundaries of the Leon Valley Crime Control and Prevention District are the same as the boundaries for the city of Leon Valley.

NOTE 2: The Hays County Emergency Services District No. 5 is located in the east central portion of Hays County, which has a county sales tax. District boundaries for sales tax purposes exclude any area within the city of Kyle. A portion of the city of Mountain City is located within the district. The unincorporated areas of Hays County in ZIP Codes 78610, 78640 and 78666 are partially in Hays County Emergency Services District No. 5. Contact the district representative at 512-268-3131 for additional boundary information.

NOTE 3: The boundaries of the Malone Municipal Development District are the same as the boundaries for the city of Malone.

NOTE 4: The boundaries of the Palmview Municipal Development District are the same as the boundaries for the city of Palmview.

NOTE 5: The Fort Bend County Assistance District No. 6 is located in the northeast portion of Fort Bend County. The district's boundaries include areas of the district which are also responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between a utility district and the city of Houston. The district does not include any area within the Houston MTA. The unincorporated areas of Fort Bend County in ZIP Codes 77083 and 77498 are partially located in the

Fort Bend County Assistance District No. 6. Contact the district representative at 281-341-8608 for additional boundary information.

NOTE 6: The Fort Bend County Improvement District No. 24 is located in the north-central portion of Fort Bend County. The district overlaps a small part of the territory in the Fort Bend County Assistance District No. 1 which has a special purpose district tax. The unincorporated areas of Fort Bend County in ZIP Code 77494 are partially located in the Fort Bend County Improvement District No. 24. Contact the district representative at 713-860-6400 for additional boundary information.

NOTE 7: The Burnet County Emergency Services District No. 8 is located in the northeast portion of Burnet County which does not have county sales and use tax. The unincorporated area of Burnet County in ZIP Codes 76527, 76539, 76550, 78605 and 78608 are partially located within the Burnet County Emergency Services District No. 8. Contact the district representative at 512-773-8499 for additional boundary information.

NOTE 8: The Galveston County Emergency Services District No. 2 Is located in the eastern portion of Galveston County on the Bolivar Peninsula. Galveston County does not have county sales and use tax. The unincorporated area of Galveston County in zip codes 77617, 77623 and 77650 are partially located within the Galveston County Emergency Services District No. 2. Contact the district representative at 409-684-6311 for additional boundary information.

NOTE 9: The Travis County Emergency Services District No. 4-A is the unincorporated area of the original district, which is located in the various portions of northeast and northwest Travis County outside of the Austin MTA. The unincorporated areas of Travis County in ZIP Codes 78724, 78725, 78726, 78727, 78728, 78729, 78753, 78754 and 78759 are partially located within the Travis County Emergency Services District No. 4-A. Contact the district representative at 512-836-7566 for additional boundary information.

TRD-201401061
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: March 7, 2014

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## Notice of Request for Applications

Pursuant to Chapter 403, §403.354 and §403.356, Texas Government Code; and Chapter 134, §134.004 and §134.006, Texas Education Code, the Texas Comptroller of Public Accounts (Comptroller), announces this Notice of Request for Applications (RFA #E-JG9-2014) and invites applications from qualified and interested public junior colleges and public technical institutes (as defined in §61.003 of the Texas Education Code) for Jobs and Education for Texans (JET) grants to defray the start-up costs associated with the development of new career and technical education programs that meet the requirements consistent with the terms of the RFA. Comptroller reserves the right to award more than one grant under the terms of the RFA. If a grant award is made under the terms of the RFA, the recipient should anticipate an effective date no earlier than June 17, 2014, or as soon thereafter as practical.

FUNDS AVAILABLE: Comptroller anticipates awarding approximately $5,000,000 in grants under the RFA. The minimum grant amount is $50,000 and the maximum amount is $350,000.

CONTACT: Parties interested in submitting an application should contact Jason C. Frizzell, Assistant General Counsel, at: 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office) by telephone at (512) 305-8673 or by email at contract@cpa.state.tx.us. The application and instructions will be available at http://www.everychanceeverytexan.org/funds and on the Electronic State Business Daily (http://esbd.cpa.state.tx.us) after 10:00 a.m. Central Time (CT) on March 21, 2014, and during normal business hours thereafter.

QUESTIONS: All written inquiries and questions must be received in the Issuing Office no later than 2:00 p.m. (CT) on Friday, March 28, 2014. Prospective applicants are encouraged to submit questions by fax to (512) 463-3669 or by email to contracts@cpa.state.tx.us to ensure timely receipt. On or about April 4, 2014, or as soon thereafter as practical, Comptroller expects to post responses to questions at http://esbd.cpa.state.tx.us. Late questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of questions in the Issuing Office.

CLOSING DATE: Applications must be delivered in the Issuing Office to the attention of Jason C. Frizzell, Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Monday, April 21, 2014. Late applications will not be considered under any circumstances. Respondents shall be solely responsible for verifying the timely receipt of applications in the Issuing Office.

EVALUATION CRITERIA: Applications will be evaluated under the evaluation criteria outlined in the application instructions. Comptroller will make the final decision. Comptroller reserves the right to accept or

reject any or all applications submitted. Comptroller is not obligated to make a grant award or to execute a contract on the basis of this notice or RFA. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or RFA.

SCHEDULE: The anticipated schedule of events pertaining to this grant is as follows: Issuance of RFA - March 21, 2014, after 10:00 a.m. CT; Questions Due - March 28, 2014, 2:00 p.m. CT; Official Responses to Questions posted - April 4, 2014, or as soon thereafter as practical; Applications Due - April 21, 2014, 2:00 p.m. CT; Grant Award/Contract Execution - June 17, 2014, or as soon thereafter as practical; Commencement of Grant Funding - as soon thereafter as practical.

TRD-201401135
Jason C. Frizzell
Assistant General Counsel
Comptroller of Public Accounts
Filed: March 12, 2014

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

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

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/17/14 - 03/23/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/17/14 - 03/23/14 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-201401123
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 11, 2014

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## Texas Education Agency

### Request for Applications Concerning the 2014-2017 Texas Title I Priority Schools, Cycle 3, Grant Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-14-109 from local educational agencies (LEAs) on behalf of eligible campuses that qualify as Title I priority schools and are not currently receiving Texas Title I Priority Schools (TTIPS) funds. An LEA with multiple eligible campuses must submit an application for each eligible campus. An eligibility list will be published with this RFA.

Description. The purpose of the TTIPS grant program is to provide funding to LEAs for use in Title I schools identified as priority schools that demonstrate the greatest need for the funds and the strongest commitment to use the funds to provide adequate resources to substantially raise the achievement of their students so as to enable the schools to meet the annual measurable objectives and exit priority status.

Dates of Project. The TTIPS, Cycle 3, grant program will be implemented during the 2014-2015, 2015-2016, and 2016-2017 school years. Applicants should plan for a starting date of no earlier than August 1, 2014, and an ending date of no later than July 31, 2017. Pre-implementation costs, which are requested as part of the Year 1 budget, may be allowable back to the date the grant awards are announced on the TEA website.

Project Amount. The number of projects funded will depend on the number of eligible applicants that apply. Each project will receive a maximum of $6 million for the 2014-2015, 2015-2016, and 2016-2017 project period. This project is funded 100 percent with federal funds.

Waivers. As part of the application for funding, the state applied for, and received approval of, two waivers from the U.S. Department of Education. Specifically, TEA applied for waiver requests on behalf of Texas LEAs to do the following: (1) waive the General Education Provisions Act (20 U.S.C. §1225(b)), §421(b), to extend the period of availability of school improvement funds for the state and all of its eligible LEAs to September 30, 2017; and (2) waive the school eligibility requirements in §I.A.1 of the school improvement grant final requirements to replace the lists of Tier I, II, and III schools with the state list of priority schools. The waivers will increase the quality of instruction for students and improve the academic achievement of students in eligible schools by enabling an LEA to use more effectively the school improvement funds to implement one of the four school intervention models in its priority schools and carry out school improvement activities.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Special Considerations. Priority points may be available to eligible applicants. Details of priority points will be outlined in the Program Guidelines of the RFA.

Applicants' Technical Assistance. A prerecorded webinar will be posted to the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms no later than April 4, 2014. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA. The webinar will cover topics such as grant program requirements, the school intervention models, technical assistance available to applicants and grantees, and application submission procedures.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Shayna Ortiz Sheehan, Division of School Improvement and Support, Texas Education Agency, (512) 463-7582. In order to assure

that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, May 20, 2014, to be eligible to be considered for funding.

TRD-201401136
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 12, 2014

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## 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 **April 21, 2014.** 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 April 21, 2014.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 73 LAND CORPORATION, INCORPORATED dba Nutty Jerrys; DOCKET NUMBER: 2013-1127-PWS-E; IDENTIFIER: RN106239916; LOCATION: Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.117(i)(1), by failing to provide the results of semiannual lead and copper sampling to the executive director; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive sample and failed to provide public notification regarding the failure to conduct triggered source monitoring; 30 TAC §290.109(f)(3) and §290.122(b)(2)(B) and Texas Health and Safety Code, §341.031(a), by failing to comply with maximum contaminant level (MCL) for total coliform and failed to provide public notification regarding the exceedance of the MCL for total coliform; 30 TAC §290.109(c)(2)(F); by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of July 2012; 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and failed to provide public notice of the failure to sample; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to collect at least five routine distribution coliform samples the month following a total coliform-positive sample; PENALTY: $2,877; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2013-2043-PWS-E; IDENTIFIER: RN102678950; LOCATION: Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 5 picoCuries per liter for combined radium-226 and radium-228, based on the running annual average; PENALTY: $990; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: B. T. RAND OIL COMPANY dba Texaco Food Mart; DOCKET NUMBER: 2013-2200-PST-E; IDENTIFIER: RN102251493; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $3,908; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: BELVAN CORPORATION; DOCKET NUMBER: 2013-1680-AIR-E; IDENTIFIER: RN100214022; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: natural gas plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for Incident Number 181272 no later than 24 hours after the discovery of the emissions event; and 30 TAC §116.115(b)(2) and (c), THSC, §382.085(b), and New Source Review Permit Number 9824A, Special Conditions Number 9, by failing to prevent unauthorized emissions; PENALTY: $7,938; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(5) COMPANY: Camden Resources, LLC; DOCKET NUMBER: 2013-1938-AIR-E; IDENTIFIER: RN106869704; LOCATION: Raywood, Liberty County; TYPE OF FACILITY: gas production well site; RULE VIOLATED: 30 TAC §115.112(d)(4) and (5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to meet the control requirements for flashed gases from the storage of volatile

organic compounds; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; and 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit emissions inventories for calendar years 2009 - 2012; PENALTY: $131,025; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Eldorado; DOCKET NUMBER: 2013-2156-MWD-E; IDENTIFIER: RN102671690; LOCATION: Eldorado, Schleicher County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1) and (17), and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010165001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0010165001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2013, by September 1, 2013; PENALTY: $1,820; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(7) COMPANY: City of Kosse; DOCKET NUMBER: 2013-1926-MWD-E; IDENTIFIER: RN101919702; LOCATION: Kosse, Limestone County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011405001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $6,000; Supplemental Environmental Project offset amount of $4,800 applied to Wastewater Treatment Plant Improvement Project; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of Mason; DOCKET NUMBER: 2013-2177-PWS-E; IDENTIFIER: RN101240836; LOCATION: Mason, Mason County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 15 picoCuries per liter (pCi/L) for gross alpha particle activity, based on the running annual average; and 30 TAC §290.108(f)(1) and THSC,§341.0315(c), by failing to comply with the MCL of 5 pCi/L for combined radium-226 and radium-228, based on the running annual average; PENALTY: $690; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: City of Mexia; DOCKET NUMBER: 2013-2085-PWS-E; IDENTIFIER: RN101399905; LOCATION: Mexia, Limestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(6), by failing to maintain all clearwells, potable water storage tanks, and all associated appurtenances, including valves, piping, and fittings tight against leakage; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.43(c)(8), by failing to paint, disinfect, and maintain all ground storage tanks in strict accordance with current American Water Works Association standards; 30 TAC §290.44(h)(4), by failing to test all backflow prevention assemblies on an annual basis by a licensed backflow prevention assembly tester and certify that they are operating within specifications; 30 TAC §290.46(w), by failing to provide documentation showing that the facility is maintaining internal procedures to notify the executive director by a toll-free reporting phone number immediately following certain events that may negatively impact the production or delivery of safe and adequate drinking water; and 30 TAC §290.44(h)(1)(A), by failing to install an appropriate backflow prevention assembly or an air gap at all residences or establishments where an actual or potential contamination hazard exists; PENALTY: $1,951; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Corby Chitsey; DOCKET NUMBER: 2013-2050-WR-E; IDENTIFIER: RN102971769; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: agricultural irrigation system; RULE VIOLATED: TWC, §11.053 and §11.081 and 30 TAC §304.15(a), (b), and (c), by failing to comply with the Declaration of Intent expressing the diverter's intent to divert state water; PENALTY: $1,550; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(11) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2013-2104-IWD-E; IDENTIFIER: RN100225085; LOCATION: La Porte, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000474000, Effluent Limitations and Monitoring Requirements Number 1, for Outfall Numbers 001 and 101, by failing to comply with permitted effluent limits; PENALTY: $26,250; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2014-0049-AIR-E; IDENTIFIER: RN101973360; LOCATION: Crane County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O924/General Operating Permit (GOP) Number 514, Terms and Conditions (b)(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O924/GOP Number 514, Terms and Conditions (b)(2), and THSC, §382.085(b), by failing to submit a semiannual deviation report within 30 days after the end of the reporting period; PENALTY: $5,626; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(13) COMPANY: Galveston County; DOCKET NUMBER: 2013-2052-PST-E; IDENTIFIER: RN101737179; LOCATION: League City, Galveston County; TYPE OF FACILITY: fleet service center with an emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $8,288; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Kempner Water Supply Corporation; DOCKET NUMBER: 2013-2165-PWS-E; IDENTIFIER: RN101197549; LO-

CATION: Kempner, Lampasas County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.44(d)(2), by failing to provide increased pressure by means of booster pumps taking suction from storage tanks or obtain an exception by acquiring plan approval from the executive director for a booster pump taking suction from the distribution lines; PENALTY: $744; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: KMCO, LLC; DOCKET NUMBER: 2013-2188-AIR-E; IDENTIFIER: RN101613511; LOCATION: Crosby, Harris County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1441, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2013-1894-PWS-E; IDENTIFIER: RN102736089; LOCATION: Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low chlorine residual using the prescribed format in 30 TAC §290.47(e); 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.5 milligrams per liter (mg/L) of total chlorine throughout the distribution system at all times; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements which is maintained at each water treatment plant and at a central location; 30 TAC §290.46(s)(2)(C)(i), by failing to properly verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $2,339; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Maloy, Walon D; DOCKET NUMBER: 2014-0289-WOC-E; IDENTIFIER: RN106588122; LOCATION: Darrouzett, Lipscomb County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §30.5(a), by failing 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.

(18) COMPANY: Margarito Flores and Lucia Flores dba Royal Oaks Apartments; DOCKET NUMBER: 2013-2005-PWS-E; IDENTIFIER: RN101261006; LOCATION: Gillespie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) of 10 milligrams per liter for nitrate; and 30 TAC §290.108(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 5 picoCuries per liter based on a running annual average for combined radium-226 and radium-228; PENALTY: $1,087; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Martin Operating Partnership L.P.; DOCKET NUMBER: 2013-2099-PWS-E; IDENTIFIER: RN103870572; LOCATION: Aransas Pass, Nueces County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Meier, Sheila M; DOCKET NUMBER: 2014-0290-WOC-E; IDENTIFIER: RN106635857; LOCATION: Darrouzzet, Lipscomb County; TYPE OF FACILITY: public water system; 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.

(21) COMPANY: Orange County Water Control and Improvement District Number 1; DOCKET NUMBER: 2013-2158-MWD-E; IDENTIFIER: RN102341328; LOCATION: Vidor, Orange County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010875008, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,625; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Rough Hollow Yacht Club, Ltd.; DOCKET NUMBER: 2013-1516-PST-E; IDENTIFIER: RN105623037; LOCATION: Austin, Travis County; TYPE OF FACILITY: retail convenience facility; 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: $2,567; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(23) COMPANY: SHORE-TECH, INCORPORATED; DOCKET NUMBER: 2013-1613-PWS-E; IDENTIFIER: RN102685351; LOCATION: Santa Fe, Galveston County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.122(c)(2)(A), by failing to timely post public notification regarding the failure to conduct routine coliform monitoring; 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; and 30 TAC §290.117(c)(2)(D) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites and provide the results to the executive director; PENALTY: $1,904; ENFORCEMENT

COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2013-0736-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Numbers 02213, Special Terms and Conditions Number 21, Flexible Permit (FP) Numbers 20432 and PSD-TX-994M1, and Special Conditions (SC) Number III-1, by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(D) and (H), THSC, §382.085(b), and FOP Number 02213, General Terms and Conditions (GTC), by failing to submit a complete and accurate emissions event final record for incident number 177149; and 30 TAC §101.201(b)(1), THSC, §382.085(b), and FOP Number 02213, GTC, by failing to submit a complete final record for incident number 175802; PENALTY: $83,825; Supplemental Environmental Project offset amount of $33,530 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Amancio Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Town of Darrouzett; DOCKET NUMBER: 2014-0073-PWS-E; IDENTIFIER: RN101437390; LOCATION: Darrouzett, Lipscomb County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; PENALTY: $366; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-201401124
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 11, 2014

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## Notice of Water Quality Applications

The following notices were issued on February 28, 2014 through March 7, 2014.

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

DECORDOVA POWER COMPANY LLC AND LUMINANT GENERATION COMPANY LLC which operate the DeCordova Steam Electric Station, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001481000, which authorizes the discharge of once-through cooling water and previously monitored effluent (low volume wastes, stormwater runoff from yard drains and the diked oil storage area, and metal cleaning wastes) at a daily average flow not to exceed 1,041,480,000 gallons per day. The facility is located at 4950 Power Plant Court, Granbury Texas, on the southwest shore of Lake Granbury along County Road 312, approximately seven miles southeast of the intersection of U.S. Highway 377 and State Highway 144 in the City of Granbury, Hood County, Texas 76408.

THE GOODYEAR TIRE AND RUBBER COMPANY which operates Goodyear Houston Chemical Plant, has applied for a renewal of TPDES Permit No. WQ0000520000, which authorizes the discharge of treated process wastewater commingled with treated miscellaneous cleaning wastes, treated cooling tower blowdown, treated stormwater, previously treated domestic sewage, and stormwater at a daily average flow not to exceed 2,900,000 gallons per day via Outfall 001; and stormwater on an intermittent and flow variable basis via Outfall 002. The facility is located at 2000 Goodyear Drive, approximately 0.6 mile east of the intersection of State Highway 225 and Interstate Highway 610 in the City of Houston, Harris County, Texas 77017.

BNSF RAILWAY COMPANY which operates BNSF Railyard, a fueling and lubrication station for locomotives and railroad rolling stock, has applied for a renewal of TPDES Permit No. WQ0002545000, which authorizes the discharge of stormwater runoff, groundwater from a trench recovery system, and pad wash water on an intermittent and flow variable basis via Outfall 001 and 002. The facility is located approximately 800 feet north of the Hawkins Road and 3400 feet north of Farm-to-Market Road 3117, south of the City of Temple, Bell County, Texas 76508.

K3 RESOURCES LP has applied for a renewal of TCEQ Permit No. WQ0004445000, which authorizes the land application of sewage sludge and water treatment plant sludge for beneficial use on 180.55 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sludge land application site is located on Farm-to-Market Road 529, approximately 0.9 mile southwest of the intersection of Farm-to-Market Road 362 and Farm-to-Market Road 529, in Waller County, Texas 77423.

SOUTH ATLANTIC SERVICES INC which operates a reverse osmosis water treatment plant at a facility that stores, blends, and packages liquid automotive products, has applied for a renewal of TPDES Permit No. WQ0004953000, which authorizes the discharge of reverse osmosis concentrate water on an intermittent and flow variable basis via Outfall 001. The facility is located at 16530 Peninsula Street, City of Houston, Harris County, Texas 77015.

CITY OF HEARNE has applied for a renewal of TPDES Permit No. WQ0010046002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at the end of Farm-to-Market Road 50 (Mumford Road), approximately 7,500 feet south-southwest of the intersection of U.S. Highway 190 and U.S. Highway 79 and State Highway 6 in Robertson County, Texas 77859.

CITY OF EMORY has applied for a renewal of TPDES Permit No. WQ0010082001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located on the west side of Willow Springs Road, approximately 0.5 mile south of the intersection of U.S. Highway 69 and State Highway 19 in Rains County, Texas 75440.

CITY OF GORMAN has applied for a renewal of TPDES Permit No. WQ0010091001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located southwest of the City of Gorman, west of Farm-to-Market Road 79 (Crescent Street) in Eastland County, Texas 76454.

CITY OF MERIDIAN has applied for a renewal of TPDES Permit No. WQ0010113002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per

day. The facility is located at 501 South Main Street, north of the North Bosque River, approximately 2900 feet east-northeast of the intersection of State Highway 6 and State Highway 22, and approximately 1800 feet south of the intersection of State Highway 22 and State Highway 144, Meridian in Bosque County, Texas 76665.

CITY OF PEARLAND has applied for a renewal of TPDES Permit No. WQ0010134002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located on Pearland Parkway, 500 feet north of the intersection of Pearland Parkway and Barry Rose Road in Brazoria County, Texas 77581.

CITY OF LUBBOCK has applied for a renewal of TPDES Permit No. WQ0010353002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,000,000 gallons per day via Outfall 001; the disposal of treated domestic wastewater at a volume not to exceed an annual average flow of 14,5000,000 gallons per day from Outfall 002 via irrigation of 5,900 acres at the Lubbock Land Application Site (LLAS); the disposal of treated wastewater at a volume not to exceed an annual average flow of 12,000,000 gallons per day from Outfall 003 via irrigation of 3,400 acres at the Hancock Land Application Site (HLAS); the disposal of treated effluent from Outfall 004 at an intermittent and flow variable rate via contract with an outside source to supply industrial reuse water (cooling make-up water) for the Jones Power Plant; from Outfall 005, the disposal of effluent via irrigation by reclaimed water users under the City of Lubbock's 30 Texas Administrative Code (TAC) Chapter 210 authorization; and from Outfall 007, the discharge of treated domestic wastewater at a volume not to exceed an annual average flow of 14,500,000 gallons per day. The aggregate volume of effluent shall not exceed an annual average flow of 31,500,000 gallons per day which is reported as Outfall 006. The facility is located at 3603 Guava Avenue at the eastern terminus of East 38th Street, south of the Fort Worth and Denver Railroad bridge crossing of the North Fork Double Mountain Fork Brazos River, approximately one mile northwest of the intersection of State Highway-Loop 289 and Farm-to-Market Road 835 (Buffalo Spring Lake Road), in the southeastern portion of the City of Lubbock in Lubbock County, Texas 79404. The LLAS is located primarily east of State Highway-Loop 289. The eastern boundary of the main site extends along Farm-to-Market Road 835 and its intersection of Yellow House Canyon to its intersection with Trotter Road and extending north of East 19th Street. The main site has a southern boundary along the north rim of Yellow House Canyon and a northern boundary south and north of East 19th Street. In addition, there are three non-contiguous effluent application area described as follows: 815 acres located 0.75 mile north of the Village of Ransom Canyon and east of the main site, 300 acres located east of Farm-to-Market Road 1729, 0.5 mile south of East 19th Street and 0.5 mile north of 50th Street and approximately 150 acres located north of the Southeast Water Reclamation plant (SEWRP) and west of Loop 289. The LLAS is located in Lubbock County, Texas. The HLAS has an approximately southern boundary of 0.6 mile north of the intersection of Farm-to-Market Road 400 and Farm-to-Market Road 211 (in the City of Wilson), and is bounded by a county road approximately 4.0 miles to the north; the east and west sides of the irrigation site are bounded by parallel county roads two miles apart in Lynn County, Texas. The HLAS is located in Lynn County, Texas.

CITY OF PORT ARTHUR has applied for a renewal of TPDES Permit No. WQ0010364001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,200,000 gallons per day. The facility is located at 6300 Proctor Street Extension, approximately 0.2 mile east of the intersection of Proctor Street and Main Avenue, 3.3 miles northeast of the intersection of U.S. Highway 287/96/69 and State Highway 87 in Jefferson County, Texas 77642.

NEW ULM WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013655001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 24056 Bernard Road, one mile southeast of the intersection of Farm-to-Market Road 109 and Farm-to-Market Road 1094 in Austin County, Texas 78950.

MONARCH UTILITIES I LP has applied for a renewal of TPDES Permit No. WQ0014055001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1,400 feet northwest of the Searcy Cemetery and approximately 0.9 mile northeast of the intersection of State Highway 154 and Farm-to-Market Road 288 in Wood County, Texas 75783.

CIRCLE T RESORT LLC AND CTA-H LLC have applied for a renewal of TPDES Permit No. WQ0014678001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day. The facility is located at 4007 West Highway 36, in Hamilton County, Texas 76531.

MANVILLE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014978001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 95,000 gallons per day. The facility is located at 1805 Lee County Road 313, Lexington, in Lee County, Texas 78947.

FLOWING WELLS RESORT LLC has applied for a new permit, Proposed TCEQ Permit No. WQ0015182001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day via surface irrigation of 9.0 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located 3.0 miles west of the intersection of Farm-to-Market Road 120 and Flowing Wells Road, located on Flowing Wells Road in Grayson County, Texas 75076.

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-201401132
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2014

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## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2014.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting or implementing fees for:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

Early and Periodic Screening, Diagnosis, and Treatment Services; and

Physicians and Other Practitioners

These rate actions comply with applicable adjustments in response to direction from the Texas Legislature as set out in the 2012-2013 General Appropriations Act and the 2014-2015 General Appropriations Act, effective September 1, 2013. Rider 51 of the Health and Human Services Commission's portion of article II of the current appropriations act in particular directs HHSC to reduce expenditures by, among other things, implementing certain payment adjustments. See General Appropriations Act, 83d Leg., R.S., art. II, rider 51, at II-100 to II-101, 2013 Tex. Gen. Laws ch. 1411 (Health & Hum. Servs. Section, Health & Hum. Servs. Comm'n); General Appropriations Act, 82d Leg., R.S., art. II, §16, at II-108, 2011 Tex. Gen. Laws ch. 1355 (Health & Hum. Servs. Section, Special Provisions Related to All Health & Hum. Servs. Agencies). All of the proposed adjustments are being made in accordance with 1 TAC §355.201.

The proposed amendment is estimated to result in an annual savings of $1,843,447 for federal fiscal year (FFY) 2014, consisting of $1,081,919 in federal funds and $761,528 in state general revenue. For FFY 2015, the estimated annual saving is $3,867,263, consisting of $2,244,946 in federal funds and $1,622,317 in state general revenue. For FFY 2016, the estimated annual saving is $4,068,380, consisting of $2,361,695 in federal funds and $1,706,685 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201401069
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: March 7, 2014

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## Public Notice of Intent to Submit a State Plan Amendment for Clinical Diagnostic Laboratory Services

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2014.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting or implementing fees for Clinical Diagnostic Laboratory Services. These rate actions are being taken to comply with §355.8610, Reimbursement for Clinical Laboratory Services, in Title 1, Part 15, Chapter 355, Subchapter J, of the Texas Administrative Code, which requires the Health and Human Services Commission to review maximum fees at least every two years, with any adjustments made within available funding. Payments for services provided must not exceed the Medicare fee schedule. After performing the required review, HHSC has determined that amendments to the fee schedule are appropriate.

The proposed amendment is estimated to result in an annual savings of $1,102,592 for federal fiscal year (FFY) 2014, comprising savings of $647,697 in federal funds and $454,955 in state general revenue. For FFY 2015, the estimated annual savings is $3,730,102, comprising $2,173,657 in federal funds and $1,556,445 in state general revenue. For FFY 2016, the estimated annual savings is estimated to be $2,827,814, comprising $1,641,546 in federal funds and $1,186,268 in general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Guilda Roman, Rate Analyst for Hospital Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6090; by facsimile at (512) 730-7475; or by e-mail at guilda.roman@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201401128
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: March 11, 2014

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## Public Notice of Negotiated Rulemaking Committee Meeting on Informal Dispute Resolution Process for Assisted Living Facilities

The Health and Human Services Commission (HHSC), as required by House Bill 33, will engage in negotiated rulemaking to develop an implementation plan in the form of a rule (Acts 2013, 83rd Legislature, Regular Session, Chapter 218, 2013 Texas General Laws). This rule will establish an informal dispute resolution (IDR) process that provides for adjudication by an appropriate disinterested person of disputes relating to a statement of violations submitted by the Department of Aging and Disability Services (DADS) under §32.021(d), Human Resources Code, or Chapter 247 Health and Safety Code, to an assisted living facility.

The statutory IDR process requires assisted living facilities to request IDR no later than the 10th calendar day after notification by DADS of the violation of a standard or standards. It requires HHSC to complete the process not later than the 90th calendar day after receipt of a request from an assisted living facility for IDR.

The scope of this negotiated rulemaking will include the revision to current rules at 1 Texas Administrative Code §393.1, specific to assisted living facilities. It will not include revisions to the existing rules at §393.1 for nursing facilities or intermediate care facilities for individuals with intellectual disabilities.

A negotiated rulemaking committee has been established for this purpose and its first meeting is scheduled on Monday, March 31, 2014 at 8:00 a.m. at 4900 N. Lamar Blvd. (Brown Heatly Bldg.), Room #1430 (Public Hearing Room) Austin, Texas 78751. The committee will meet to discuss and possibly act on the following agenda:

1. Welcome and Introductions
2. Purpose
3. Committee Protocols
4. Selection of a Facilitator
5. IDR Process
6. Timeframes
7. Meeting Logistics
8. Next Steps
9. Adjourn

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Lynda Acosta by phone at (512) 424-6646 or by email at Lynda.Acosta@hhsc.state.tx.us at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201401042
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: March 5, 2014

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## Department of State Health Services

### Annual Republication of the Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual republication of the Texas Schedules of Controlled Substances was signed by David L. Lakey, M.D., Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.state.tx.us/dmd.

**SCHEDULES**

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

**SCHEDULE I**

Schedule I consists of:

Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Allylprodine;

(3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(4) Alpha-methylfentanyl or any other derivative of Fentanyl;

(5) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenyl-propanamide);

(6) Benzethidine;

(7) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);

(8) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(9) Betaprodine;

(10) Clonitazene;

(11) Diampromide;

(12) Diethylthiambutene;

(13) Difenoxin;

(14) Dimenoxadol;

(15) Dimethylthiambutene;

(16) Dioxaphetyl butyrate;

(17) Dipipanone;

(18) Ethylmethylthiambutene;

(19) Etonitazene;

(20) Etoxeridine;

(21) Furethidine;

(22) Hydroxypethidine;

(23) Ketobemidone;

(24) Levophenacylmorphan;

(25) Meprodine;

(26) Methadol;

(27) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;

(28) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(29) Moramide;

(30) Morpheridine;

(31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(32) Noracymethadol;

(33) Norlevorphanol;

(34) Normethadone;

(35) Norpipanone;

(36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);

(37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(38) Phenadoxone;

(39) Phenampromide;

(40) Phencyclidine;

(41) Phenomorphan;

(42) Phenoperidine;

(43) Piritramide;

(44) Proheptazine;

(45) Properidine;

(46) Propiram;

(47) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(48) Tilidine; and

(49) Trimeperidine.

Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine-N-Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

(22) Normorphine;

(23) Pholcodine; and

(24) Thebacon.

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT;

(19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(20) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(21) Dimethyltryptamine (some trade and other names: DMT);

(22) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(23) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; taber-nanthe iboga);

(24) Lysergic acid diethylamide;

(25) Marihuana;

(26) Mescaline;

(27) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(31) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora,* whether growing or not, the seeds of the plant, an extract from a part of the

plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(32) Psilocybin;

(33) Psilocin;

(34) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(35) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(36) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP);

(37) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);

(38) 4-methylmethcathinone (Other names: 4-methyl-N-methylcathinone; mephedrone);

(39) 3,4-methylenedioxypyrovalerone (MDPV);

(40) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other names: 2C-E);

(41) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other names: 2C-D);

(42) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-C);

(43) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-I);

(44) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-2);

(45) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-4);

(46) 2-(2,5-Dimethoxyphenyl)ethanamine (Other names: 2C-H);

(47) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other names: 2C-N); and

(48) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other names: 2C-P).

*(49) 3,4-Methylenedioxy-N-methylcathinone (Other name: Methylone).

Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene-ethaneamine; N,N-alpha-trimethylphenethylamine).

Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;

(1-2) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;

(1-3) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent;

(1-4) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent;

(1-5) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent;

(2) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: CP-47,497);

(3) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol or CP-47,497 C8 homolog);

(4) 1-pentyl-3-(1-naphthoyl)indole (Other names: JWH-018 and AM678);

(5) 1-mutyl-3-(1-naphthoyl)indole (Other names: JWH-073);

(6) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);

(7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other names: JWH-200);

(8) 1-pentyl-3-(2-methoxyphenylacetyl)indole (Other names: JWH-250);

(9) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other names: JWH-081);

(10) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (Other names: JWH-122);

(11) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other names: JWH-398);

(12) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (Other names: AM2201);

(13) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (Other names: AM694);

(14) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19 and RCS-4);

(15) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18 and RCS-8); and

(16) 1-pentyl-3-(2-chlorophenylacetyl)indole (Other names: JWH-203).

Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

*Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

*(1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

*(2) [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);

*(3) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA, AKB48);

*(4) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);

*(5) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82); and

*(6) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36).

**SCHEDULE II**

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;

(1-2) Dihydroetorphine;

(1-3) Ethylmorphine;

(1-4) Etorphine hydrochloride;

(1-5) Granulated opium;

(1-6) Hydrocodone;

(1-7) Hydromorphone;

(1-8) Metopon;

(1-9) Morphine;

(1-10) Opium extracts;

(1-11) Opium fluid extracts;

(1-12) Oripavine;

(1-13) Oxycodone;

(1-14) Oxymorphone;

(1-15) Powdered opium;

(1-16) Raw opium;

(1-17) Thebaine; and

(1-18) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil; and

(28) Tapentadol.

Schedule II stimulants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts;

(4) Phenmetrazine and its salts; and

(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital.

Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

(2-1) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(3) Immediate precursors to phencyclidine (PCP):

(3-1) 1-phenylcyclohexylamine; and

(3-2) 1-piperidinocyclohexanecarbonitrile (PCC).

(4) Immediate precursor to fentanyl:

(4-1) 4-anilino-N-phenethyl-4-piperidine (ANPP).

**SCHEDULE III**

Schedule III consists of:

Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isoners, and salts of isomers, for which an application is approved under section 505 of the Federal Food Drug and Cosmetic Act;

(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(7) Lysergic acid;

(8) Lysergic acid amide;

(9) Methyprylon;

(10) Sulfondiethylmethane;

(11) Sulfonethylmethane;

(12) Sulfonmethane; and

(13) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

Nalorphine

Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(1-4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) androstanediol

(1-1) 3 beta,17 beta-dihydroxy-5 alpha-androstane;

(1-2) 3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(2) androstanedione (5 alpha-androstan-3,17-dione);

(3) androstenediol--

(3-1) 1-androstenediol (3 beta,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-2) 1-androstenediol (3 alpha,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-3) 4-androstenediol (3 beta,17 beta-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3 beta,17 beta-dihydroxy-androst-5-ene);

(4) androstenedione--

(4-1) 1-androstenedione ([5 alpha]-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) bolasterone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(6) boldenone (17 beta-hydroxyandrost-1,4,-diene-3-one);

(7) boldione (androsta-1,4-diene-3,17-dione);

(8) calusterone (7 beta,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(9) clostebol (4-chloro-17 beta-hydroxyandrost-4-en-3-one);

(10) dehydrochloromethyltestosterone (4-chloro-17 beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

(11) delta-1-dihydrotestosterone (a.k.a. '1-testosterone') (17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(12) desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol);

(13) 4-dihydrotestosterone (17 beta-hydroxy-androstan-3-one);

(14) drostanolone (17 beta-hydroxy-2 alpha-methyl-5 alpha-androstan-3-one);

(15) ethylestrenol (17 alpha-ethyl-17 beta-hydroxyestr-4-ene);

(16) fluoxymesterone (9-fluoro-17 alpha-methyl-11 beta,17 beta-dihydroxyandrost-4-en-3-one);

(17) formebolone (2-formyl-17 alpha-methyl-11 alpha,17 beta-dihydroxyandrost-1,4-dien-3-one);

(18) furazabol (17 alpha-methyl-17 beta-hydroxyandrostano[2,3-c]-furazan);

(19) 13 beta-ethyl-17 beta-hydroxygon-4-en-3-one;

(20) 4-hydroxytestosterone (4,17 beta-dihydroxy-androst-4-en-3-one);

(21) 4-hydroxy-19-nortestosterone (4,17 beta-dihydroxy-estr-4-en-3-one);

(22) mestanolone (17 alpha-methyl-17 beta-hydroxy-5 alpha-androstan-3-one);

(23) mesterolone (1 alpha-methyl-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(24) methandienone (17 alpha-methyl-17 beta-hydroxyandrost-1,4-dien-3-one);

(25) methandriol (17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-5-ene);

(26) methenolone (1-methyl-17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(27) 17 alpha-methyl-3 beta, 17 beta-dihydroxy-5 alpha-androstane;

(28) methasterone (2 alpha, 17 alpha-dimethyl-5-alpha-androstan-17 beta-ol-3-one;

(29) 17alpha-methyl-3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(30) 17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-4-ene;

(31) 17 alpha-methyl-4-hydroxynandrolone (17 alpha-methyl-4-hydroxy-17 beta-hydroxyestr-4-en-3-one);

(32) methyldienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9(10)-dien-3-one);

(33) methyltrienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9-11-trien-3-one);

(34) methyltestosterone (17 alpha-methyl-17 beta-hydroxyandrost-4-en-3-one);

(35) mibolerone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyestr-4-en-3-one);

(36) 17 alpha-methyl-delta-1-dihydrotestosterone (17 beta-hydroxy-17 alpha-methyl-5 alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');

(37) nandrolone (17 beta-hydroxyestr-4-en-3-one);

(38) norandrostenediol--

(38-1) 19-nor-4-androstenediol (3 beta, 17 beta-dihydroxyestr-4-ene);

(38-2) 19-nor-4-androstenediol (3 alpha, 17 beta-dihydroxyestr-4-ene);

(38-3) 19-nor-5-androstenediol (3 beta, 17 beta-dihydroxyestr-5-ene);

(38-4) 19-nor-5-androstenediol (3 alpha, 17 beta-dihydroxyestr-5-ene);

(39) norandrostenedione--

(39-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(39-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione;

(40) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(41) norbolethone (13 beta,17alpha-diethyl-17 beta-hydroxygon-4-en-3-one);

(42) norclostebol (4-chloro-17 beta-hydroxyestr-4-en-3-one);

(43) norethandrolone (17 alpha-ethyl-17 beta-hydroxyestr-4-en-3-one);

(44) normethandrolone (17 alpha-methyl-17 beta-hydroxyestr-4-en-3-one);

(45) oxandrolone (17 alpha-methyl-17 beta-hydroxy-2-oxa-[5 alpha]-androstan-3-one);

(46) oxymesterone (17 alpha-methyl-4,17 beta-dihydroxyandrost-4-en-3-one);

(47) oxymetholone (17 alpha-methyl-2-hydroxymethylene-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(48) stanozolol (17 alpha-methyl-17 beta-hydroxy-[5 alpha]-androst-2-eno[3,2-c]-pyrazole);

(49) stenbolone (17 beta-hydroxy-2-methyl-[5 alpha]-androst-1-en-3-one);

(50) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(51) testosterone (17 beta-hydroxyandrost-4-en-3-one);

(52) prostanozol (17 beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);

(53) tetrahydrogestrinone (13 beta,17 alpha-diethyl-17 beta-hydroxygon-4,9,11-trien-3-one);

(54) trenbolone (17 beta-hydroxyestr-4,9,11-trien-3-one); and

(55) any salt, ester, or ether of a drug or substance described in this paragraph.

Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol).

**SCHEDULE IV**

Schedule IV consists of:

Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Dichloralphenazone;

(16) Estazolam;

(17) Ethchlorvynol;

(18) Ethinamate;

(19) Ethyl loflazepate;

(20) Fludiazepam;

(21) Flunitrazepam;

(22) Flurazepam;

(23) Halazepam;

(24) Haloxazolam;

(25) Ketazolam;

(26) Loprazolam;

(27) Lorazepam;

(28) Lormetazepam;

(29) Mebutamate;

(30) Medazepam;

(31) Meprobamate;

(32) Methohexital;

(33) Methylphenobarbital (mephobarbital);

(34) Midazolam;

(35) Nimetazepam;

(36) Nitrazepam;

(37) Nordiazepam;

(38) Oxazepam;

(39) Oxazolam;

(40) Paraldehyde;

(41) Petrichloral;

(42) Phenobarbital;

(43) Pinazepam;

(44) Prazepam;

(45) Quazepam;

(46) Temazepam;

(47) Tetrazepam;

(48) Triazolam;

(49) Zaleplon;

(50) Zolpidem; and

(51) Zopiclone, its salts, isomers, and salts of isomers.

Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenfluramine;

(5) Fenproporex;

(6) Mazindol;

(7) Mefenorex;

(8) Modafinil;

(9) Pemoline (including organometallic complexes and their chelates);

(10) Phentermine;

(11) Pipradrol;

(12) SPA [(-)-1-dimethylamino-1,2-diphenylethane]; and

(13) Sibutramine.

Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;

(2) Carisoprodol;

*(3) Lorcarserin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible; and

(4) Pentazocine, its salts, derivatives, compounds, or mixtures.

**SCHEDULE V**

Schedule V consists of:

Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;

(2) Lacosamide *[(R)*-2-acetoamido-N-benzyl-3-methoxy-proprionamide]; and

(3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

TRD-201401140
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 12, 2014

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## Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Austin | Central Texas Medical Specialists, P.L.L.C. dba Austin Cancer Centers | L06618 | Austin | 00 | 02/24/14 |
| Houston | Shared Imaging, L.L.C. | L06614 | Houston | 00 | 02/25/14 |
| Plano | Truradiation Partners Plano, L.L.C. | L06617 | Plano | 00 | 02/21/14 |
| Plano | Mind For Life, L.L.C. | L06619 | Plano | 00 | 02/25/14 |
| Throughout TX | CDK Perforating, L.L.C. dba Nine Energy Service | L06616 | Midland | 00 | 02/20/14 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Amarillo | Cardinal Health | L03398 | Amarillo | 42 | 02/24/14 |
| Austin | Thermo Finnigan, L.L.C. | L01186 | Austin | 50 | 02/20/14 |
| Beaumont | Christus Health Southeast Texas dba Christus Hospital-St. Elizabeth | L00269 | Beaumont | 116 | 02/20/14 |
| College Station | Scott & White - College Station | L06557 | College Station | 02 | 02/18/14 |
| Corpus Christi | Coastal Cardiology Association | L04754 | Corpus Christi | 25 | 02/24/14 |
| Dallas | Cardinal Health | L05610 | Dallas | 27 | 02/25/14 |
| Dallas | Southwestern Testing Laboratories, L.L.C. dba STL Engineers | L06100 | Dallas | 08 | 02/25/14 |
| Denton | Denton Cancer Center, L.L.P. | L05945 | Denton | 08 | 02/25/14 |
| Duncanville | Afridi Heart Care, P.A. | L06005 | Duncanville | 09 | 02/18/14 |
| El Paso | Southwest X-Ray, L.P. | L05207 | El Paso | 16 | 02/25/14 |
| Harlingen | Texas Oncology, P.A. dba South Texas Cancer Center Harlingen | L00154 | Harlingen | 42 | 02/18/14 |
| Houston | The Methodist Hospital dba Houston Methodist | L00457 | Houston | 196 | 02/19/14 |
| Houston | St. Luke's Health System Corporation | L00581 | Houston | 106 | 02/20/14 |
| Houston | St. Luke's Health System Corporation | L00581 | Houston | 107 | 02/21/14 |
| Houston | Memorial Hermann Health System dba Memorial Hermann Texas Medical Center | L00650 | Houston | 91 | 02/25/14 |
| Houston | Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center | L01168 | Houston | 144 | 02/28/14 |
| Houston | Ben Taub General Hospital | L01303 | Houston | 84 | 02/19/14 |
| Houston | Phillips 66 Pipeline, L.L.C. | L02083 | Houston | 26 | 02/26/14 |
| Houston | Texas Childrens Hospital | L04612 | Houston | 61 | 02/20/14 |
| Houston | UT Physicians | L05465 | Houston | 14 | 02/20/14 |
| Houston | American Diagnostic Tech, L.L.C. | L05514 | Houston | 98 | 02/25/14 |
| Houston | NIS Holdings, Inc. dba Nuclear Imaging Services | L05775 | Houston | 93 | 02/18/14 |
| Houston | C & J Spec-Rent Services, Inc. | L06594 | Houston | 02 | 01/27/14 |
| Lubbock | Texas Tech University Environmental Health and Safety | L01536 | Lubbock | 100 | 02/19/14 |
| Odessa | Ector County Hospital District dba Medical Center Hospital | L01223 | Odessa | 94 | 02/19/14 |
| Odessa | Ector County Hospital District dba Medical Center Hospital | L01223 | Odessa | 95 | 02/24/14 |
| Orange | Baptist Hospitals of Southeast Texas dba Memorial Hermann Baptist Orange Hospital | L01597 | Orange | 35 | 02/18/14 |

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Orange | S & T International | L03652 | Orange | 41 | 02/26/14 |
| Pampa | Hunting Titan, Inc. | L06610 | Pampa | 01 | 02/21/14 |
| Paris | Essent PRMC, L.P.<br>dba Paris Regional Medical Center | L03199 | Paris | 55 | 02/27/14 |
| Pasadena | CHCA Bayshore, L.P.<br>dba Bayshore Medical Center | L00153 | Pasadena | 98 | 02/26/14 |
| Richardson | Methodist Hospitals of Dallas<br>dba Methodist Richardson Medical Center | L06475 | Richardson | 02 | 02/19/14 |
| San Antonio | South Texas Radiology Imaging Centers | L00325 | San Antonio | 213 | 02/20/14 |
| San Antonio | Texas Biomedical Research Institute<br>dba Southwest Foundation for Biomedical Research | L00468 | San Antonio | 56 | 02/25/14 |
| San Antonio | BHS Specialty Network, Inc.<br>dba Heart and Vascular Institute of Texas | L06482 | San Antonio | 04 | 02/25/14 |
| Sugar Land | Methodist Sugar Land Hospital Cancer Center | L06232 | Sugar Land | 03 | 02/24/14 |
| Texas City | Sid Acharya, M.D., P.A.<br>dba Cardiovascular Specialists of Texas | L05714 | Texas City | 06 | 02/18/14 |
| The Woodlands | Lexicon Pharmaceuticals, Inc. | L04932 | The Woodlands | 23 | 02/28/14 |
| Throughout TX | Exxonmobil Chemical Company | L01135 | Baytown | 75 | 02/24/14 |
| Throughout TX | Weatherford International, L.L.C. | L04286 | Benbrook | 103 | 02/26/14 |
| Throughout TX | Bonded Inspections, Inc. | L00693 | Dallas | 90 | 02/25/14 |
| Throughout TX | Mistras Group, Inc. | L06369 | Deer Park | 15 | 02/26/14 |
| Throughout TX | Professional Services Industries, Inc. | L02476 | El Paso | 26 | 02/20/14 |
| Throughout TX | Techcorr USA, L.L.C.<br>dba Aut Specialists, L.L.C. | L05972 | Flint | 102 | 02/20/14 |
| Throughout TX | Terracon Consultants, Inc. | L05268 | Fort Worth | 46 | 02/26/14 |
| Throughout TX | The Dow Chemical Company | L00451 | Freeport | 96 | 02/26/14 |
| Throughout TX | TH Healthcare, Ltd.<br>dba Park Plaza Hospital | L02071 | Houston | 60 | 02/26/14 |
| Throughout TX | Aviles Engineering Corporation | L03016 | Houston | 30 | 02/19/14 |
| Throughout TX | Aviles Engineering Corporation | L03016 | Houston | 31 | 02/21/14 |
| Throughout TX | Tolunay Wong Engineers, Inc. | L04848 | Houston | 17 | 02/24/14 |
| Throughout TX | Advanced Nuclear Consultants | L06167 | Houston | 08 | 02/25/14 |
| Throughout TX | Platinum Energy Solutions, Inc. | L06410 | Houston | 10 | 02/27/14 |
| Throughout TX | IRISNDT, Inc. | L06435 | Houston | 09 | 02/25/14 |
| Throughout TX | Savoy Technical Services, Inc. | L06502 | Houston | 05 | 02/19/14 |
| Throughout TX | Marco Inspection Services, L.L.C. | L06072 | Kilgore | 49 | 02/27/14 |
| Throughout TX | Texas A&M University Kingsville | L01821 | Kingsville | 49 | 02/27/14 |
| Throughout TX | Industrial Nuclear Company, Inc. | L04508 | La Porte | 17 | 02/25/14 |
| Throughout TX | Hi-Tech Testing Service, Inc. | L05021 | Longview | 104 | 02/28/14 |
| Throughout TX | Weld Spec, Inc. | L05426 | Lumberton | 100 | 02/27/14 |
| Throughout TX | Quantum Technical Services, L.L.C. | L06406 | Pasadena | 09 | 02/25/14 |
| Throughout TX | Arias & Associates, Inc. | L04964 | San Antonio | 41 | 02/26/14 |
| Throughout TX | Schlumberger Technology Corporation | L01833 | Sugar Land | 176 | 02/21/14 |
| Tomball | Arvind M. Pai, M.D., P.A. | L06008 | Tomball | 06 | 02/18/14 |
| Tomball | RCOA Imaging Services, Inc. | L06091 | Tomball | 12 | 02/26/14 |
| Tomball | Tomball Texas Hospital Company, L.L.C.<br>dba Tomball Regional Medical Center | L06472 | Tomball | 07 | 02/18/14 |
| Uvalde | Uvalde County Hospital Authority<br>dba Uvalde Memorial Hospital | L03327 | Uvalde | 23 | 02/26/14 |
| Waco | Waco Cardiology Associates | L05158 | Waco | 17 | 02/28/14 |
| Weslaco | Knapp Medical Center | L03290 | Weslaco | 49 | 01/16/14 |

RENEWAL OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Dallas | Texas Oncology, P.A. | L05534 | Dallas | 13 | 02/19/14 |
| Dallas | E+ PET Imaging, V L.P. | L05726 | Dallas | 12 | 02/21/14 |
| Granbury | Granbury Hospital Corporation dba Lake Granbury Medical | L02903 | Granbury | 37 | 02/18/14 |
| Houston | M. Basith Baig M.D., P.A. | L05666 | Houston | 09 | 02/25/14 |
| McAllen | Texas Oncology, P.A. | L05485 | McAllen | 11 | 02/18/14 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Austin | Austin Texas Radiation Oncology Group, P.A. dba Austin Cancer Centers | L01761 | Austin | 72 | 02/21/14 |
| Austin | Jane C. Nelson, M.D., P.A. | L06126 | Austin | 01 | 02/21/14 |
| Euless | Texas Health Physicians Group dba PET/CT Center of Richardson | L06424 | Euless | 03 | 02/24/14 |
| Galena Park | United States Gypsum Company | L03896 | Galena Park | 13 | 02/27/14 |
| Odessa | Odessa Heart Institute | L05439 | Odessa | 08 | 02/24/14 |
| Pasadena | Air Products, L.L.C. | L06517 | Pasadena | 02 | 02/20/14 |
| Rio Grande City | Advanced Nuclear Imaging, Inc. | L05467 | Rio Grande City | 13 | 02/20/14 |
| San Antonio | BHS Specialty Network, Inc. dba Heart Institute of South Texas | L06520 | San Antonio | 01 | 02/25/14 |

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

In accordance with Texas Health and Safety Code, §401.106(b), it has been determined that companies using neutron generating industrial accelerators for well-logging purposes are hereby exempt from the regulatory requirement of obtaining an x-ray registration, provided the radioactive material in the device is authorized by a Department of State Health Services issued Radioactive Material License.

Rationale

Section 401.106(b) states: The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under tis chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

After reviewing the exemption request by Baker Hughes dated January 23, 2014, the department hereby issues a generic exemption to licensees possessing neutron generating industrial accelerators that are used for well-logging service operations from registering the accelerators since their use is authorized by their radioactive material license.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201401062
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 7, 2014

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Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Houston | St. Luke's Hospital at the Vintage | L06612 | Houston | 00 | 02/10/14 |
| Sugar Land | Best Friends Veterinary Services, Inc. dba Sugar Land Veterinary Specialists | L06613 | Sugar Land | 00 | 02/10/14 |
| Throughout TX | Control and Inspection Services USA Corporation | L06611 | Houston | 00 | 02/03/14 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Addison | Rockwall Regional Hospital, L.L.C. dba Texas Health Presbyterian Hospital Rockwall | L06103 | Addison | 05 | 02/13/14 |
| Bay City | Equistar Chemicals, L.P. | L03938 | Bay City | 32 | 02/05/14 |
| Bedford | Texas Health Physicians Group dba Cardiac and Vascular Center of North Texas | L06373 | Bedford | 05 | 02/04/14 |
| Corpus Christi | The Corpus Christi Medical Center Bay Area | L04723 | Corpus Christi | 54 | 02/05/14 |
| Corpus Christi | Radiology & Imaging of South Texas, L.L.P. dba Alameda Imaging Center | L05182 | Corpus Christi | 36 | 02/03/14 |
| Dallas | Methodist Hospitals of Dallas Radiology Svcs. | L00659 | Dallas | 97 | 02/04/14 |
| Dallas | Heartmasters, P.A. | L05760 | Dallas | 08 | 02/04/14 |
| Dallas | Healthtexas Provider Network dba Cardiology Consultants of Texas | L06572 | Dallas | 03 | 02/04/14 |
| El Paso | Cardiology Care Consultants | L05045 | El Paso | 13 | 02/11/14 |
| El Paso | LEC Engineering, Inc. | L06478 | El Paso | 02 | 02/14/14 |
| Fort Worth | Texas Health Harris Methodist Hospital Ft. Worth | L01837 | Fort Worth | 140 | 02/05/14 |
| Galveston | The University of Texas Medical Branch | L01299 | Galveston | 94 | 02/11/14 |
| Grapevine | Healthtexas Provider Network dba Cardiovascular Consultants - Grapevine | L06396 | Grapevine | 02 | 02/14/14 |
| Houston | The Methodist Hospital dba Houston Methodist | L00457 | Houston | 195 | 02/12/14 |
| Houston | The University of Texas M.D. Anderson Cancer Center | L00466 | Houston | 150 | 02/12/14 |
| Houston | Memorial Hermann Health System dba Memorial Hermann Katy Hospital | L03052 | Houston | 66 | 02/05/14 |
| Houston | Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands | L03772 | Houston | 108 | 02/13/14 |
| Houston | Woodlands-North Houston Heart Associates | L04253 | Houston | 31 | 02/04/14 |
| Houston | Tops Specialty Hospital, Ltd. dba Tops Surgical Specialty Hospital | L05441 | Houston | 22 | 02/02/14 |
| Houston | Heart Care Center of Northwest Houston, P.A. | L05539 | Houston | 18 | 02/13/14 |
| Houston | Petnet Houston, LLC | L05542 | Houston | 30 | 02/05/14 |
| Houston | Triad Isotopes, Inc. | L06327 | Houston | 08 | 02/03/14 |
| Jourdanton | Jourdanton Hospital Corporation dba South Texas Regional Medical Center | L04966 | Jourdanton | 20 | 02/06/14 |

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Kingwood | KPH Consolidation, Inc.<br>dba Kingwood Medical Center | L04482 | Kingwood | 29 | 02/13/14 |
| Lewisville | Columbia Medical Center of Lewisville Subsidiary, L.P.<br>dba Medical Center of Lewisville | L02739 | Lewisville | 67 | 02/14/14 |
| Midland | Precision Pressure Data, Inc. | L06324 | Midland | 01 | 02/11/14 |
| Mount Pleasant | Titus County Memorial Hospital | L02921 | Mount Pleasant | 42 | 01/31/14 |
| New Braunfels | TXI Operations, L.P. | L01421 | New Braunfels | 52 | 02/14/14 |
| Orange | Invista, Inc. | L05777 | Orange | 10 | 02/14/14 |
| Pasadena | Chevron Phillips Chemical Company, L.P. | L00230 | Pasadena | 88 | 02/14/14 |
| Plano | Heartplace, P.A. | L05699 | Plano | 11 | 02/05/14 |
| Plano | Health Texas Provider Network<br>dba Cardiovascular Consultants - Plano | L06494 | Plano | 02 | 02/14/14 |
| Quitman | East Texas Medical Center Quitman | L06387 | Quitman | 01 | 02/04/14 |
| San Antonio | South Texas Radiology Imaging Centers | L00325 | San Antonio | 212 | 02/05/14 |
| San Antonio | Methodist Healthcare System of San Antonio Ltd., L.L.P. | L00594 | San Antonio | 324 | 02/14/14 |
| San Antonio | Radiation Oncology of San Antonio, P.A.<br>dba Oncology San Antonio | L05853 | San Antonio | 18 | 02/04/14 |
| San Antonio | Radiation Oncology of San Antonio. P.A.<br>dba Oncology San Antonio | L05853 | San Antonio | 19 | 02/14/14 |
| Sugar Land | Kota J. Reddy, M.D., P.A. | L05568 | Sugar Land | 07 | 02/06/14 |
| Sugar Land | Fort Bend Heart Center Ltd., L.L.P. | L05678 | Sugar Land | 11 | 02/12/14 |
| The Woodlands | Pietro Fiorentini USA, Inc. | L06592 | The Woodlands | 02 | 02/11/14 |
| Throughout TX | U.S. NDI, L.L.C. | L06597 | Abilene | 01 | 02/11/14 |
| Throughout TX | Mistras Group, Inc. | L06369 | Deer Park | 14 | 02/06/14 |
| Throughout TX | Techcorr USA, L.L.C.<br>dba AUT Specialists L.L.C. | L05972 | Flint | 101 | 02/10/14 |
| Throughout TX | Thrubit. L.L.C. | L06030 | Houston | 17 | 02/06/14 |
| Throughout TX | Control and Inspection Services USA Corp. | L06611 | Houston | 01 | 02/13/14 |
| Throughout TX | Spectrum Tracer Services, L.L.C. | L06361 | Odessa | 02 | 02/11/14 |
| Throughout TX | Effective Environmental, Inc. | L06322 | Pasadena | 05 | 02/14/14 |
| Throughout TX | Medical and Radiation Physics, Inc. | L01417 | San Antonio | 33 | 02/13/14 |
| Throughout TX | Schlumberger Technology Corporation | L01833 | Sugar Land | 175 | 02/06/14 |
| Throughout TX | Circle Z Pressure Pumping, L.L.C. | L06551 | Tatum | 02 | 02/06/14 |
| Tyler | Carter Bloodcare | L04826 | Tyler | 18 | 01/31/14 |
| Waxahachie | Baylor Medical Center at Waxahachie | L04536 | Waxahachie | 38 | 02/13/14 |

RENEWAL OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Austin | Simona Scumpia, M.D., P.A.<br>dba Austin Thyroid and Endocrinology | L05579 | Austin | 05 | 02/04/14 |
| Cleveland | Cleveland Regional Medical Center, L.P. | L02055 | Cleveland | 44 | 02/07/14 |
| Corpus Christi | Coastal Bend Blood Center | L05694 | Corpus Christi | 07 | 02/11/14 |
| Dallas | North Texas Cardiovascular Associates | L05602 | Dallas | 13 | 02/05/14 |
| Edinburg | Doctors Hospital at Renaissance, Ltd. | L05761 | Edinburg | 32 | 01/31/14 |
| El Paso | Edward R. Assi, D.O., P.A. | L05695 | El Paso | 11 | 02/14/14 |
| Odessa | Madhava Agusala, M.D., P.A. | L05628 | Odessa | 05 | 02/07/14 |
| Plano | Plano Heart Center, P.A. | L05673 | Plano | 06 | 02/07/14 |
| Sugar Land | Hillcroft Medical Clinic Association | L05618 | Sugar Land | 09 | 02/06/14 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Katy | St. Catherine Health and Wellness Center | L05310 | Katy | 24 | 02/07/14 |
| Nacogdoches | Stephen F. Austin State University | L05191 | Nacogdoches | 08 | 02/14/14 |
| Sugar Land | Sugar Land Veterinary Specialists, P.C. | L05903 | Sugar Land | 11 | 02/11/14 |

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

In accordance with Texas Health and Safety Code, §401.106(b), it has been determined that companies using neutron generating industrial accelerators for well-logging purposes are hereby exempt from the regulatory requirement of obtaining an x-ray registration, provided the radioactive material in the device is authorized by a Department of State Health Services issued Radioactive Material License.

Rationale

Section 401.106(b) states: The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under tis chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

After reviewing the exemption request by Baker Hughes dated January 23, 2014, the department hereby issues a generic exemption to licensees possessing neutron generating industrial accelerators that are used for well-logging service operations from registering the accelerators since their use is authorized by their radioactive material license.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201401063
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 7, 2014

♦ ♦ ♦

## Texas Department of Housing and Community Affairs

### Announcement of the Opening of the Public Comment Period for the Draft 2014 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2013

The Texas Department of Housing and Community Affairs (Department) announces the opening of a 15-day public comment period for the *State of Texas Draft 2014 Consolidated Plan Annual Performance Report - Reporting on Program Year 2013 (Report)* as required by the US Department of Housing and Urban Development (HUD). The Report is required as part of the overall requirements governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins Monday, March 31, 2014, and continues until 5:00 p.m. on Monday, April 14, 2014.

The Report gives the public an opportunity to evaluate the performance of the past program year for four HUD programs: the Community Development Block Grant Program administered by the Texas Department of Agriculture, the Emergency Shelter Grants and HOME Investment Partnerships programs administered by the Department, and the Housing Opportunities for Persons with AIDS Program administered by the Texas Department of State Health Services. The following information is provided for each of the four programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

Beginning March 31, 2014, the Report will be available on the Department's website at www.tdhca.state.tx.us. A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070.

TRD-201401102
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 10, 2014

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## Texas Lottery Commission

Instant Game Number 1599 "Golden Key"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1599 is "GOLDEN KEY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1599 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1599.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DOLLAR BILL SYMBOL, GOLD BAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1599 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWFV |
| 26 | TWSX |
| 27 | TWSV |
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| DOLLAR BILL SYMBOL | WIN |
| GOLD BAR SYMBOL | WINX5 |
| $5.00 | FIVE$ |
| $10.00 | TEN$ |
| $15.00 | FIFTN |
| $20.00 | TWENTY |

| | |
|---|---|
| $40.00 | FORTY |
| $50.00 | FIFTY |
| $100 | ONE HUND |
| $500 | FIV HUND |
| $1,000 | ONE THOU |
| $100,000 | HUN THOU |

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1599), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1599-0000001-001.

K. Pack - A Pack of "GOLDEN KEY" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GOLDEN KEY" Instant Game No. 1599 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "GOLDEN KEY" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of the LOCK NUMBERS Play Symbols to any of the KEY NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "DOLLAR BILL" Play Symbol, the player wins the prize for that symbol. If a player reveals a "GOLD BAR" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different "KEY NUMBERS" Play Symbols.

E. Non-winning "LOCK NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "DOLLAR BILL" (WIN) and the "GOLD BAR" (WINX5) Play Symbol(s) will never appear in the "KEY NUMBERS" Play Symbol spots.

H. The "GOLD BAR" (WINX5) Play Symbol will appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "LOCK NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "GOLDEN KEY" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLDEN KEY" Instant Game prize of $1,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLDEN KEY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "GOLDEN KEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "GOLDEN KEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account,

with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 16,080,000 Tickets in the Instant Game No. 1599. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1599 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---|---|---|
| $5 | 1,715,200 | 9.38 |
| $10 | 2,251,200 | 7.14 |
| $20 | 428,800 | 37.50 |
| $50 | 216,812 | 74.17 |
| $100 | 18,626 | 863.31 |
| $500 | 1,206 | 13,333.33 |
| $1,000 | 200 | 80,400.00 |
| $100,000 | 15 | 1,072,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1599 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1599, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201401133

Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 12, 2014

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## North Central Texas Council of Governments

### Cancellation of Request for Proposals for Traffic Counts Data Collection

This request by the North Central Texas Council of Governments (NCTCOG) to cancel the Request for Proposals on Traffic Counts Data Collection is filed under the provisions of Government Code, Chapter 2254.

On February 14, 2014, NCTCOG issued a Request for Proposals (RFP) for Traffic Counts Data Collection. NCTCOG has decided not to move forward with this project and is cancelling the RFP.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201401134
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 12, 2014

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## Panhandle Regional Planning Commission

### Legal Notice

The Panhandle Regional Planning Commission (PRPC) encourages applications from providers of training programs that lead to employment in the targeted occupations in the Panhandle Workforce Development Area. A current list of these occupations may be accessed through the Workforce Solutions Panhandle's website at https://wspanhandle.com/site_main/labor_market_targeted_occupation.php.

Applications must be submitted through the online automated Workforce Investment Act (WIA) Eligible Training Provider System (ETPS). For information or instructions about such submissions, please see http://tpcs.twc.state.tx.us or contact Leslie Hardin, PRPC's Workforce Development Training Coordinator, at (806) 372-3381 or lhardin@theprpc.org Submissions will be accepted throughout the year and reviewed for certification by the Texas Workforce Commission (TWC).

TRD-201401118
Leslie Hardin
Workforce Development Training Coordinator
Panhandle Regional Planning Commission
Filed: March 10, 2014

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## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 6, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42285.

The requested amendment is to expand the service area footprint to include the city limits of Troup, Texas; Arp, Texas; Van, Texas; and Eustace, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42285.

TRD-201401129
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 11, 2014

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### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 10, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Panhandle Telecommunication Systems, Inc. d/b/a PTCI for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42298.

The requested amendment is to expand the service area footprint to include the city limits of Perryton, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42298.

TRD-201401130
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 11, 2014

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### Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On March 5, 2014, IntelePeer, Inc. (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60850. Applicant seeks a change in ownership/control whereby all membership interests in Applicant will be transferred to Peerless Network, Inc.

The Application: Application of IntelePeer, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42280.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than March 28, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42280.

TRD-201401047

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2014

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### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on February 28, 2014, pursuant to the Public Utility Regulatory Act (PURA), Tex. Util. Code Ann. §39.158 (Vernon 2007 & Supp. 2013).

Docket Style and Number: Application of Pattern Panhandle Wind LLC Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 42274.

The Application: Pattern Panhandle Wind, LLC (Pattern Panhandle) has filed an application for approval of the issuance of passive equity interests (Class A), with rights and obligations in Pattern Panhandle to two entities, Citicorp North America, Inc. or another 100% wholly-owned direct or indirect subsidiary of Citicorp, Inc. and EFS Panhandle Wind, LLC (collectively, Investors) (the sale hereinafter referred to as the Transaction). Pattern Panhandle states it is developing a 218 MW wind generation project located in Carson County and interconnected into the Electric Reliability Council of Texas (ERCOT) through facilities that will be operated by Sharyland Utilities, LP and Cross Texas Transmission, LLC (the Project) and under the control of ERCOT. The Project is currently projected to commence commercial operation on approximately July 1, 2014.

The applicant represents that Pattern Renewables, LP (Pattern Renewables) indirectly owns 100% of the equity interests in Pattern Panhandle. Pattern Renewables is indirectly owned by Riverstone Holdings, LLC (Riverstone). Riverstone also indirectly owns Topaz Power Group, LLC which indirectly owns equity interests in generation facilities in ERCOT. Pattern Panhandle desires to issue Class A, passive equity interests in Pattern Panhandle to the Investors, while the equity interests indirectly held by Pattern Renewables would be converted into Class B managing interests. After the Transaction, the combined direct and indirect generation ownership of Pattern Panhandle, together with its affiliates and upstream owners, and the Investors and their affiliates, will equal 2,125.6 MW, or approximately 2.6% of the installed capacity in ERCOT, which is below the 20% statutory limitation in Section 39.154 of PURA.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42274.

TRD-201401074
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2014

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### Notice of Public Hearing

Staff of the Public Utility Commission of Texas (commission staff) will conduct a public hearing regarding Project No. 41622, *Rulemaking to Propose New Substantive Rule 25.245, Relating to Recovery of Expenses for Ratemaking Proceedings* on Thursday, April 3, 2014, at 10:00 a.m. The public hearing will be conducted in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Ave., Austin, Texas.

The purpose of the public hearing is for commission staff to receive public comment on the rule proposed in Project No. 41622. The public hearing will be open to the public. Prior to the public hearing, individuals do not need to register or contact commission staff to attend or participate. A sign-up sheet will be available in the morning shortly before the public hearing in the Commissioners' Hearing Room. Public comments will be taken in the order in which persons signed the sign-up sheet on the day of the public hearing. Comments should be specific to the rule proposed in Project No. 41622.

Questions concerning the public hearing or this notice should be referred to A. J. Smullen, Legal Division, at (512) 936-7289 or at aj.smullen@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201401131
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 11, 2014

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## Texas Department of Transportation

### Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Uvalde, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

**Current Project:** City of Uvalde; TxDOT CSJ; No.: 1415UVLDE.

Scope: Provide engineering/design services to Expand Westside apron.

The DBE goal for the design of the current project is 14%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Eusebio Torres.

The following is a listing of proposed projects at Garner Field during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate and mark Runway 15-33; rehabilitate parallel, connecting, and hangar access taxiways; and rehabilitate aprons.

The City of Uvalde reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Garner Field." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/insidetxdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 80" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

**SIX** completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than 4:00 p.m. on April 15, 2014. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members and one local official. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201401104
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: March 10, 2014

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## Notice of Extension of Comment Deadline for Outdoor Advertising Rules

On January 30, 2014, the Texas Department of Transportation (department) proposed rules for revisions to the outdoor advertising rules, 43 TAC 21, Subchapter I, Regulation of Signs Along Interstate and Primary Highways (§§21.142, 21.149, 21.152, 21.159, 21.163 - 21.165, 21.167, 21.172 - 21.176, 21.179, 21.180, 21.182, 21.190 - 21.192, 21.251, 21.253, and 21.255), and Subchapter K, Control of Signs Along Rural Roads (§§21.402, 21.409, 21.412 - 21.414, 21.416, 21.417, 21.421 - 21.425, 21.428, 21.433 - 21.435, 21.449, and 21.457).

The deadline for receipt of written comments on this proposed rulemaking is extended to 5:00 p.m. on April 14, 2014. Written comments may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Right of Way." In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-201401103
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: March 10, 2014

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## Notice of Public Hearing Trinity Parkway in Dallas County - Availability of Final Environmental Impact Statement

The Texas Department of Transportation (TxDOT) is advising the public of the availability of the approved Final Environmental Impact Statement (FEIS) for the proposed Trinity Parkway in the City of Dallas, Dallas County, Texas. TxDOT is also giving notice of a public hearing. This notice is issued pursuant to Title 43, Texas Administrative Code (TAC), §2.103(g) and §2.109(d).

As currently proposed, the northern terminus of the Trinity Parkway is located at the Interstate Highway (IH) 35E Interchange with State Highway (SH) 183 and extends to the southern terminus at the United States Highway (U.S.) 175 Interchange with SH 310, for a distance of approximately nine miles (Project). The Project involves the construction of a six-lane controlled access toll facility with local street interchanges, and freeway-to-tollway interchanges at IH 35E/SH 183, U.S. 175/SH 310, Woodall Rodgers Freeway, and IH 45. It would be grade separated at crossings of existing highways and local arterial streets. The number and configuration of interchanges, ramps, auxiliary lanes, and frontage road improvements vary among the build alternatives considered. The primary purpose of the Project is to provide a safe and efficient transportation solution to manage traffic congestion and improve safety in the area of the Dallas Central Business District (CBD).

The Project is being developed jointly by the Federal Highway Administration (FHWA), TxDOT, and the North Texas Tollway Authority (NTTA).

The FEIS was prepared by the FHWA, TxDOT, and the NTTA in cooperation with the U.S. Environmental Protection Agency (USEPA) and the U.S. Army Corps of Engineers (USACE). It evaluates the No-Build Alternative (Alternative 1) and four Build Alternatives (Alternatives 2A, 2B, 3C, and 4B), and provides new or additional information and analysis performed since the publication of the Supplemental Draft Environmental Impact Statement (SDEIS) in February 2009 and the Limited Scope Supplemental (LSS) in March 2012. The FEIS presents an analysis of expected impacts of the Build Alternatives as assessed in the SDEIS/LSS. It explains the recommendation of Build Alternative 3C for further design refinements and updated environmental impact analyses. Build Alternative 3C would generally follow along the east levee inside of the Dallas Floodway.

The right-of-way for Build Alternative 3C would be approximately 559 acres. Potential displacements for this alternative would be three single-family residences and 27 commercial buildings. Alternative

3C would have an adverse effect on the historic Continental Avenue Viaduct. Alternative 3C would impact approximately 305 acres of the Federal Emergency Management Agency 100-year floodplain, and is considered a significant and longitudinal encroachment in the Dallas Floodway.

The FEIS may be obtained on the NTTA homepage via the internet at www.ntta.org. Select "Roads & Projects" on the NTTA homepage, and then click on "Trinity Parkway" under the "Future Projects" category. Finally, click on "Project Meeting Materials" (https://www.ntta.org/roadsprojects/futproj/trihwy/Pages/Project-Meeting-Materials.aspx).

Copies of the FEIS are also available for review at the following locations:

1) J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Texas 75201

2) Martin Luther King Jr. Branch Library, 2922 Martin Luther King Jr. Boulevard, Dallas, Texas 75215

3) Dallas West Branch Library, 2332 Singleton Boulevard, Dallas, Texas 75212

4) North Oak Cliff Branch Library, 302 W. Tenth Street, Dallas, Texas 75208

5) Oak Lawn Branch Library, 4100 Cedar Springs Road, Dallas, Texas 75219

6) Pleasant Grove Branch Library, 7310 Lake June Road, Dallas, Texas 75217

7) Dallas Regional Chamber, 500 N. Akard Street, Suite 2600, Dallas, Texas 75201

8) Oak Cliff Chamber of Commerce, 1001 N. Bishop Avenue, Dallas, Texas 75208

9) Dallas Black Chamber of Commerce, 2838 Martin Luther King Jr. Boulevard, Dallas, Texas 75215

10) Greater Dallas Hispanic Chamber of Commerce, 4622 Maple Avenue, Suite 207, Dallas, Texas 75219

11) Greater Dallas Asian American Chamber of Commerce, 7610 Stemmons Freeway, Suite 690, Dallas, Texas 75247

12) Downtown Dallas, 901 Main Street, Suite 7100, Dallas, Texas 75202

13) West Dallas Multipurpose Center, 2828 Fish Trap Road, Dallas, Texas 75212

14) St. Philip's School and Community Center, 1600 Pennsylvania Avenue, Dallas, Texas 75215

15) Exline Recreation Center, 2525 Pine Street, Dallas, Texas 75215

16) TR Hoover Community Development Corporation, 5106 Bexar Street, Dallas, Texas 75215

Copies of the FEIS (both electronic and paper) may be requested online at trinityparkway@ntta.org or by mail. Written requests should be submitted to NTTA, Attn: Corridor Manager, Re: Trinity Parkway Project, P.O. Box 260729, Plano, Texas 75026. Paper copies are available for $320.00 plus shipping and handling, and a CD-ROM of the document in Adobe Acrobat format is available for $10.00 plus shipping and handling.

Conceptual schematic drawings and the FEIS have been placed on file for public inspection and review at the following locations:

1) City of Dallas, 1500 Marilla Street, Room 6BS, Dallas, Texas 75201

2) Dallas County, 411 Elm Street, 4th Floor, Dallas, Texas 75202

3) NTTA Offices, 5900 W. Plano Parkway, Suite 100, Plano, Texas 75093

4) TxDOT, Dallas District Library, 4777 E. Highway 80, Mesquite, Texas 75150

5) North Central Texas Council of Governments Headquarters, Center Point Two, 1st Floor, 616 Six Flags Drive, Arlington, Texas 76011

The NTTA, in cooperation with TxDOT, will conduct a formal public hearing on Thursday, April 24, 2014, at 7:00 p.m., at the Kay Bailey Hutchison Convention Center Arena, located at 650 S. Griffin Street, Dallas, Texas 75202. The purpose of the public hearing is to inform and solicit comments from the public and agencies on the schematics for the Project alternatives and on the FEIS. While not traditionally provided after the FEIS stage of project development, due to public interest in the Project, the NTTA, TxDOT, and the FHWA have agreed to provide an additional public hearing after the FEIS was made available to the public. The public hearing will include a formal presentation. An Open House will be held from 5:00 p.m. to 7:00 p.m. prior to the public hearing at the same location to allow for questions and review of Project exhibits with NTTA and TxDOT staff. Information concerning the NTTA's Relocation and Assistance Program will be discussed at the public hearing.

Persons requiring special communication or accommodation needs are encouraged to contact the NTTA at (214) 224-3062 or by email at trinityparkway@ntta.org at least three (3) working days prior to the public hearing so that appropriate arrangements can be made. Because the public hearing will be conducted in English, any request for language interpreters or other special communication needs should also be made at least three (3) working days prior to the hearing. The NTTA will make all reasonable efforts to accommodate these needs.

Comments regarding the FEIS can be mailed to NTTA, Attn: Corridor Manager, Re: Trinity Parkway Project, P.O. Box 260729, Plano, Texas 75026. Comments will also be accepted by email at trinityparkway@ntta.org. All comments must be received or postmarked on or before Monday, May 5, 2014, to be included in the public record. Substantive comments not addressed in the FEIS would be noted in the Record of Decision (ROD). FHWA will execute a ROD no sooner than 30 days from the date of publication of the Notice of Availability (NOA) of the FEIS in the Federal Register.

Contingent upon a ROD from FHWA, USACE authorization pursuant to 33 United States Code §408 would be required due to the proposed location of the Project within the Dallas Floodway. Approximately 66 acres of waters of the U.S., including wetlands, would be impacted by Alternative 3C, and USACE authorization pursuant to §404 of the Clean Water Act (CWA) and §10 of the Rivers and Harbors Act of 1899 would also be required. USACE is proposing to utilize CESWF-09-RGP-12 Regional General Permit 12 (RGP-12) for the modification and alteration of Corps of Engineers Project for this action. The Texas Commission on Environmental Quality (TCEQ) has certified pursuant to §401 of the CWA and 30 TAC §279, for activities for which it is responsible, and that result in the loss of less than 0.5 acre of waters of the state, that activities conducted under RGP-12 should not result in a violation of established Texas Water Quality Standards provided that the Standard Provisions are followed. Since impacts to waters of the U.S. result in the loss of greater than 0.5 acre of waters of the U.S., §401 water quality certification for the Trinity Parkway is being requested during the USACE §408 review process under the scope of RGP-12. Since USACE is a Cooperating Agency on this FEIS, USACE is utilizing this NOA to make the public aware that, concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under §401 of the CWA, and 30 TAC §§279.1

- 279.13 to determine if the work would comply with State water quality standards. By virtue of an agreement between USACE and TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. Any comments concerning the §401 Water Quality Certification application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087, by Monday, May 5, 2014. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

TRD-201401137
Jeff Graham
General Counsel
Texas Department of Transportation
Filed: March 12, 2014

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### Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter E (enabling legislation), the Texas Department of Transportation (department) may enter into Comprehensive Development Agreements (CDAs) for the design, development, construction, maintenance, repair, extension, expansion and/or operation of certain non-tolled projects on the state highway system. The enabling legislation authorizes private involvement in such projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.203 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register*. The Texas Transportation Commission (commission) has promulgated rules located at Title 43, Texas Administrative Code, §§27.1 - 27.10 (the rules), governing the submission and processing of qualifications submittals, and providing for publication of notice that the department is requesting qualifications submittals, and setting forth the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and such other information the department considers relevant or necessary in the request for qualifications (RFQ). The commission has authorized the issuance of a RFQ to develop, design, construct, and potentially maintain all or any portion of the US 181 Harbor Bridge Project in Nueces County between US 181 at Beach Avenue and I-37, which extends north-south along US 181 and SH 286 and east-west along I-37, and includes US 181 at Beach Avenue on the north; SH 286 at Morgan Avenue on the south; I-37 and up River Road on the west; and I-37 and Shoreline Boulevard on the east (Project), through a design-build CDA potentially with long-term maintenance obligations.

On February 27, 2014, in Minute Order 113853, the commission authorized the department to commence the procurement process for the project under the enabling legislation. This notice represents the next step in the process.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a CDA. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a CDA. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a CDA for the project.

**RFQ Evaluation Criteria.** QSs will be evaluated by the department for shortlisting purposes using the following general criteria: technical qualifications and capability, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

**Release of RFQ and Due Date.** The department currently anticipates that the RFQ will be available on March 21, 2014. Copies of the RFQ will be available at the Texas Department of Transportation, 1701 S Padre Island Drive, Corpus Christi, Texas 78416, or on the following website:

http://www.txdot.gov/business/partnerships/current-cda/harbor-bridge/harbor-bridge-rfq.html

QSs will be due by 12:00 p.m. (noon) CST on May 16, 2014, at the address specified in the RFQ.

TRD-201401138
Jeff Graham
General Counsel
Texas Department of Transportation
Filed: March 12, 2014

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## Texas Water Development Board

### Applications for March 2014

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #10442, a request from the Mooreville Water Supply Corporation, 261 CR 499A, Chilton, Texas 76632-3037, received December 20, 2013, for financial assistance in the amount of $1,744,690 from the Economically Distressed Areas Program to fund planning, acquisition, design, and construction of an interconnection project to address a water well failure.

Project ID #73672, a request from the City of San Antonio, acting by and through the San Antonio Water System, 745 E. Mulberry, Suite 900, San Antonio, Texas 78212, received December 2, 2013, for a loan in the amount of $38,260,000 from the Clean Water State Revolving Fund to finance construction costs relating to wastewater system improvements.

Project ID #62631, a request from the City of San Antonio, acting by and through the San Antonio Water System, 745 E. Mulberry, Suite 900, San Antonio, Texas 78212, received December 10, 2013, for a loan in the amount of $22,400,000 from the Drinking Water State Revolving Fund to finance construction costs relating to water system improvements.

Project ID #73622, a request from the Greater Texoma Utility Authority on behalf of the City of Krum, 5100 Airport Drive, Denison, Texas 75020-8448, received January 27, 2014, for a $2,085,000 loan from the Clean Water State Revolving Fund to finance construction costs for the City of Krum's Wastewater Treatment Plant project.

TRD-201401073

Les Trobman
General Counsel
Texas Water Development Board
Filed: March 7, 2014

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## How to Use the Texas Register

**Information Availabl**e: 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 Rule**s- 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 Cit**e: 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 39 (2014) is cited as follows: 39 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 "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 TexReg 3."

**How to Researc**h: 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 Cit**e: 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 updat**e: 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)***

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