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# TEXAS REGISTER

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*Angel Banda  
6th Grade*



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

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# THE ATTORNEY GENERAL

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

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

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

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

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Requests for Opinions

**RQ-1178-GA**

**Requestor:**

The Honorable Kenda Culpepper

Criminal District Attorney

Rockwall County Courthouse

1111 East Yellowjacket Lane, Suite 201

Rockwall, Texas 75087

Re: Authority of the Rockwall County Juvenile Board over policy matters of the juvenile probation department, including the adoption of a personnel manual (RQ-1178-GA)

**Briefs requested by February 3, 2014**

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

TRD-201400130

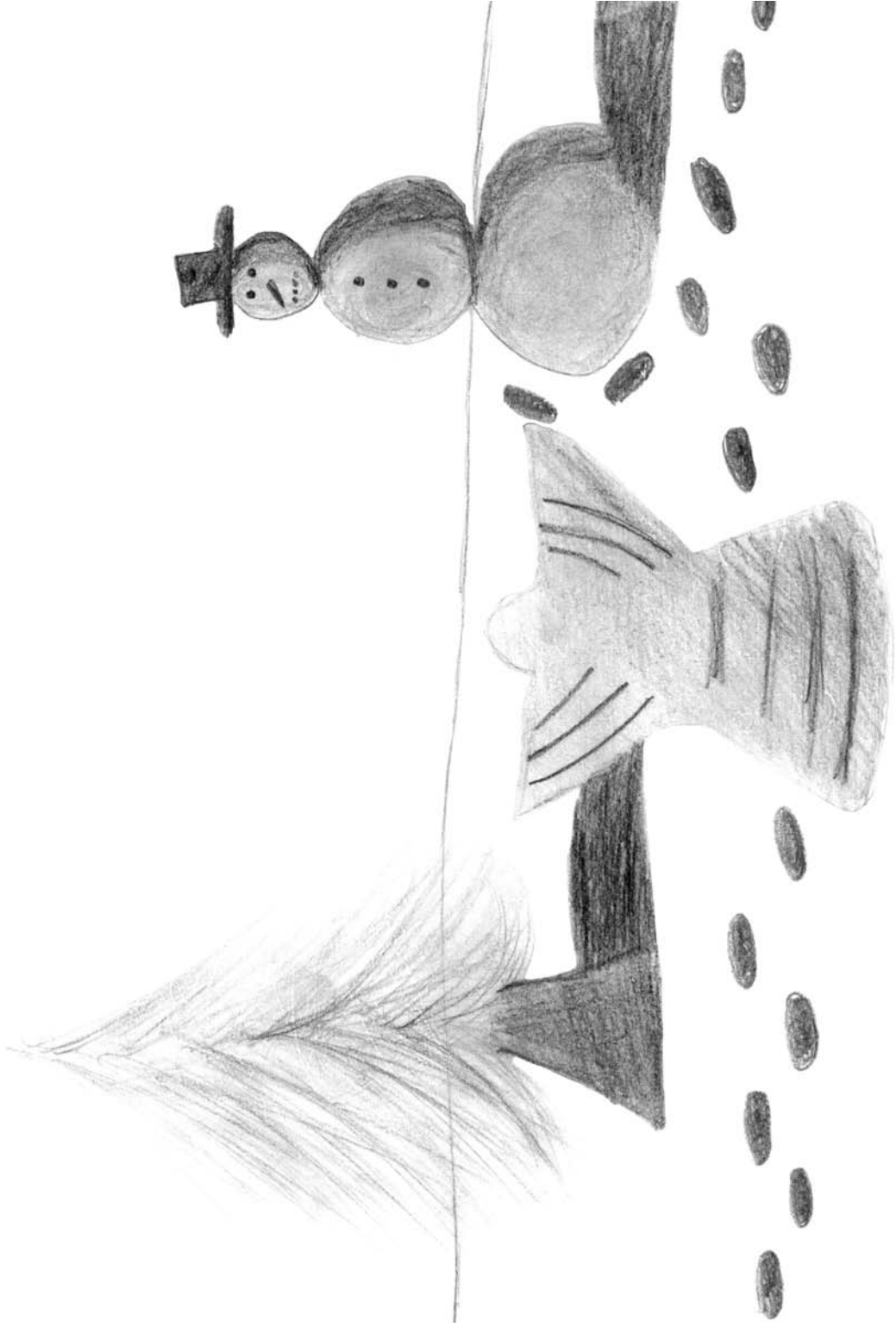
Katherine Cary

General Counsel

Office of the Attorney General

Filed: January 15, 2014





David Zermeno  
7th Grade

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 57. OUTSIDE COUNSEL CONTRACTS

##### 1 TAC §57.4, §57.5

The Office of the Attorney General (OAG) proposes amendments to Chapter 57, §57.4 and §57.5, relating to OAG process regarding the approval of outside counsel contracts and review of invoices.

The proposed amendments will provide a formalized process for the disclosure of potential conflicts of interest by selected outside counsel.

Katherine Cary, the OAG's General Counsel, has determined that for the first five-year period the amendments to §57.4 and §57.5 are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Katherine Cary has determined that for each of the first five years following the adoption of the amendments to §57.4 and §57.5, the anticipated public benefit of the proposed amendments will be to increase the state's effective and efficient review of outside counsel contracts for potential conflicts of interests. Also, the General Counsel has determined that the proposed amendments are not likely to have an adverse economic impact on micro-business or small business. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Written comments on the proposed amendments should be submitted to OAG General Counsel at: [general.counsel@texasattorneygeneral.gov](mailto:general.counsel@texasattorneygeneral.gov). Written comments on the proposed amendments must be submitted no later than 30 days from the date of this publication.

The amendments are proposed in accordance with Texas Government Code §402.0212, which requires the OAG to set procedures for approving outside counsel contracts, reviewing outside counsel invoices and charging an administrative fee to outside counsel.

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

##### *§57.4. Request for Qualification Process.*

(a) An Agency seeking to obtain legal services from Outside Counsel must publish a Request for Qualifications for Outside Counsel in the Texas State Business Daily for thirty (30) days.

(b) The Request for Qualifications for Outside Counsel publication must contain:

(1) a description of the legal services that the Outside Counsel will provide;

(2) the name and contact information for an Agency employee who should be contacted by an attorney or law firm that intends to submit their qualifications;

(3) the closing date for the receipt of qualifications;

(4) the procedure by which the Agency will make a selection of Outside Counsel;

(5) notice that the selection of and contracting with, Outside Counsel is subject to the approval of the Office of the Attorney General; and

(6) any other information the Agency deems necessary.

(c) After the closing date for the receipt of qualifications, the Agency may select an Outside Counsel. The Agency may only select an Outside Counsel that complied with the Request for Qualifications for Outside Counsel. The Agency shall make the selection of Outside Counsel:

(1) on the basis of demonstrated competence and qualifications to perform the legal services; and

(2) for a fair and reasonable price, which includes, but is not limited to, the hourly rates or fixed fee basis or fee schedule and expenses for legal services.

(d) After selecting the Outside Counsel, the Agency shall require the law firm to submit a written disclosure statement identifying every matter in which the firm has, within the past calendar year, represented any entity or individual in a matter in which the entity or individual is adverse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials in connection with their official job duties and responsibilities; a short description of the nature of the claim and the relief requested or obtained in each matter; and if applicable, the cause number of the court file.

(e) The Agency shall determine given the disclosure statement whether to continue with its choice of Outside Counsel.

##### *§57.5. Outside Counsel Contract.*

(a) Except as authorized by law, an Outside Counsel Contract or any amendment to an Outside Counsel Contract must be approved by the Office of the Attorney General to be valid and enforceable.

(b) When entering into an Outside Counsel Contract, an Agency and Outside Counsel must use the Outside Counsel Contract template promulgated by the Office of the Attorney General. The contract template and instructions on submitting it are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) In the event of an inconsistency between this chapter and an executed Outside Counsel Contract, the contract shall prevail.

(d) Once an Agency selects an Outside Counsel, the Agency shall submit one copy of its proposed Outside Counsel Contract to the Office of the Attorney General for approval pursuant to this chapter. The Outside Counsel Contract must be signed by an authorized representative of the Outside Counsel and the chief administrator of the Agency, or authorized designee. The Agency shall submit to the OAG one copy of the disclosure statement previously submitted by the selected Outside Counsel to the Agency identifying every matter in which the firm has, within the past calendar year, represented any entity or individual in a matter in which the entity or individual is adverse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials in connection with their official job duties and responsibilities; a short description of the nature of the claim and the relief requested or obtained in each matter; and if applicable, the cause number of the court file.

(e) The Agency shall submit to the OAG an affirmative statement that it is satisfied in its choice of selected Outside Counsel notwithstanding the information contained in the disclosure statement.

(f) [(e)] Upon receipt of a proposed Outside Counsel Contract, the Office of the Attorney General will review the contract and either approve or reject it based upon the best interest of the State and compliance with state law.

(g) [(f)] If the Office of the Attorney General approves a proposed Outside Counsel Contract, an authorized representative of the Office of the Attorney General will indicate that approval on the contract and return the signed copy to the Agency.

(h) [(g)] If the Office of the Attorney General rejects a proposed Outside Counsel Contract, it will contact the submitting Agency to discuss the basis for the rejection and to explore whether revisions to the proposed contract could rectify the basis for the rejection. In the event the proposed contract is rejected and rectifying amendments are not acceptable or possible, the Office of the Attorney General will contact the submitting Agency to discuss alternatives to representation by the selected Outside Counsel.

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 January 13, 2014.

TRD-201400106

Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: February 23, 2014

For further information, please call: (512) 936-1180



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

#### 1 TAC §351.3

The Texas Health and Human Services Commission (HHSC) proposes to amend §351.3, concerning Purpose, Task and Duration of Advisory Committees.

#### Background and Justification

The proposed amendment updates the expiration date of two existing committees, updates the name of an existing committee, updates the work of two existing committees, deletes an expired committee, clarifies language, adds an existing committee (State Medicaid Managed Care Advisory Committee) to the rule, and adds six new HHSC advisory committees: Intellectual and Developmental Disability System Redesign Advisory Committee; STAR Kids Managed Care Advisory Committee; STAR+PLUS Quality Council; STAR+PLUS Nursing Facility Advisory Committee; Behavioral Health Integration Advisory Committee; and Perinatal Advisory Council.

The amendment is proposed to comply with Government Code §2110.005 and §2110.008, which require the following information regarding advisory committees to be included in rules: the purpose and task of the committee; the manner in which the committee will report to the agency; and the date on which the committee will be abolished, if any.

The amendment is also proposed in response to:

-Senate Bill (S.B.) 7, 83rd Legislature, Regular Session, 2013, which adds Government Code §534.053, establishing the Intellectual and Developmental Disability System Redesign Advisory Committee to advise the commission and the Department of Aging and Disability Services on the implementation of the acute care services and long-term care services and supports system redesign.

-S.B. 7, 83rd Legislature, Regular Session, 2013, which adds Government Code §533.00252, establishing the STAR+PLUS Nursing Facility Advisory Committee to advise HHSC on implementation and associated activities related to Medicaid services provided to individuals who reside in nursing facilities and are members of STAR+PLUS managed care program.

-S.B. 7, 83rd Legislature, Regular Session, 2013, which adds Government Code §533.00254, establishing the STAR Kids Managed Care Advisory Committee to advise HHSC on the establishment and implementation of the STAR Kids managed care program.

-S.B. 7, 83rd Legislature, Regular Session, 2013, which adds Government Code §533.00285, establishing the STAR+PLUS Quality Council to advise HHSC on the development of policy recommendations to ensure eligible recipients receive quality, person-centered, consumer-directed acute care services and long-term services and supports in an integrated setting under the STAR+PLUS Medicaid managed care program.

-S.B. 58, 83rd Legislature, Regular Session, 2013, which adds Government Code §533.00255, requiring HHSC and the Department of State Health Services to establish a Behavioral Health Integration Advisory Committee to: address the planning and development needs of a behavioral health services network of public and private providers as developed by a managed care organization contracted with HHSC; seek input from the behavioral health community; and issue recommendations to HHSC.

-House Bill 15, 83rd Legislature, Regular Session, 2013, which adds Health and Safety Code §241.187, to establish a Perinatal Advisory Committee that will: develop and make recommendations related to hospital level of care designations for neonatal



and maternal care, and the process for the assignment of the level of care to a hospital; make recommendations for the division of the state into regions; examine utilization trends; and make recommendations related to outcomes.

-S.B. 7, 83rd Legislature, Regular Session, 2013, which amends Government Code §533.041, to update the composition, duties, and meeting frequency of the State Medicaid Managed Care Advisory Committee.

-S.B. 50, 83rd Legislature, Regular Session 2013, which amends Human Resources Code §22.035, to update the duties of the Children's Policy Council.

-S.B. 421, 83rd Legislature, Regular Session, 2013, which amends Government Code §531.251, to replace the Texas Integrated Funding Initiative Pilot Project Consortium with the Texas System of Care Consortium and modifies the composition, purpose, and duties of the committee.

#### Section-by-Section Summary

Proposed paragraph (1)(A) and (B) are modified to update the description and duties of the Children's Policy Council.

Proposed paragraph (9)(A) makes a minor grammatical correction.

Paragraph (11) is modified to replace the Pilot Project Consortium with the Texas System of Care Consortium, modifies the composition and duties of the consortium, and sets the abolishment date.

Proposed paragraph (14)(C) updates the abolishment date of the Electronic Health Information Exchange System Advisory Committee to August 31, 2016.

Proposed paragraph (17) deletes the information related to the Neonatal Intensive Care Unit Council which is abolished.

Proposed new paragraphs (17) - (23) add six new committees and one existing committee and describe the committees' purpose and task, the manner in which the committees will report to the agency, and the date on which the committees will be abolished.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government as a result of amending the rule. The amended rule will not result in any fiscal implications for local health and human services agencies or local governments.

#### Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposed rule because the rule concerns HHSC advisory committees and does not apply to businesses. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be

that the rule reflects the current status of the advisory committees.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on this proposal may be submitted to Jonas Schwartz, Medicaid/CHIP Division Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200; by fax to (512) 730-7472; or by e-mail to [jonas.schwartz@hhsc.state.tx.us](mailto:jonas.schwartz@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

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

The amendment affects Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §351.3. Purpose, Task and Duration of Advisory Committees.

The Texas Health and Human Services Commission (HHSC) receives recommendations from advisory committees established through state and federal laws, rules, and regulations. The following advisory committees are approved by the HHSC Executive Commissioner:

##### (1) Children's Policy Council.

(A) The Children's Policy Council is established under the Human Resources Code, Chapter 22, §22.035. The work group assists the ~~[HHSC Executive Commissioner and]~~ HHS agencies in developing, implementing, and administering certain family support policies [and related long-term care and health programs] for children with disabilities.

(B) The Children's Policy Council studies and makes recommendations on long-term services and supports, ~~[care and]~~ health services and mental health services [policies] and submits a report on its findings and recommendations to the legislature and the HHSC Executive Commissioner each even numbered year.

(C) The Human Resources Code, Chapter 22, §22.035, exempts the Children's Policy Council from the abolishment date required in the Government Code, Chapter 2110, §2110.008.

##### (2) Consumer Direction Work Group.

(A) The Consumer Direction Work Group is established under the Government Code, Chapter 531, Subchapter B, §531.052. The work group advises HHSC on the development, implementation, expansion and delivery of services through consumer direction in all programs offering long-term services and supports.

(B) The Consumer Direction Work Group makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.052, exempts the Consumer Direction Work Group from the abolishment date required in the Government Code, Chapter 2110, §2110.008.

(3) Drug Use Review Board.

(A) The Drug Use Review Board is established under the authority of Title 42, Code of Federal Regulations (CFR), §456.716, and is internally referred to as the Drug Utilization Review Board. This advisory committee advises HHSC about criteria and standards for appropriate drug use in the Medicaid program.

(B) The Drug Use Review Board makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Drug Use Review Board is required by federal regulations and will continue as long as the federal law that requires it remains in effect. The continued need for the committee will be reviewed by August 31, 2016.

(4) HHSC Medicaid and Children's Health Insurance Program (CHIP) Regional Advisory Committees.

(A) The HHSC Executive Commissioner established the HHSC Medicaid and CHIP Regional Advisory Committees under the authority of the Government Code, Chapter 531, Subchapter A, §531.012 and Chapter 533, Subchapter B, §533.021. These advisory committees meet quarterly to discuss the implementation and operations of Medicaid and CHIP programs within the respective regions and to provide recommendations to HHSC.

(B) The HHSC Medicaid and CHIP Regional Advisory Committees report quarterly and make recommendations through HHSC staff assigned to the committees.

(C) The HHSC Medicaid and CHIP Regional Advisory Committees will be automatically abolished August 31, 2016.

(5) Hospital Payment Advisory Committee.

(A) The Hospital Payment Advisory Committee (HPAC) is established under the Human Resources Code, Chapter 32, Subchapter B, §32.022(e). HPAC functions as a subcommittee of the Medical Care Advisory Committee (MCAC). HPAC advises MCAC and HHSC about hospital reimbursement methodologies for inpatient hospital prospective payment and on adjustments for disproportionate share hospitals. The committee advises HHSC to ensure reasonable, adequate, and equitable payments to hospital providers and to address the essential role of rural hospitals.

(B) The HPAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The HPAC will be automatically abolished August 31, 2016.

(6) Medical Care Advisory Committee.

(A) The Medical Care Advisory Committee (MCAC) is established under the authority of Title 42, CFR, §431.12 and the Human Resources Code, Chapter 32, Subchapter B, §32.022. MCAC makes recommendations to HHSC regarding health and medical care policy for the Medicaid program.

(B) The MCAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The MCAC is required by federal regulations and will continue as long as the federal law that requires it remains in effect. The continued need for the committee will be reviewed by August 31, 2016.

(7) Pharmaceutical and Therapeutics Committee.

(A) The Pharmaceutical and Therapeutics Committee is established under the authority of the Government Code, Chapter 531, Subchapter B, §531.074. The committee advises HHSC on the clinical efficacy, safety, cost-effectiveness and any program benefit associated with a drug product and develops recommendations for the preferred drug lists.

(B) The Pharmaceutical and Therapeutics Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.074, exempts the Pharmaceutical and Therapeutics Committee from the abolishment date requirement by the Government Code, Chapter 2110, §2110.008.

(8) Physician Payment Advisory Committee.

(A) The Physician Payment Advisory Committee (PPAC) is created pursuant to the authority granted by the Government Code, Chapter 531, Subchapter A, §531.012. PPAC functions as a subcommittee of the MCAC. PPAC advises MCAC and HHSC about technical issues regarding physician payment policies.

(B) The PPAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The PPAC will be automatically abolished August 31, 2017.

(9) Promoting Independence Advisory Committee.

(A) The Promoting Independence Advisory Committee (PIAC) is authorized by the Government Code, Chapter 531, Subchapter B, §531.02441 and is statutorily known [know] as the Task Force on Ensuring Appropriate Care Settings for Persons with Disabilities. The task force advises HHSC in the development of a comprehensive, effectively working plan to ensure appropriate care settings for persons with disabilities.

(B) The PIAC will meet at the call of the HHSC Executive Commissioner. Not later than September 1 of each year, the Committee shall submit a report to the Commissioner on its findings and recommendations.

(C) The PIAC will be automatically abolished September 1, 2017.

(10) Public Assistance Health Benefit Review and Design Committee.

(A) The Public Assistance Health Benefit Review and Design Committee was established under the Government Code, Chapter 531, Subchapter B, §531.067. This committee provides

recommendations to HHSC regarding health benefits and coverage provided under the Medicaid program, the Children's Health Insurance Program and any other income-based health care program administered by HHSC.

(B) The Public Assistance Health Benefit Review and Design Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.067, exempts the Public Assistance Health Benefit Review and Design Committee from the abolishment date required by the Government Code, Chapter 2110, §2110.008.

(11) Texas System of Care Consortium [Pilot Project Consortium; Expansion Plan].

(A) The Texas System of Care [Pilot Project] Consortium is established under the Government Code, Chapter 531, Subchapter G-1, §531.251. The consortium provides oversight over a state system of care to [shall develop criteria for and implement the expansion of the Texas Integrated Funding Initiative (TIFI) pilot project and criteria to] develop local mental health [care] systems of care in communities for minors who are receiving residential mental health services or inpatient mental health hospitalization or who are at risk of being removed from the minor's home and placed in a more restrictive environment to receive mental health services, including an inpatient mental health hospital, a residential treatment facility, or a facility or program operated by the Department of Family and Protective Services or an agency that is part of the juvenile justice system [placement to receive mental health services].

(B) The Texas System of Care Consortium must submit a report not later than November 1 of every even-numbered year to the legislature and the Council on Children and Families that contains an evaluation of the outcomes of the Texas System of Care and recommendations on strengthening state policies and practices that support local systems of care. [Pilot Project Consortium makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the consortium.]

(C) The Texas System of Care [Pilot Project] Consortium will be automatically abolished effective August 31, 2017 [2012].

(12) Telemedicine and Telehealth Advisory Committee.

(A) The Telemedicine and Telehealth Advisory Committee is established under the authority of the Government Code, Chapter 531, Subchapter B, §531.02172. The committee makes recommendations to HHSC on policy for telemedicine and telehealth services, development of telecommunication technology, and coordinating and monitoring related programs and activities.

(B) The Telemedicine and Telehealth Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Telemedicine and Telehealth Advisory Committee will be automatically abolished effective August 31, 2016.

(13) Advisory Committee on Qualifications for Health Care Translators and Interpreters.

(A) The Advisory Committee on Qualifications for Health Care Translators and Interpreters is established under the authority of the Government Code, §531.704. The committee advises HHSC on qualifications and standards for health care translators and interpreters for persons with limited English proficiency and persons who are deaf and hard of hearing.

(B) The Advisory Committee on Qualifications for Health Care Translators and Interpreters, through regularly scheduled meetings and verbal or written recommendations to HHSC staff assigned to the committee, establishes and recommends qualifications for health care interpreters and health care translators. The committee will:

(i) develop strategies for implementing the regulation of health care interpreters and health care translators;

(ii) make recommendations to HHSC for any legislation necessary to establish and enforce qualifications for health care interpreters and health care translators or for the adoption of rules by state agencies regulating health care practitioners, hospitals, physician offices, and health care facilities that hire health care interpreters or health care translators; and

(iii) perform other activities assigned by HHSC related to health care interpreters or health care translators.

(C) The Advisory Committee on Qualifications for Health Care Translators and Interpreters will be automatically abolished January 1, 2021.

(14) Electronic Health Information Exchange System Advisory Committee.

(A) The Electronic Health Information Exchange System Advisory Committee is established under the authority of the Government Code §531.904. The committee advises HHSC on the development and implementation of the electronic health information exchange system for Medicaid and the Children's Health Insurance Program, including any issue specified by HHSC and the following specific issues:

(i) data to be included in an electronic health record;

(ii) presentation of data;

(iii) useful measures for quality of service and patient health outcomes;

(iv) federal and state laws regarding privacy and management of private patient information;

(v) incentives for increasing health care provider adoption and usage of an electronic health record and the health information exchange system; and

(vi) data exchange with local or regional health information exchanges to enhance:

(I) the comprehensive nature of the information contained in electronic health records; and

(II) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers.

(B) The Electronic Health Information Exchange System Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and verbal or written recommendations to HHSC staff assigned to the committee.

(C) The Electronic Health Information Exchange System Advisory Committee will be automatically abolished August 31, 2016 [2013].

(15) Quality Based Payment Advisory Committee.

(A) The Quality Based Payment Advisory Committee is established under the authority of the Government Code, Chapter 536, Subchapter A, §536.002. The committee makes recommendations

to HHSC on quality of care and cost-efficiency benchmarks, process measures and measurable goals, and quality-based payment systems and other payment initiatives that may be implemented for Medicaid and CHIP.

(B) The Quality Based Payment Advisory Committee must submit an annual report to the Texas Legislature.

(C) The Quality Based Payment Advisory Committee will be automatically abolished September 28, 2015.

(16) Physician Payment for Quality Committee.

(A) The Physician Payment for Quality Committee is established under the authority of the Government Code, Chapter 531, Subchapter A, §531.012. The committee will identify the top ten overused physician services.

(B) The Physician Payment for Quality Committee does not have a reporting requirement.

(C) The Physician Payment for Quality Committee will be automatically abolished September 1, 2015.

(17) Perinatal Advisory Council.

(A) The Perinatal Advisory Council is established under the authority of Health and Safety Code, Chapter 241, Subchapter H, §241.187. The council makes recommendations to HHSC on the designation of levels of care for neonatal or maternal care assigned to hospitals.

(B) The Perinatal Advisory Council must submit a report not later than September 1, 2015, detailing the advisory council's determinations and recommendations to the Department of State Health Services and the Executive Commissioner.

(C) The Perinatal Advisory Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished on September 1, 2025.

(18) Intellectual and Developmental Disability System Redesign Advisory Committee.

(A) The Intellectual and Developmental Disability System Redesign Advisory Committee is established under the authority of Government Code, Chapter 534, Subchapter B, §534.053. The committee will advise HHSC and the Department of Aging and Disability Services (DADS) on the implementation of the acute care services and long-term services and supports system redesign.

(B) The Intellectual and Developmental Disability System Redesign Advisory Committee, in consultation with HHSC and DADS, shall provide recommendations for the continued implementation of and improvements to the acute care and long-term services and supports system. These recommendations will be included in an annual report due on or before September 30th of 2018, 2019, and 2020.

(C) The Intellectual and Developmental Disability System Redesign Advisory Committee is subject to Chapter 551 (Open Meetings), Government Code, and will be automatically abolished January 1, 2024.

(19) STAR Kids Managed Care Advisory Committee.

(A) The STAR Kids Managed Care Advisory Committee is established under the authority of Government Code, Chapter 533, Subchapter A, §533.00254, to advise HHSC on the establishment and implementation of the STAR Kids managed care program.

(B) The committee makes recommendations to HHSC through regularly scheduled meetings and staff assigned to the committee.

(C) The advisory committee is subject to Chapter 551 (Open Meetings), Government Code, and will be automatically abolished September 1, 2016.

(20) STAR+PLUS Nursing Facility Advisory Committee.

(A) The STAR+PLUS Nursing Facility Advisory Committee is established under the authority of Government Code, Chapter 533, Subchapter A, §533.00252, to advise HHSC on implementation of and other activities related to the provision of medical assistance benefits to recipients who reside in nursing facilities and are members of the STAR+PLUS managed care program. The committee will advise HHSC on developing quality-based outcomes and process measures, payments systems, and quality initiatives for nursing facilities and the reporting of outcomes and process measures; transparency of information received from managed care organizations; sharing of data among health and human service agencies; and patient care coordination, quality of care improvement, and cost savings.

(B) The STAR+PLUS Nursing Facility Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and staff assigned to the committee.

(C) The STAR+PLUS Nursing Facility Advisory Committee is subject to Chapter 551 (Open Meetings), Government Code, and will be automatically abolished September 1, 2016.

(21) STAR+PLUS Quality Council.

(A) The STAR+PLUS Quality Council is established under the authority of Government Code, Chapter 533, Subchapter A, §533.00285, to advise HHSC on the development of policy recommendations to ensure eligible recipients receive quality, person-centered, consumer-directed acute care services and long-term services and supports in an integrated setting under the STAR+PLUS Medicaid managed care program.

(B) Reports.

(i) The STAR+PLUS Quality Council in coordination with HHSC, shall submit a report to the executive commissioner that includes: an analysis and assessment of the quality of acute care and long-term services and supports provided under the STAR+PLUS managed care program; recommendations of how to improve the quality of services provided under the program; and recommendations on how to ensure recipients of the program receive person-centered, consumer directed care in the most integrated setting achievable. This report is due no later than November 1st of each year.

(ii) Not later than December 1 of each even-numbered year, HHSC in consultation with the council shall submit a report to the legislature regarding the assessments and recommendations contained in reports submitted by the council during the most recent state fiscal biennium.

(C) The advisory committee is subject to Chapter 551 (Open Meetings), Government Code, and will be automatically abolished January 1, 2017.

(22) Behavioral Health Integration Advisory Committee.

(A) The Behavioral Health Integration Advisory Committee is established under the authority of Government Code, Chapter 533, Subchapter A, §533.00255(e). The committee will address the planning and development needs of a behavioral health services network. The network is developed by a managed care organization, contracted with HHSC, and includes public and private providers of

behavioral health services and ensures adults with serious mental illness and children with serious emotional disturbance have access to a comprehensive array of services.

(B) The Behavioral Health Integration Advisory Committee will seek input from the behavioral health community and issue formal recommendations to HHSC.

(C) The Behavioral Health Integration Advisory Committee will be automatically abolished September 1, 2017.

(23) State Medicaid Managed Care Advisory Committee.

(A) The State Medicaid Managed Care Advisory Committee is established under the authority of Government Code, Chapter 533, Subchapter C, §533.041, to advise HHSC on the statewide operation of Medicaid managed care including program design and benefits, systemic concerns from consumers and providers, efficiency and quality of services, contract requirements, provider network adequacy, and trends in claims processing. Additionally, the committee will assist HHSC with Medicaid managed care issues and disseminate Medicaid managed care best practice information to the Regional Advisory Committees (RACs).

(B) The State Medicaid Managed Care Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and staff assigned to the committee.

(C) The State Medicaid Managed Care Advisory Committee is subject to Chapter 551 (Open Meetings), Government Code. The Government Code, Chapter 533, Subchapter C, §531.044, exempts the State Medicaid Managed Care Advisory Committee from the abolishment date required in Government Code, Chapter 2110, §2110.008.

[(17) Neonatal Intensive Care Unit Council.]

[(A) The Neonatal Intensive Care Unit (NICU) Council is established under the authority of the Government Code, Chapter 531, Subchapter A, §531.012. The committee makes recommendations to HHSC on standards and certification for NICU services and Medicaid reimbursement.]

[(B) The NICU Council must submit a report not later than January 1, 2013, to the HHSC Executive Commissioner, the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate legislative committees on its findings and recommendations required by this section.]

[(C) The NICU Council will be automatically abolished June 1, 2013.]

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 January 13, 2014.

TRD-201400095

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 23, 2014

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



## CHAPTER 354. MEDICAID HEALTH SERVICES

## SUBCHAPTER A. PURCHASED HEALTH SERVICES

### DIVISION 11. GENERAL ADMINISTRATION

#### 1 TAC §354.1177

The Texas Health and Human Services Commission (HHSC) proposes new §354.1177, concerning implementation of Electronic Visit Verification (EVV) System.

#### Background and Justification

Texas Government Code §531.024172, adopted in 2011, requires HHSC, if it is cost-effective and feasible, to implement an EVV system to electronically verify and document through a telephone or computer-based system basic information relating to the delivery of Medicaid acute nursing services. See Act of June 27, 2011, 82nd Legislature, 1st Called Session, Chapter 7, §1.01, 2011 Texas General Laws 5390, 5391-92 (S.B. 7). Acute nursing services, as used in §531.024172, means home health skilled nursing services, home health aide services, and private duty nursing services. Texas Government Code §531.02417. In addition, the 2012-2013 and 2014-2015 appropriation acts require HHSC to reduce the amount of general revenue funds expended for Medicaid by implementing a plan that may include an initiative to conduct "statewide monitoring of community care and home health through electronic visit verification in Medicaid fee-for-service and managed care." General Appropriations Act, 83rd Legislature, Regular Session, Chapter 1411, Article II, Rider 51(b)(8), at II-100 (Health & Human Services Section, Health & Human Services Commission); General Appropriations Act, 82nd Legislature, Regular Session, Chapter 1355, Article II, Rider 61(b)(8), at II-94 (Health & Human Services Section, Health & Human Services Commission).

Based on EVV savings achieved in the Department of Aging and Disability Services (DADS) EVV pilot program, HHSC estimates an approximate 2% savings in Private Duty Nursing (PDN) and approximately 3% savings in Personal Care Services (PCS). Additional savings may be achieved as the estimated savings for PDN and PCS do not include home health nursing services, which will also be included in HHSC's EVV program.

The proposed new rule establishes requirements applicable to contractors providing EVV services for Medicaid-enrolled providers and guidelines for Medicaid-enrolled providers that are required to use an EVV system for services as defined by HHSC. Additionally, the rule defines which Medicaid services require EVV and identifies the data elements that must be included to verify the service occurred.

#### Section-by-Section Summary

Proposed §354.1177(a) defines key terms used in §354.1177.

Proposed §354.1177(b) sets out EVV system requirements.

Proposed §354.1177(c) states that HHSC will certify EVV service providers based on demonstrated ability to meet HHSC-approved minimum standard requirements.

Proposed §354.1177(d) requires use of an EVV system to document the provision of the following attendant and nursing services in a home or community setting: home health skilled nursing; private duty nursing; and personal care services.

Proposed §354.1177(e) lists requirements applicable to providers required to utilize EVV.

Proposed §354.1177(f) allows for grandfathering certain Medicaid-enrolled-provider-based EVV systems if the system meets certain requirements.

Proposed §354.1177(g) states that HHSC will not reimburse a claim for services subject to the EVV requirements unless the data from the EVV system corresponds with the services for which reimbursement is claimed and is consistent with an approved HHSC prior authorization or DADS Plan of Care. This subsection also states that claims may be subject to retrospective review and recoupment.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be a fiscal impact of general revenue savings to state government in the amount of (\$22,229,393) for state fiscal year (SFY) 2014 through SFY 2018: (\$1,065,097) for SFY 2014; (\$4,696,887) for SFY 2015; (\$5,077,454) for SFY 2016; (\$5,478,573) for SFY 2017; and (\$5,911,381) for SFY 2018. This estimate also includes administrative costs, but does not include the impact of EVV in the STAR+PLUS program or DADS programs. EVV also will be implemented for attendant and nursing services in STAR+PLUS and some DADS programs, resulting in additional savings.

#### Small and Micro-business Impact Analysis

HHSC has determined that there may be an impact on small businesses or micro-businesses as Texas Medicaid-enrolled providers may incur additional costs in staff time needed to comply with requirements of EVV. Although Medicaid providers will not be required to pay for EVV transaction costs, implementation of EVV may increase administrative costs for some providers. Providers will be responsible for ensuring service attendants comply with EVV activities (documenting when services begin and end), which will include training for service attendants and staff. In addition, Medicaid-enrolled provider staff will have to work with EVV vendors to provide recipient service delivery schedules in order to document EVV. HHSC does not have sufficient data to provide an estimated fiscal impact.

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

HHSC is unable to determine the economic cost to persons who are required to comply with the amendment as the number of providers subject to the rule is unknown. Medicaid-enrolled providers providing attendant and nursing services in STAR+PLUS, fee-for-service, and approximately six DADS waiver programs will be required to comply with EVV. Additional programs and/or services may be included in EVV at a later date. However, there is no anticipated negative impact on local employment or local economies as the anticipated cost savings from EVV may result overall in less administrative burden for providers.

#### Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the rule, which HHSC believes will achieve cost savings by reducing the incidence of timekeeping and record keeping errors, and reducing fraud, waste, and abuse. By reducing administrative errors, and fraud, waste, and abuse, both the State and Medicaid providers may experience fewer provider appeals, and audit reviews, resulting in less administrative burden.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Deborah Keyser, Senior Program Specialist, Medicaid/CHIP Division, Health and Human Services Commission, P.O. Box 149030, MC-H100, Austin, Texas 78714; by fax to (512) 730-7476; or by e-mail to [deborah.keyser@hhsc.state.tx.us](mailto:deborah.keyser@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for February 11, 2014, from 10:00 a.m. to 11:00 a.m. (central time) at the Brown-Heatly Building, Conference Room 2301, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 462-6284.

#### Statutory Authority

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

This rule is proposed to effectuate Texas Government Code §531.024172, which requires HHSC, if it is cost-effective and feasible, to implement an EVV system to electronically verify and document basic information relating to the delivery of Medicaid acute nursing services.

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

#### §354.1177. Electronic Visit Verification (EVV) System.

(a) Definitions. For purposes of this section, the following terms have the following meanings:

- (1) DADS--Department of Aging and Disability Services.
- (2) Electronic visit verification (EVV) system--A telephone or computer-based system that allows confirmation that services were provided to an eligible recipient according to an approved HHSC prior authorization or DADS Plan of Care.
- (3) HHSC--The Texas Health and Human Services Commission or its designee.

(b) EVV system requirements. An EVV system must:

(1) allow for verification and documentation of the delivery of services in the home or in the community and data associated with those services and must require the confirmation of, among other things:

(A) the service recipient's identity;

(B) the health care service provider's identity;

(C) the date and time the health care service provider begins and ends each service delivery visit;

(D) location at which the service is provided; and

(E) any additional requirements as established by HHSC;

(2) support the services requested in the approved HHSC prior authorization or DADS Plan of Care and claims filed for reimbursement;

(3) be certified by HHSC in accordance with subsection (c) of this section; and

(4) satisfy the policy guidelines specified by HHSC.

(c) Certification. HHSC will certify an entity providing EVV services to health care service providers to provide EVV services based on demonstrated ability to comply with minimum standard requirements approved by HHSC.

(d) Services requiring EVV system use. An EVV system must be used for the following attendant and nursing services:

(1) Home Health Skilled Nursing as provided under §354.1039(a)(1) and (2) of this chapter (relating to Home Health Services Benefits and Limitations);

(2) Private Duty Nursing (PDN) as provided under Chapter 363, Subchapter C of this title (relating to Private Duty Nursing Services); and

(3) Personal Care Services (PCS) as provided under Chapter 363, Subchapter F of this title (relating to Personal Care Services).

(e) Provider requirements. A health care service provider that provides the services listed in subsection (d) of this section must:

(1) use an EVV system to document the provision of health care services;

(2) comply with all documentation requirements as defined by HHSC;

(3) comply with applicable federal and state laws regarding confidentiality of information about a person who is receiving services described in this chapter;

(4) ensure that HHSC may review documentation generated by an EVV system or obtain a copy of that documentation at no charge to HHSC; and

(5) at any time, allow HHSC direct access to the EVV system.

(f) Use of provider-based EVV systems. HHSC at its discretion may grandfather a health care service provider's proprietary EVV system into the HHSC EVV program for a specified certification period provided the system meets the following requirements:

(1) demonstrates the ability to meet all standards and requirements set forth in this rule and HHSC policy;

(2) can comply with all necessary data submission, exchange and reporting requirements as outlined in HHSC policy; and

(3) was in place for use prior to June 1, 2014.

(g) Use of EVV data for claims reimbursement.

(1) HHSC will not pay a claim for reimbursement unless the data from the EVV system corresponds with the health care services for which reimbursement is claimed and is consistent with an approved HHSC prior authorization or DADS Plan of Care.

(2) Paid claims may be subject to retrospective review and recoupment, if appropriate.

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 January 13, 2014.

TRD-201400099

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



## CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

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

#### 1 TAC §355.8441

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

#### Background and Justification

The proposed rule clarifies the Medicaid reimbursement methodology for Physician Assistants (PAs) and Advanced Practice Registered Nurses (APRNs) who provide EPSDT, also known as Texas Health Steps (THSteps), services. Under this proposal, rule language is clarified to indicate that PAs and APRNs providing services under EPSDT, also known as THSteps, will be reimbursed in accordance with the reimbursement methodologies for these provider types as described in existing Texas Administrative Code (TAC) sections. This rule also includes an administrative update to clarify reimbursement for vaccines.

#### Section-by-Section Summary

Proposed §355.8441(3)(A) deletes obsolete language.

Proposed new §355.8441(3)(C) and (4) rule language is clarified to indicate that PAs and APRNs providing services under EPSDT, also known as THSteps, will be reimbursed in accordance with the reimbursement methodologies for these provider types as described in existing TAC sections.

Proposed §355.8441(10) clarifies that the reimbursement for vaccines is the lesser of the provider's billed charges or the fee determined by HHSC.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, during the first five-year period the amendment is in effect, there will be no fiscal impact to the state government. There will be no fiscal impact because the proposed amendment is clarifying rule language to match current practice. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

#### Small and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the amendment. Providers will not be required to alter their business practices as a result of the amendment because the amendment is clarifying rule language to match current practice. There are no anticipated economic costs to persons who are required to comply with the amendment. There is no anticipated negative effect on local employment in geographic areas affected by the amendment.

#### Public Benefit

Ms. McDonald has also determined that for each of the years the amendment is in effect, the expected public benefit is increased public understanding of the way in which APRNs, PAs and vaccines are reimbursed under EPSDT.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-9030; by fax to (512) 730-7484; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which 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 amendment affects the Texas Human Resources Code Chapter 32 and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

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

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

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

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

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

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

(B) Home health agencies (HHAs), under §355.8021(a) of this subchapter; and[-]

(C) Advanced Practice Registered Nurses (APRNs), under §355.8281 of this subchapter (relating to Reimbursement Methodology).

(4) Physician Assistants (PA) are reimbursed the lesser of the provider's billed charges or fees established by HHSC under §355.8093 of this subchapter (relating to Physician Assistants).

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

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



Associates' Services, Provisionally Licensed Psychologists' Services, Maternity Clinic Services, and Tuberculosis Clinic Services);

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

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

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

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

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

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

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

(C) CORFs and ORFs, under §355.8085 of this subchapter;

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

(E) outpatient hospitals, under §355.8061 of this subchapter.

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

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

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

(C) CORFs and ORFs, under §355.8085 of this subchapter;

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

(E) outpatient hospitals, under §355.8061 of this subchapter.

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

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

(10) [(9)] Vaccines [not covered elsewhere] are reimbursed the lesser of the provider's billed charges or the fees determined by HHSC in accordance with §355.8085 of this subchapter [actual cost of the vaccine].

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

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

each dental service, excluding billed charges that are less than or equal to the published Medicaid fee for that service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 January 13, 2014.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



## CHAPTER 356. MEDICAID AND CHIP ELECTRONIC HEALTH INFORMATION SUBCHAPTER B. MEDICAID ELECTRONIC HEALTH RECORD INCENTIVE PAYMENT PROGRAM

### 1 TAC §356.202

The Texas Health and Human Services Commission (HHSC) proposes new §356.202, Audit Review and Recoupment, related to the Texas Medicaid Electronic Health Record (EHR) Incentive Program.

Background and Justification

The American Recovery and Reinvestment Act of 2009 (Public Law 111-5), Division B, Title IV, Section 4201, Medicaid Provider Health Information Technology (HIT) Adoption and Operation Payments, authorizes states, at their option, to provide incentive payments to Medicaid providers for the meaningful use of certified EHR technology. In February 2011, the HHSC implemented a Medicaid EHR incentive program in accordance with the applicable provisions in 42 Code of Federal Regulations Part 495, Subpart D. The purpose of the incentive program is to promote the adoption and meaningful use of interoperable health information technology and qualified electronic health records.

HHSC audits the providers who have received incentive payments through the Texas Medicaid EHR Incentive Program. Proposed new §356.202 describes the audit review and recoupment process for EHR incentive payments.

#### Section-by-Section Summary

Proposed new §356.202 explains that the audit review process is no greater than that which is described in 1 TAC §354.1450 and that HHSC may recoup overpayments made through the Texas Medicaid EHR Incentive Program.

#### Fiscal Note

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

#### Small and Micro-business Impact Analysis

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

#### Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the new rule will be in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed new rule is that the policy regarding EHR incentive program audit review and recoupment will be clearly stated in rule for members of the Medicaid provider community who participate in the Texas Medicaid EHR Incentive Program.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Sylvia Kauffman, Health and Human Services Commission, Medicaid Health Information Technology, MC-560, 4900 N. Lamar Boulevard, Austin, Texas 78751; by fax to (512) 730-7497; or by e-mail to [sylvia.kauffman@hhsc.state.tx.us](mailto:sylvia.kauffman@hhsc.state.tx.us) within 30 days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

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

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

#### §356.202. Audit Review and Recoupment.

(a) Introduction. This section describes the policies HHSC will follow related to the review of audit findings and recoupment of overpayments in the Texas Medicaid Electronic Health Record (EHR) Incentive Program.

(b) Review of audit findings. A review of audit findings is limited to the reviews provided for in §354.1450 of this title (relating to Audits of Medicaid Providers).

(c) Recoupment. HHSC will recoup an EHR incentive payment if it was paid in excess of what a Medicaid provider is eligible to receive under the Texas Medicaid EHR Incentive Program, including a payment resulting from HHSC error or a payment that is identified as part of an audit.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



## CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 371, relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity,

primarily to align the rules with several statutes enacted by the Texas Legislature in its 83rd Regular Session.

#### BACKGROUND AND JUSTIFICATION

The Texas Health and Human Services Commission (HHSC) proposes new §§371.1301, 371.1303, 371.1305, 371.1307, and 371.1309, concerning Investigations. These sections apply to investigations for Medicaid and other health and human services (HHS) programs in Texas.

HHSC also proposes to amend §§371.1601, 371.1603, 371.1605, 371.1607, 371.1609, 371.1611, 371.1613, 371.1615, and 371.1617, concerning General Provisions; §§371.1653, 371.1655, 371.1659, 371.1663, 371.1667, and 371.1669, concerning Grounds for Enforcement; and §§371.1703, 371.1705, 371.1707, 371.1709, 371.1711, 371.1713, 371.1715, 371.1717, and 371.1719, concerning Administrative Actions and Sanctions.

HHSC intends that any obligations or requirements that accrued under Chapter 371, Subchapter G before the effective date of these rules will be governed by the prior rules in Subchapter G, and that those rules continue in effect for this purpose. HHSC does not intend for the amendments to the rules in Subchapter G to affect the prior operation of the rules; any prior actions taken under the rules; any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the rules; any violation of the rules or any penalty, forfeiture, or punishment incurred under the rules before their amendment; or any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment. HHSC additionally intends that any investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the rules had not been amended.

HHSC intends that should any sentence, paragraph, subdivision, clause, phrase, or section of the amended or new rules in Subchapters F and G be determined, adjudged, or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of the subchapter as a whole, or any part or provision hereof other than the part so declared to be unconstitutional, illegal, or invalid, and shall not affect the validity of the subchapter as a whole.

#### Background and Justification

The existing rules in Chapter 371 include various provisions to ensure the integrity of Medicaid and other HHS programs by discovering, preventing, and correcting fraud, waste, and abuse.

The new rules in Chapter 371, Subchapter F, and the amendments to Subchapter G are proposed in light of recent state legislation affecting Texas Government Code Chapter 531, Human Resources Code Chapters 32 and 36; and Texas Health and Safety Code §62.1561, concerning Prohibition of Certain Health Care Providers. Specifically, these rules implement various provisions of three bills enacted in the 83rd Regular Legislative Session: Senate Bills 8, 746, and 1803. See Act of May 27, 2013, 83rd Legislature, Regular Session, Chapter 1311 (S.B. 8); Act of May 22, 2013, 83rd Legislature, Regular Session, Chapter 622 (S.B. 1803); Act of May 21, 2013, 83rd Legislature, Regular Session, Chapter 572 (S.B. 746).

The amendments also incorporate federal and state requirements by including enforcement provisions implementing federal Health Insurance Portability and Accountability Act (HIPAA) regulations contained in 45 C.F.R. Part 164 that consolidated

the privacy, security, and HITECH regulations and became effective in March 2013 and the Texas Medical Records Privacy Act contained in Texas Health and Safety Code Chapter 181.

Finally, the new rules and amendments are being revised to delete unnecessary language, revise or eliminate obsolete terminology, and to provide better and more helpful organization.

More specifically, the new rules proposed in Subchapter F implement the requirements of Texas Government Code §531.1011 and §531.102 and Texas Human Resources Code §32.0291, as amended by Senate Bill 1803, and Texas Government Code §§531.118, 531.119, 531.120, 531.1201, and 531.1202, as enacted by the same bill. As proposed, Subchapter F provides for the investigation of complaints filed with the HHSC's Office of Inspector General (OIG) alleging fraud, waste, or abuse in the Medicaid program. The new rules outline requirements for the investigatory process when OIG receives and initiates an investigation. These provisions include deadlines, training, and an outline of the OIG's processes in investigations.

Subchapter G is amended to implement various provisions of Senate Bills 8, 746, and 1803, Texas Health and Safety Code Chapter 181, and federal rules codified in 45 C.F.R. Part 164. The proposed amendments revise the current process for hearings and informal reviews and include additional components to be included in the notifications of a payment hold or of a prospective recoupment.

#### Section-by-Section Summary

In all sections, the phrase "the OIG" is shortened to "OIG," and the phrase "informal review" is changed to "informal resolution meeting (IRM)." Other changes are as follows:

Section 371.1301 sets out the purpose of the rules in Subchapter F.

Section 371.1303 defines the terms that apply to Subchapters F and G.

Section 371.1305 explains the preliminary investigation and report process for OIG investigations involving allegations of fraud or abuse.

Section 371.1307 provides for full investigation of a complaint within 30 days of completing its preliminary investigation in certain circumstances.

Section 371.1309 provides for investigator training.

Amendments to §371.1601 narrow the scope of the rules to OIG's investigations of fraud, waste and abuse and continue Subchapter G as it existed on September 1, 2013, for investigations pending on that date.

Amendments to §371.1603 clarify the scope of the OIG's responsibilities generally. Among other things, the amendments set out roles for the OIG's medical director and dental director in reviewing certain investigation findings.

Amendments to §371.1605 include the "privacy standards" required by federal (Health Insurance Portability and Accountability Act of 1996) and state (Medical Records Privacy Act) laws and regulations.

Amendments to §371.1607 update the definitions. The definitions in §371.1607 are in addition to the definitions set out in §371.1303, which apply to both Subchapters F and G.

Amendments to §371.1609 pertains to the written notice that OIG provides to providers who are the subject of an investigation. A

new subsection (b) lists the items that must be included in the notice.

Amendment to §371.1611 changes "HHSC" to "OIG."

Amendments to §371.1613 delete language from the due process provision that is repetitive of earlier sections.

Amendments to §371.1615 delete language from the due process provision that is repetitive of earlier sections.

Amendments to §371.1653 add three new paragraphs to the list of reasons for which a person may be subject to an administrative action or sanction for claim and billing issues.

Amendments to §371.1655 add to the list of reasons for which a person may be subject to an administrative action or sanction for program compliance issues.

Amendments to §371.1659 add to the list of reasons for which a person may be subject to an administrative action or sanction for issues related to compliance with health care standards. The additions concern a failure to comply with the "privacy standards" required by federal (Health Insurance Portability and Accountability Act of 1996) and state (Medical Records Privacy Act) laws and regulations.

Amendments to §371.1663 add three provisions to the list of reasons for which a managed care organization or managed care provider may be subject to an administrative action or sanction.

Amendments to §371.1669, which lists the reasons for which a person may be subject to administrative action or sanction for self-dealing, add a provision relating to marketing services in contravention of Texas Government Code §531.02115, program rules, or contract.

Amendments to §371.1703, which lists the reasons for which OIG must terminate the enrollment or contract of any person, add a provision relating to a provider's previous exclusion or debarment from participating in a state or federally funded health care program. The amendments also modify the rule's due process provisions and provide for reinstatement.

Amendments to §371.1705 delete language from the due process provision that is repetitive of earlier sections in this subchapter.

Amendments to §371.1707 delete language from the due process provision that is repetitive of §371.1613.

Amendments to §371.1709 modify the list of reasons for which a payment hold may be instituted and the procedures associated with a payment hold. The amendments also modify the items required in the notice, delete language from the due process provision that is repetitive of §371.1613, and allow for continuation or discontinuation of a payment hold.

Amendments to §371.1711 modify the notice provisions applicable to the recoupment of overpayments and debts. The amendments also delete language from the due process provision that is repetitive of earlier sections.

Amendments to §371.1713 delete language from the due process provision that is repetitive of earlier sections.

Amendments to §371.1715 repeal language in the due process provisions that applies to the assessment of administrative damages or penalties.

Amendments to §371.1717 modify the notice provisions that apply to the reinstatement of a person who has been excluded from Medicaid or any state health care program.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new sections and amendments are in effect, there will be a fiscal impact to state government of \$644,744 general revenue for state fiscal year 2014 and \$1,080,513 general revenue each subsequent fiscal year 2015 through 2018. The 83rd Legislature appropriated funding to HHSC for fiscal years 2014 and 2015. These rule changes are expected to generate savings to the state by discovering, preventing, and correcting fraud, waste, and abuse; however, because these are new requirements, there is insufficient data available to estimate the potential fiscal impact.

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

HHSC has determined that the rules will not have an adverse economic effect on either small businesses or micro-businesses because the proposed rules will not require providers to alter their business practices.

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

HHSC anticipates that there will be an economic cost to persons who are required to comply with the proposed new sections and amendments during the first five years the rules will be in effect. There would be costs to persons for cases that are heard at State Office of Administrative Hearings (SOAH). SOAH costs to persons would be half of total hearing costs while the other half is borne by the agency bringing the administrative charges. However, because these are new requirements, there is insufficient data available to estimate the potential fiscal impact.

There is no anticipated negative impact on local employment or local economies.

#### Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the new sections and amendments are in effect, the expected public benefit is that the rules will ensure the integrity of Medicaid and other HHS programs by discovering, preventing, and correcting fraud, waste, and abuse.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Lisa Barragan, Texas Health and Human Services Commission, 11101 Metric Boulevard, Building I, MC 1350, Austin, Texas 78758; by fax to (512) 833-6484; or by e-mail to Lisa.Barragan@hhsc.state.tx.us within 30 days of publication in the *Texas Register*.

A public hearing is scheduled for February 13, 2014, at 9:00 a.m. at the Lone Star Conference Room located at 11209 Metric Boulevard, Building H, Austin, Texas 78758. Persons requiring further information, special assistance or accommodations should contact Lisa Barragan at (512) 491-2028.

## SUBCHAPTER F. INVESTIGATIONS

### 1 TAC §§371.1301, 371.1303, 371.1305, 371.1307, 371.1309

#### Legal Authority

The new sections are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §32.0322, which directs HHSC to establish certain provider screening, disclosure, and verification criteria by rule.

In addition, Texas Government Code §531.102(g)(4) requires HHSC and the State Office of Administrative Hearings to jointly adopt rules regarding security that a provider must advance before a payment hold administrative hearing; and §531.102(g)(7) requires HHSC, in consultation with the state's Medicaid fraud control unit, to establish exclusions from payment holds.

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

#### §371.1301. Purpose.

(a) Pursuant to §531.033 and §531.102 of the Texas Government Code, the Executive Commissioner is authorized to adopt rules relating to the investigation of a fraud, waste, or abuse complaint filed with the Texas Health and Human Services Commission's Office of Inspector General. The purpose of this chapter is to provide procedures for the investigation of complaints or allegations that will promote their just and efficient disposition.

(b) This chapter governs the investigation of all jurisdictional complaints or allegations before the Commission's Office of Inspector General.

#### §371.1303. Definitions.

For purposes of this subchapter and Subchapter G of this chapter (relating to Administrative Action and Sanctions), the following terms have the meanings assigned as follows:

(1) Full investigation--Review of evidence to support allegation or complaint to resolution through dismissal, settlement, or formal hearing.

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

(3) Jurisdiction--An issue or matter that OIG has authority to investigate and act upon.

(4) OIG--HHSC's Office of Inspector General.

(5) Preliminary investigation--A review by OIG when it either receives a complaint or allegation of fraud, waste, or abuse from any source or identifies any questionable practices to determine whether there is sufficient basis to warrant a full investigation.

§371.1305. Preliminary Investigation and Report.

(a) OIG will determine whether it has sufficient information and whether it has jurisdiction within 30 days of receipt of a complaint or allegation of fraud, waste, or abuse; within 30 days of OIG having reason to believe that fraud or abuse has occurred; or within 30 days of OIG having identified possible questionable practices. If OIG has jurisdiction and sufficient information to initiate an investigation, OIG will conduct a preliminary investigation to determine whether there is sufficient basis to warrant a full investigation. OIG may also collaborate with federal or other state authorities in conducting audits or investigations and in taking enforcement measures in response to program violations.

(1) After completing its preliminary investigation, OIG may, at its discretion, initiate settlement discussions of an administrative case with the person who is the subject of the investigation. If the matter cannot reasonably be settled or if OIG determines that further investigation is required before the propriety of settlement or other enforcement can be evaluated, OIG may conduct a full investigation.

(2) If, at any point during its investigation, OIG determines that an overpayment resulted without wrongdoing, OIG may refer the matter for routine payment correction by HHSC's fiscal agent or an operating agency or may offer a payment plan.

(b) Once the preliminary investigation is completed, OIG will review the allegations of fraud, abuse, or questionable practices, and all facts and evidence relating to the allegation and will prepare a preliminary report before the allegation of fraud or abuse will proceed to a full investigation. The preliminary report will document the following:

- (1) the allegation that is the basis of the report;
- (2) the evidence reviewed;
- (3) the procedures used to conduct the preliminary investigation, if available;
- (4) the findings of the preliminary investigation; and
- (5) whether a full investigation is warranted.

(c) OIG will also consider the factors listed in §371.1603(f)(1) of this chapter (relating to Legal Basis and Scope).

(d) OIG will maintain a record of all allegations of fraud or abuse against a provider containing the date each allegation was received or identified and the source of the allegation, if available. This record is confidential under Texas Government Code §531.1021(g) and subject to Texas Government Code §531.1021(h).

§371.1307. Full Investigation.

Within 30 days of completion of the preliminary investigation, OIG will refer the case to the state's Medicaid fraud control unit if a provider is suspected of fraud or abuse involving criminal conduct or if OIG learns or has reason to suspect that a provider's records are being withheld, concealed, destroyed, fabricated, or in any way falsified. This referral will not preclude OIG from continuing its investigation of the provider.

§371.1309. Training of Investigators.

Investigators who investigate Medicaid providers for potential fraud or abuse will receive annual training on notice, service, due process, and any additional regulations or policies that may affect the OIG investigatory process.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



## SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS

### DIVISION 1. GENERAL PROVISIONS

**1 TAC §§371.1601, 371.1603, 371.1605, 371.1607, 371.1609, 371.1611, 371.1613, 371.1615, 371.1617**

Legal Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §32.0322, which directs HHSC to establish certain provider screening, disclosure, and verification criteria by rule.

In addition, Texas Government Code §531.102(g)(4) requires HHSC and the State Office of Administrative Hearings to jointly adopt rules regarding security that a provider must advance before a payment hold administrative hearing; and §531.102(g)(7) requires HHSC, in consultation with the state's Medicaid fraud control unit, to establish exclusions from payment holds.

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

§371.1601. Applicability.

(a) Unless otherwise provided, this subchapter applies to all administrative actions and sanctions imposed by the OIG and arising out of an investigation of fraud, waste, or abuse [Texas Health and Human Services Commission (HHSC)].

(b) If an investigation, utilization review, or audit procedure is conducted on a person whose program area is regulated by another health and human services (HHS) agency, the substantive rules governing that program area also apply.

(c) This subchapter supersedes any other HHS agency rule regarding enforcement involving fraud, waste, or abuse.

(d) This subchapter does not apply to system recoupments or other administrative or clerical corrections.

(e) An investigation pending on September 1, 2013, is governed by this subchapter as it existed on that date, unless by mutual agreement of the parties.

§371.1603. Legal Basis and Scope.

(a) The statutory authority for this subchapter is provided by:

- (1) Texas Human Resources Code Chapters 32 and 36;
- (2) Texas Government Code Chapter 531;
- (3) Title 42, United States Code; and
- (4) Title 42, Code of Federal Regulations; ~~and~~
- ~~{(5) the Social Security Act.}~~

(b) OIG is responsible for:

(1) preventing, detecting, auditing, inspecting, reviewing, and investigating [the investigation of] fraud, abuse, overpayments, and waste in the provision and delivery of [within] Medicaid and all other state-administered HHS programs and services that are wholly or partly federally funded;

(2) minimizing the opportunity for fraud, abuse, overpayments, and waste within Medicaid and other HHS programs;

(3) protecting recipients of federally funded programs; and

(4) ensuring compliance with [the enforcement of] state law relating to the provision of health and human services.

(c) OIG may take administrative enforcement measures against a person or an affiliate of a person based upon an investigation or finding, including an audit finding, in the Medicaid or other HHS programs.

(d) When OIG receives information regarding a possible program violation or possible fraud, abuse, overpayment, or waste, OIG will conduct an investigation pursuant to Subchapter F of this chapter (relating to Investigations). [may conduct an integrity review to determine whether there is sufficient basis to warrant a full audit or investigation. OIG may also collaborate with other federal or state authorities in conducting audits or investigations and in taking enforcement measures in response to program violations.]

~~{(1) After completing its integrity review, OIG may, at its discretion, initiate settlement discussions of an administrative case with the person who is the subject of the audit or investigation. If the matter cannot reasonably be settled or if OIG determines that further audit or investigation is required before the propriety of settlement or other enforcement can be evaluated, OIG may conduct a full audit or investigation.}~~

~~{(2) If, at any point during its investigation, OIG determines that an overpayment resulted without wrongdoing, OIG may refer the matter for routine payment correction by the agency's fiscal agent or an operating agency or may offer a payment plan.~~

(e) When OIG conducts a risk analysis, creates an audit plan, or receives a request to conduct an audit service or agreed-upon procedure, OIG may initiate an audit service, singly or in combination with an investigation. OIG may also collaborate with other federal or state authorities in conducting audit services and enforcing audit findings and questioned costs.

(f) OIG may take administrative actions, sanctions, or both against a person or an affiliate of a person who commits a program violation.

(1) In determining whether to open a full scale investigation or administer appropriate administrative actions and sanctions, OIG will consider:

- (A) the nature of the program violation;
- (B) evidence of knowledge and intent;

(C) the seriousness of the program violation;

(D) the extent of the violation;

(E) prior non-compliance issues;

(F) prior imposition of sanctions, damages, or penalties;

(G) willingness to comply with program rules;

(H) efforts to interfere with an investigation or witnesses;

(I) recommendations of peer review groups;

(J) program violations within Medicaid, Medicare, Titles V, XIX, XX, CHIP, and other HHS programs;

(K) pertinent affiliate relationships;

(L) past and present compliance with licensure and certification requirements;

(M) history of criminal, civil, or administrative liability. The lack of a prior record is considered neutral; and

(N) any other relevant information or analysis deemed appropriate by OIG.

(2) Administrative enforcement measures include:

(A) making referrals for further investigation or action;

(B) taking an administrative action;

(C) imposing a sanction;

(D) assessing damages, penalties, costs related to an administrative appeal, and investigative and administrative costs; or

(E) abating, denying, or postponing a decision to enroll a person for participation in the Medicaid program.

(3) OIG will determine by prima facie evidence that a person or affiliate has committed a program violation prior to taking administrative enforcement measures. Upon a credible allegation of fraud, however, OIG may impose the sanction of payment hold before establishing prima facie evidence.

(A) The medical director employed by OIG ensures that any investigative findings based on medical necessity or the quality of medical care have been reviewed by a qualified expert as described by the Texas Rules of Evidence before OIG imposes a payment hold or seeks recoupment of an overpayment, damages, or penalties.

(B) The dental director employed by OIG ensures that any investigative findings based on the necessity of dental services or the quality of dental care have been reviewed by a qualified expert as described by the Texas Rules of Evidence before OIG imposes a payment hold or seeks recoupment of an overpayment, damages, or penalties.

(g) OIG has authority to settle any administrative issue or case. All settlement negotiations are confidential according to the protections in the Texas Government Code.

(h) At OIG's sole discretion, overpayments may be collected in a lump sum or through installments. OIG may collect recoupments by deducting them incrementally from prospective or retrospective payments owed to the person. A payment plan will be for a reasonable length of time as determined by OIG considering the circumstances of each individual case.

(i) Nothing in these rules is intended to prevent concurrent administrative, civil, or criminal investigation and action. Subject to ex-

press statutory limitations, OIG may proceed with recoupment or other administrative enforcement concurrently with judicial prosecution of the same matter.

(j) An OIG case remains open until:

- (1) the investigation is complete;
- (2) the case is settled;

(3) OIG makes an administrative determination that closes the case for lack of evidence or appropriate administrative enforcement; or

(4) all administrative remedies have been exhausted.

§371.1605. Provider Responsibility.

(a) A Medicaid or other HHS provider is responsible for:

(1) the provider's own actions and omissions; and

(2) the actions and omissions of the provider's affiliates, employees, contractors, vendors, and agents.

(b) All persons and affiliates who participate in the Medicaid and other HHS programs are required to know:

(1) federal and state law, including rules and regulations, that govern Medicaid or other HHS programs during the period of time that the person participates;

(2) the portions of the Texas Medicaid Provider Procedures Manual regarding the services that the person provides, including provisions that are [portions] applicable to all providers;

(3) other HHS program and procedure manuals and other official program manuals and publications;

(4) all publicly available official interpretations, explanations, or bulletins regarding services the person provides;

(5) the contents of any provider enrollment agreement or application;

(6) any applicable managed care contractual or publicly available policy provisions related to HHS program integrity; [and]

(7) federal sentencing guidelines and United States Department of Health and Human Services guidelines governing corporate compliance programs; and[-]

(8) federal and state privacy and security laws and regulations regarding use and disclosure of protected health information and to have the appropriate protocols in place in the event of a breach of these standards.

(c) A Medicaid or other HHS provider's responsibility under subsection (a)(2) of this section does not absolve the provider's affiliates, contractors, vendors, or agents from their own personal responsibility and liability.

§371.1607. Definitions.

For purposes of this subchapter, the following terms have the meanings assigned as follows: [The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.]

(1) Abuse--A practice by a provider [Practices] that is [are] inconsistent with sound fiscal, business, or medical practices and that results [result] in an unnecessary [program] cost to the Medicaid program; the [or in] reimbursement for services that are not medically necessary or that fail to [; do not] meet professionally recognized standards for health care; or a practice by a recipient that results in an unnecessary cost to the Medicaid program. [, or do not meet standards required

by contract, statute, regulation, previously sent interpretations of any of the items listed, or authorized governmental explanations of any of the foregoing.]

(2) Address of record--An HHS provider's current mailing or physical address, including a working fax number, as provided to the appropriate health and human service program's claims administrator or as required by contract, statute, or regulation; a non-HHS provider's last known address as reflected by the records of the United States Postal Service or the Texas Secretary of State's records for business organizations, if applicable.

(3) [(2)] Affiliate; affiliate relationship--A person who:

(A) has a direct or indirect ownership interest (or any combination thereof) of 5% or more in the person;

(B) is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity that interest is equal to or exceeds 5% of the value of the property or assets of the person;

(C) is an officer or director of the person, if the person is a corporation;

(D) is a partner of the person, if the person is organized as a partnership;

(E) is an agent or consultant of the person;

(F) is a consultant of the person and can control or be controlled by the person or a third party can control both the person and the consultant;

(G) is a managing employee of the person, that is, a person (including a general manager, business manager, administrator or director) who exercises operational or managerial control over a person or part thereof, or directly or indirectly conducts the day-to-day operations of the person or part thereof;

(H) has financial, managerial, or administrative influence over the operational decisions of a person;

(I) shares any identifying information with a person, including tax identification numbers, social security numbers, bank accounts, telephone number, business address, national provider numbers, Texas provider numbers, and corporate or franchise name; or

(J) has a former relationship with the person as described in subparagraphs (A) - (I) of this paragraph, but is no longer described, because of a transfer of ownership or control interest to an immediate family member or a member of the person's household of this section within the previous five years if the transfer occurred after the affiliate received notice of an audit, review, investigation, or potential adverse action, sanction, board order, or other civil, criminal, or administrative liability.

(4) [(3)] Agent--Any person, company, firm, corporation, employee, independent contractor, or other entity or association legally acting for or in the place of another person or entity.

(5) Allegation of fraud--Allegation of Medicaid fraud received by HHSC from any source that has not been verified by the state, including an allegation based on:

(A) a fraud hotline complaint;

(B) claims data mining;

(C) data analysis processes; or

(D) a pattern identified through provider audits, civil false claims cases, or law enforcement investigations.



(6) [(4)] At the time of the request--Immediately upon request and without delay.

(7) [(5)] Audit--A financial audit, attestation engagement, performance audit, compliance audit, economy and efficiency audit, effectiveness audit, special audit, agreed-upon procedure, nonaudit service, or review conducted by or on behalf of the state or federal government. An audit may or may not include site visits to the provider's place of business.

(8) [(6)] Auditor--The qualified person, persons, or entity performing the audit on behalf of the state or federal government.

(9) [(7)] Business day--A day that is not a Saturday, Sunday, or state legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or state legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(10) [(8)] CFR--The Code of Federal Regulations.

(11) [(9)] CHIP--The Texas Children's Health Insurance Program or its successor.

(12) [(10)] Claim--

(A) A written or electronic application, request, or demand for payment by the Medicaid or other HHS program for health care services or items; or

(B) A submitted request, demand, or representation that states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under the Medicaid or other HHS program.

(13) [(11)] Claims administrator--The entity designated by an operating agency to process and pay Medicaid or HHS program provider claims.

(14) [(12)] Closed-end contract--A contract or provider agreement for a specific period of time. It may include any specific requirements or provisions deemed necessary by OIG to ensure the protection of the program. It must be renewed for the provider to continue to participate in the Medicaid or other HHS program.

(15) [(13)] CMS--The Centers for Medicare & Medicaid Services or its successor. CMS is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and CHIP.

(16) [(14)] Commission--The Texas Health and Human Services Commission or its successor or designee.

(17) [(15)] Controlled substance--"Controlled substance" as defined by the Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481) or its successor and the Federal Controlled Substances Act (21 U.S.C. §802(a)(6) et seq.) or its successor.

(18) [(16)] Conviction or convicted--Means that:

(A) a judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether:

(i) there is a post-trial motion or an appeal pending;

or

(ii) the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;

(B) a federal, state, or local court has made a finding of guilt against an individual or entity;

(C) a federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity; or

(D) an individual or entity has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction has been withheld.

(19) [(17)] Costs related to an administrative appeal--Such costs include:

(A) the hourly State Office of Administrative Hearings (SOAH) or other administrative hearing process costs;

(B) court reporter costs and the costs of transcripts and copies of transcripts developed in preparation for, during, or after the hearing;

(C) OIG's or other agency's costs associated with discovery, including the costs of depositions, subpoenas, service of process, and witness expenses;

(D) witness expenses incurred at any time related to the administrative appeal, including during discovery or the case in chief;

(E) travel and per diem for witnesses and OIG or other staff and witness fee;

(F) cost of preparation time, including salaries, travel and per diem, any additional costs associated with the appeal hearing or the preparation for the appeal hearing;

(G) all other reasonable costs, including attorney's fees, associated with any further litigation of the case and the preparation for that litigation; and

(H) costs incurred during the investigation or audit of a case.

(20) [(18)] Credible allegation of fraud--An allegation of fraud that has been verified by the state. An allegation is considered to be credible when the commission has verified that the allegation has indicia of reliability and has carefully reviewed all allegations, facts, and evidence. The commission will act judiciously on a case-by-case basis. [from any source, including fraud hotline complaints, claims data mining and patterns identified through provider audits, civil false claims cases law enforcement investigations.]

(21) Day--A calendar day.

(22) [(19)] Delivery of a health care item or service--Includes the provision of any item or service to an individual to meet his or her physical, mental or emotional needs or well-being, whether or not reimbursed under Medicare, Medicaid, or any federal health care program.

(23) [(20)] Exclusion--The suspension of a provider or any person from being authorized under the Medicaid program to request reimbursement of items or services furnished by that specific provider. [Prohibition from participation in Medicaid.]

(24) [(21)] Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission or its successor.

(25) [(22)] False statement or misrepresentation--Any statement or representation that is inaccurate, incomplete, or not true.

(26) [(23)] Federal financial participation (FFP)--The federal government's share of a state's expenditures under the Medicaid and other HHS programs and other benefit programs.

(27) [(24)] Federal health care program--Any plan or program that provides health benefits, whether directly, through insurance,

or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the federal employee health insurance program under Chapter 89 of Title 5, United States Code).

(28) [(25)] Field work--With respect to an investigation or audit, field work may include site visits to the provider as well as consultation with expert reviewers, HHS staff subject matter experts, and other state or federal agencies.

(29) [(26)] Fraud--Any act that constitutes fraud under applicable federal or state law, including any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. Fraud may include any acts prohibited by the Texas Human Resources Code Chapter 36 or Texas Penal Code Chapter 35A.

(30) Furnished--Items or services provided or supplied, directly or indirectly, by any individual or entity. This includes items and services manufactured, distributed, or otherwise provided by individuals or entities that do not directly submit claims to Medicare, Medicaid, or any federal health care program, but that supply items or services to providers, practitioners, or suppliers who submit claims to these programs for such items or services. This term does not include individuals and entities that submit claims directly to these programs for items and services ordered or prescribed by another individual or entity.

(A) "Directly"--The provision of items and services by individuals or entities (including items and services provided by them, but manufactured, ordered, or prescribed by another individual or entity) who submit claims to Medicare, Medicaid, or any federal health care program.

(B) "Indirectly"--The provision of items and services manufactured, distributed, or otherwise supplied by individuals or entities who do not directly submit claims to Medicare, Medicaid, or other federal health care programs, but that provide items and services to providers, practitioners, or suppliers who submit claims to these programs for such items and services.

(31) [(27)] Health information--Any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and that relates to:

- (A) the past, present, or future physical or mental health or condition of an individual;
- (B) the provision of health care to an individual; or
- (C) the past, present, or future payment for the provision of health care to an individual.

(32) [(28)] Health maintenance organization (HMO)--A public or private organization organized under state law that is a federally qualified HMO or that meets the definition of HMO within this state's Medicaid plan.

(33) [(29)] HHS--Health and human services. Means:

- (A) a health and human services agency under the umbrella of the Commission or its successor, including the Commission;
- (B) a program or service provided under the authority of the Commission, including Medicaid and CHIP; or
- (C) a health and human services agency, including those agencies delineated in Texas Government Code §531.001.

(34) [(30)] Immediate family member--A person's spouse (husband or wife); natural or adoptive parent; child or sibling; step-parent, stepchild, stepbrother or stepsister; father-, mother-, daughter-,

son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

(35) [(31)] Indirect ownership interest--Any ownership interest in an entity that has an ownership interest in another entity. The term includes an ownership interest in any entity that has an indirect ownership interest in the entity at issue.

(36) [(32)] Inducement--An attempt to entice or lure an action on the part of another in exchange for, without limitation, cash in any amount, entertainment, any item of value, a promise, specific performance, or other consideration.

(37) "Item" or "service" includes--

(A) Any item, device, medical supply or service provided to a patient:

(i) that is listed in an itemized claim for program payment or a request for payment; or

(ii) for which payment is included in other federal or state health care reimbursement methods, such as a prospective payment system; and

(B) In the case of a claim based on costs, any entry or omission in a cost report, books of account, or other documents supporting the claim.

(38) [(33)] Knew or should have known--A person, with respect to information, knew or should have known when a person had or should have had actual knowledge of information, acted in deliberate ignorance of the truth or falsity of the information, or acted in reckless disregard of the truth or falsity of the information. Proof of a person's specific intent to commit a program violation is not required in an administrative proceeding to show that a person acted knowingly.

(39) [(34)] Managed care plan--A plan under which a person undertakes to provide, arrange for, pay for, or reimburse, in whole or in part, the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include an insurance plan that indemnifies an individual for the cost of health care services.

(40) [(35)] Managing employee--An individual, regardless of the person's title, including a general manager, business manager, administrator, officer, or director, who exercises operational or managerial control over the employing entity, or who directly or indirectly conducts the day-to-day operations of the entity.

(41) [(36)] MCO--Managed care organization. Has the meaning described in §353.2 of this title (relating to Definitions), and for purposes of this chapter includes an MCO's special investigative unit under Texas Government Code §531.113(a)(1), and any entity with which the MCO contracts for investigative services under Texas Government Code §531.113(a)(2).

(42) [(37)] MCO provider--An association, group, or individual health care provider furnishing services to MCO members under contract with an MCO.

(43) [(38)] Medicaid or Medicaid program--The Texas medical assistance program established under Human Resources Code Chapter 32 and regulated in part under Title 42 CFR Part 400 or its successor.

(44) [(39)] Medicaid-related funds--Any funds that:

(A) a provider obtains or has access to by virtue of participation in Medicaid; or

(B) a person obtains through embezzlement, misuse, misapplication, improper withholding, conversion or misappropriation of funds that had been obtained by virtue of participation in Medicaid.

(45) [(40)] Medicaid Provider Integrity Division (MPI)--The division within OIG that investigates provider or contractor fraud and abuse in Medicaid and other HHS programs or its successor.

(46) [(41)] Medical assistance--Includes all of the health care and related services and benefits authorized or provided under state or federal law for eligible individuals of this state.

(47) [(42)] Member of household--An individual who is sharing a common abode as part of a single-family unit, including domestic employees, partners, and others who live together as a family unit.

(48) [(43)] MFCU--The Medicaid Fraud Control Unit of the Texas Office of the Attorney General or its successor.

(49) [(44)] OAG--Office of the Attorney General of Texas or its successor.

(50) [(45)] OIG--Office of the Inspector General, or its successor, [The office] within the Health and Human Service Commission, [responsible for:]

[(A) the investigation of fraud, abuse, and waste;]

[(B) ensuring program integrity within the Medicaid program and other health and human services provided by the state; and]

[(C) the enforcement of state law relating to the provision of those services.]

(51) [(46)] OMB--The Federal Office of Management and Budget or its successor.

(52) [(47)] Operating agency--A state agency that operates any part of the Medicaid or other HHS program.

(53) [(48)] Overpayment--The amount paid by Medicaid or other HHS program or the amount collected or received by a person by virtue of the provider's participation in Medicaid or other HHS program that exceeds the amount to which the provider or person is entitled under §1902 of the Social Security Act or other state or federal statutes for a service or item furnished within the Medicaid or other HHS programs. This includes:

(A) any funds collected or received in excess of the amount to which the provider is entitled, whether obtained through error, misunderstanding, abuse, misapplication, misuse, embezzlement, or improper retention or fraud;

(B) recipient trust funds and funds collected by a person from recipients if collection was not allowed by Medicaid or other HHS program policy; or

(C) questioned costs identified in a final audit report that found that claims or cost reports submitted in error resulted in money paid in excess of what the provider is entitled to under an HHS program, contract, or grant.

(54) [(49)] Ownership interest--A direct or indirect ownership interest (or any combination thereof) of 5% or more in the equity in the capital, the stock, the profits, or other assets of a person or any mortgage, deed, trust or note, or other obligation secured in whole or in part by the property or assets of the person.

(55) [(50)] Payment hold (suspension of payments)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation

and legal proceedings, between the provider and the Commission or an operating agency or its agent(s) are resolved. This is a temporary denial of reimbursement under the Medicaid or other HHS program for items or services furnished by a specified provider.

(56) [(51)] Person--Any legally cognizable entity, including an individual, firm, association, partnership, limited partnership, corporation, agency, institution, MCO, Special Investigative Unit, CHIP participant, trust, non-profit organization, special-purpose corporation, limited liability company, professional entity, professional association, professional corporation, accountable care organization, or other organization or legal entity.

(57) [(52)] Person with a disability--An individual with a mental, physical, or developmental disability that substantially impairs the individual's ability to provide adequately for the person's care or his or her own protection, and:

(A) who is 18 years of age or older; or

(B) who is under 18 years of age and who has had the disabilities of minority removed.

(58) Physician--An individual licensed to practice medicine in this state, a professional association composed solely of physicians, a partnership composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, or a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Texas Occupations Code.

(59) [(53)] Practitioner--A physician or other individual licensed or certified under state law to practice the individual's [their] profession.

(60) [(54)] Prima facie--Sufficient to establish a fact or raise a presumption unless disproved.

(61) [(55)] Probationary contract--A contract or provider agreement for any period of time. It may include any special requirements or provisions deemed necessary by OIG to ensure the protection of the program. It must be renewed by OIG for the provider to continue to participate in the program. It may also be referred to as a provisional contract, depending upon the terminology used by the provider's agency and program area.

(62) [(56)] Professionally recognized standards of health care--Statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within the state of Texas.

(63) [(57)] Program violation--A failure to comply with a Medicaid or other HHS provider contract or agreement, the Texas Medicaid Provider Procedures Manual or other official program publications, or any state or federal statute, rule, or regulation applicable to the Medicaid or other HHS program, including any action that constitutes grounds for enforcement as delineated in this subchapter that forms the basis for an investigation, audit, or other review or that results in a notice of potential or final adverse action for cause.

(64) [(58)] Provider--Any person, including an MCO and its subcontractors, that:

(A) is furnishing Medicaid or other HHS services under a provider agreement or contract in force with a Medicaid or other HHS operating agency;

(B) has a provider or contract number issued by the Commission or by any HHS agency or program or their designee to provide medical assistance, Medicaid, or any other HHS service in any

HHS program, including CHIP, under contract or provider agreement with the Commission, its designee, or an HHS agency; or

(C) provides third-party billing services under a contract or provider agreement with the Commission or its designee.

(65) [(59)] Provider agreement--A contract, including any and all amendments and updates, with Medicaid or other HHS program to subcontract services, or with an MCO to provide services.

(66) [(60)] Provider screening process--The process that a person participates in to become eligible to participate and enroll as a provider in Medicaid or other HHS program. This process includes enrollment under this chapter or Chapter 352 of this title, 42 CFR Part 1001, or other processes delineated by statute, rule or regulation.

(67) [(61)] Provisional contract--A contract or provider agreement for any period of time. It may include any special requirements or provisions deemed necessary by OIG to ensure the protection of the program. It must be renewed by OIG for the provider to continue to participate in the program. It may also be referred to as a probationary contract, depending upon the terminology used by the provider's agency and program area.

(68) [(62)] Reasonable request--Request for access, records, documentation or other items deemed necessary or appropriate by OIG or a Requesting Agency to perform an official function, and made by a properly identified agent of OIG or a Requesting Agency during hours that a person, business, or premises is open for business.

(69) [(63)] Recipient--A person eligible for and covered by the Medicaid or any other HHS program.

(70) [(64)] Records and documentation--Records and documents in any form, including electronic form, which include:

(A) medical records, charting, other records pertaining to a patient, radiographs, laboratory and test results, molds, models, photographs, hospital and surgical records, prescriptions, patient or client assessment forms, and other documents related to diagnosis, treatment or service of patients;

(B) billing and claims records, supporting documentation such as Title XIX forms, delivery receipts, and any other records of services provided to recipients and payments made for those services;

(C) cost reports, documentation supporting cost reports;

(D) managed care encounter data, financial data necessary to demonstrate solvency of risk-bearing providers;

(E) ownership disclosure statements, articles of incorporation, bylaws, corporate minutes or other documentation demonstrating ownership of corporate entities;

(F) business and accounting records, business and accounting support documentation;

(G) statistical documentation, computer records and data;

(H) clinical practice records, including patient sign-in sheets, employee sign-in sheets, office calendars, daily or other periodic logs, employment records, and payroll documentation related to items or services rendered under a HHS program; and

(I) records affidavits, business records affidavits, evidence receipts, and schedules.

(71) [(65)] Recoupment of overpayment--A sanction imposed to recover funds paid to a provider or person to which they were not entitled.

(72) [(66)] Requesting agency--Includes OIG, the OAG or its successor's Medicaid Fraud Control Unit or Civil Medicaid Fraud Division, any other state or federal agency authorized to conduct compliance, regulatory, or program integrity functions on a provider, a person, or the services rendered by the provider or person.

(73) [(67)] Restricted reimbursement--An administrative sanction that limits or denies payment of a provider's Medicaid or other HHS program claims for specific procedures for a specified time period.

(74) [(68)] Risk analysis--The process of defining and analyzing the dangers to individuals, businesses, and governmental entities posed by potential natural and human-caused adverse events. A risk analysis can be either quantitative, which involves numerical probabilities, or qualitative.

(75) [(69)] Sanction--Any administrative enforcement measure imposed by OIG pursuant to this subchapter other than administrative actions defined in §371.1701 of this subchapter (relating to Administrative Actions). [~~Sanctions include termination of Medicaid or other HHS contracts or agreements, mandatory exclusion, permissive exclusion, payment hold, recoupment of overpayments, restricted reimbursement, assessment of damages, penalties, and other costs, and recoupment of audit overpayments.~~]

(76) [(70)] Sanctioned entity--An entity that has been convicted of any offense described in 42 CFR §§1001.101 - 1001.401 or has been terminated or excluded from participation in Medicare, Medicaid in Texas, or any other state or federal health care program.

(77) [(71)] Services--The types of medical assistance specified in §1905(a) of the Social Security Act (42 U.S.C. §1396d(a)) and other HHS program services authorized under federal and state statutes that are administered by the Commission and other HHS agencies.

(78) [(72)] SIU--A Special Investigative Unit of an MCO as defined under Texas Government Code §531.113(a)(1).

(79) SOAH--The State Office of Administrative Hearings as explained in Texas Government Code §2003.012.

(80) [(73)] Social Security Act--Legislation passed by Congress in 1965 that established the Medicaid program under Title XIX of the Act and created the Medicare program under Title XVIII of the Act.

(81) [(74)] Solicitation--Offering to pay or agreeing to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing a patient or patronage for or from a person licensed, certified, or registered or enrolled as a provider or otherwise by a state health care regulatory or HHS agency.

(82) [(75)] State health care program--A State plan approved under Title XIX, any program receiving funds under Title V or from an allotment to a State under such Title, any program receiving funds under Subtitle I of Title XX or from an allotment to a State under Subtitle I of Title XX, or any State child health plan approved under Title XXI.

(83) [(76)] Substantial contractual relationship--A relationship in which a person has direct or indirect business transactions with an entity that, in any fiscal year, amounts to more than \$25,000 or 5 percent of the entity's total operating expenses, whichever is less.

(84) [(77)] Suspension of payments (payment hold)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation and legal proceedings, between the provider and the Commission or an operating agency or its agent(s) are resolved. This is a temporary de-

nial of reimbursement under the Medicaid or other HHS program for items or services furnished by a specified provider.

(85) [(78)] System recoupment--Any recoupment to recover funds paid to a provider or other person to which they were not entitled, by means other than the imposition of a sanction under these rules. It may include any routine payment correction by an agency or an agency's fiscal agent to correct an overpayment that resulted without any alleged wrongdoing.

(86) [(79)] Terminated--Means:

(A) with respect to a Medicaid or CHIP provider, a state Medicaid program or CHIP has taken an action to revoke the provider's billing privileges, and the provider has exhausted all applicable appeal rights or the timeline for appeal has expired; and

(B) with respect to a Medicare provider, supplier, or eligible professional, the Medicare program has revoked the provider or supplier's billing privileges, and the provider has exhausted all applicable appeal rights or the timeline for appeal has expired.

(87) [(80)] Terminated for cause--Termination based on allegations related to fraud, program violations, integrity, or improper quality of care.

(88) [(81)] Title XVIII--Title XVIII (Medicare) of the Social Security Act, codified at 42 U.S.C. §§1395, *et seq.*

(89) [(82)] Title XIX--Title XIX (Medicaid) of the Social Security Act, codified at 42 U.S.C. §§1396-1, *et seq.*

(90) [(83)] Title XX--Title XX (Social Services Block Grant) of the Social Security Act, codified at 42 U.S.C. §§1397, *et seq.*

(91) [(84)] Title XXI--Title XXI (State Children's Health Insurance Program (CHIP)) of the Social Security Act, codified at 42 U.S.C. §§1397aa, *et seq.*

(92) [(85)] U.S.C.--United States Code.

(93) [(86)] Vendor hold--Any legally authorized hold or lien by any state or federal governmental unit against future payments to a person. Vendor holds may include tax liens, state or federal program holds, liens established by the OAG Collections Division, and State Comptroller voucher holds.

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

§371.1609. *Notice, Service, and Subpoena Authority.*

(a) Service of notice. [~~Notice and service and subpoena authority.~~]

(1) When [~~written notice of an OIG administrative action, sanction, assessment of damages or penalties, or other action is~~] required by this subchapter, OIG provides written notice by:

(A) hand delivery, in which case notice is presumed to be received on the date of delivery;

(B) certified mail with return receipt requested, in which case notice is presumed to be received on the date of the signature of the addressee or its agent on the return receipt or on the delivery date as reflected in the records of the United States Postal Service if the return receipt is unsigned;

(C) registered mail, in which case notice is presumed to be received on the date of delivery as reflected in the records of the United States Postal Service;

(D) fax with confirmation page, in which case notice is presumed to be received on the date of the confirmation of the fax; or

(E) regular mail plus one of the other methods enumerated in subparagraphs (A) - (D) of this paragraph. Unless the regular mail is returned as undeliverable from the United States Postal Service within ten days of the date it is mailed by OIG, a notice mailed by regular mail and another method of service is deemed to be received on the earliest date of the following:

(i) five days from the date the notice is mailed regardless of whether the other method of service resulted in proof of service; or

(ii) the actual date of delivery by the method set forth in subparagraphs (A) - (D) of this paragraph as reflected on the proof of service.

[(2) The number of notices and the content of notices are determined by the type of OIG administrative action or sanction that is being taken and are addressed in this subchapter related to specific OIG actions.]

(2) [(3)] It is the responsibility of all providers to provide a current and accurate mailing and physical address of record and other contact information, including a working fax number, to the Medicaid claims administrator.

(A) OIG will send notice to a provider's address of record. [~~the last known address or last known fax number of a provider as reflected by the records of the Medicaid claims administrator.~~]

(B) OIG will send notice to a non-HHS provider's [person who is not a provider by sending notice to the person's last known] address of record, [as reflected by the records the United States Postal Service] and, if additional addresses are located after a diligent search by OIG, to additional addresses that appear to be current addresses belonging to the person.

(3) [(4)] Notice may be delivered to the subject of [the] OIG action, any affiliate of the subject, the subject's authorized representative, or any adult at the subject's address of record. Receipt by any of these persons will be effective as against the provider or person subject to OIG action.

(4) [(5)] Notice provided in any manner as provided for in this section constitutes prima facie evidence of proper notice of agency action.

(b) Contents of Notice.

(1) OIG notices, generally, will include, as applicable:

(A) a description of the action or potential action being taken, including any financial amounts at issue;

(B) the basis of the action or potential action;

(C) the effect of the action or potential action;

(D) the duration of the action;

(E) a statement regarding the person's due process rights and the right to submit additional evidence or information for consideration, if applicable; and

(F) any additional information required by law or for resolution of the pending issue.

(2) In addition to including the information listed in paragraph (1) of this subsection, OIG notices of a payment hold to compel production of records, when requested by MFCU, or based on a credible allegation of fraud will:

(A) state the conditions under which a temporary hold will be lifted;

(B) provide a specific basis for the hold, including identification of the claims supporting the allegation at that point in the investigation and a representative sample of any documents that form the basis for the hold; and

(C) specify the types of Medicaid claims or business units to which the payment suspension is effective.

(3) In addition to including the information listed in paragraph (1) of this subsection, OIG notices of any proposed recoupment of an overpayment or debt and any damages or penalties related to a proposed recoupment of an overpayment or debt arising out of a fraud or abuse investigation will include:

(A) the specific basis for the overpayment or debt;

(B) a description of facts and supporting evidence;

(C) a representative sample of any documents that form the basis for the overpayment or debt;

(D) the extrapolation methodology;

(E) the calculation of the overpayment or debt amount;

(F) the amount of damages and penalties, if applicable;

and

(G) a description of administrative and judicial due process remedies.

(c) ~~[(b)]~~ Documents sent to OIG are considered received by OIG only when received by 5:00 p.m. on a business day. A document received after 5:00 p.m. on a business day is considered received on the next business day.

(d) Subpoenas.

(1) ~~[(e)]~~ OIG may, upon a determination of good cause and with the approval of the Executive Commissioner or the Executive Commissioner's designee, issue a subpoena, in connection with an investigation conducted by OIG, to compel the attendance of a relevant witness or the production of relevant evidence as determined by OIG.

(2) ~~[(4)]~~ Good cause will be determined from the specific circumstances of the investigation, which may include:

(A) a provider's failure to comply with an OIG investigative demand for the attendance of a relevant witness or the production of relevant evidence;

(B) a provider's past history of failing to comply with an OIG investigative demand for the attendance of a relevant witness or the production of relevant evidence;

(C) a reasonable belief that, without the issuance of a subpoena, relevant evidence will be compromised;

(D) a determination that there is an immediate threat to the health or safety of a recipient; or

(E) a substantial likelihood of loss of state or federal funds.

(3) ~~[(2)]~~ The subpoena may be served personally or by certified mail. Failure to comply with a subpoena will result in OIG, through the OAG, filing suit to enforce the subpoena in a state district court.

§371.1611. *Due Process.*

(a) OIG ~~[(HHSC)]~~ affords to any provider or person against whom it imposes sanctions the administrative due process remedies applicable to administrative sanctions as set forth in this subchapter.

(b) The imposition of administrative actions as defined in §371.1701 of this subchapter (relating to Administrative Actions) does not give rise to due process remedies.

§371.1613. *Informal Resolution Process* ~~[(Review)].~~

(a) A person who receives a notice of intent to impose a sanction, including notice of a payment hold, may request an initial informal resolution meeting (IRM) to discuss the pending allegations and initiate settlement discussions ~~[(review)].~~ OIG must receive a written request for an initial IRM ~~[(informal review)]~~ no later than 30 days ~~[(the 30th calendar day)]~~ after the date the person receives notice of intent to impose the sanction, including a payment hold. ~~[(; however, a request for an expedited informal review as described in §371.1709 of this subchapter (relating to Payment Hold) must be received in accordance with subsection (e) of this section.)]~~

(b) A written request for an IRM ~~[(informal review)]~~ must:

(1) be sent by certified mail to the address specified in the notice letter;

(2) arrive at the address specified in the notice of intent to impose the sanction no later than 30 days after receipt by the person of the notice;

(3) include a statement as to the specific issues, findings, and/or legal authority in the notice letter with which the person disagrees;

(4) state the basis for the person's contention that the specific issues or findings and conclusions of OIG are incorrect; and

(5) be signed by the person or an attorney for the person. No other person or party may request an IRM ~~[(informal review)]~~ for or on behalf of the subject of the sanction.

(c) On timely request for an initial IRM ~~[(informal review)]~~, OIG will schedule the IRM no later than 60 days after the date OIG receives a timely request or will schedule at a later date if requested by ~~[(contact)]~~ the person or an attorney for the person. OIG will provide the person or the person's attorney notice of the time and place of the initial IRM no later than 30 days before the meeting is to be held. ~~[(schedule the informal review.)]~~

(d) Within 30 days of receipt of a notice of intent to impose a sanction, including notice of a payment hold, a person may also submit to OIG any documentary evidence or written argument regarding whether the sanction is warranted. Documentary evidence or written argument that may be submitted is not necessarily controlling upon the OIG, however. ~~[(The submitted evidence and argument will be reviewed prior to the informal review. Submission of documentary evidence or written argument, however, is not binding upon the OIG.)]~~

(e) A written request for an initial IRM may be combined with a request for an administrative contested case hearing if it meets the requirements of this subchapter. If both an initial IRM and an administrative contested case hearing have been requested, the administrative contested case hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative contested case hearing will be abated until the informal resolution process has concluded without settlement or resolution of the issues. OIG will request that the case be docketed for an administrative contested case hearing on the sanction if no resolution is met at the conclusion of the informal resolution process. ~~[(When a provider is entitled to an expedited informal review or administrative contested case hearing pursuant to the imposition of a payment hold or if otherwise expressly]~~

provided by statute, the written request for an informal review must be received by OIG no later than ten calendar days after receipt of the notice by the person. The request for expedited informal review must comply with all requirements of subsection (b) of this section.]

[(f) A written request for an informal review may be combined with a request for an administrative contested case hearing if it meets the requirements of both rules. If both an informal review and an administrative contested case hearing have been requested, the administrative contested case hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative contested case hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues. OIG will request that the case be docketed for an administrative contested case hearing on the sanction if no resolution is met at the conclusion of the informal review process.]

(f) [(g) OIG will provide for a recording [notify the person] of an IRM at no expense to the provider who requested the meeting. [results of the informal review in writing.] The recording of an IRM will be made available to the provider who requested the meeting. [results of the informal review may be combined with the final notice of a sanction.]

(g) A person may request a second IRM not later than 20 days after the date of the initial IRM if the sanction involves any payment hold or proposed recoupment of an overpayment or debt and any damages or penalties relating to a proposed recoupment of an overpayment or debt arising out of a fraud or abuse investigation. On receipt of a timely request, OIG will schedule the second IRM not later than 45 days after the date OIG receives the request. If requested by the provider, OIG will schedule the meeting on a later date as determined by OIG. OIG will give notice to the provider of the time and place of the second IRM no later than 20 days before the date the meeting is to be held. A provider may provide additional information before the second IRM for consideration by OIG. Additional information that may be submitted is not necessarily controlling upon the OIG, however.

(h) In the event that the IRM process does not result in settlement, OIG will issue a [If a person who has received] notice of a final sanction, and the provider may then elect [fails] to request an administrative contested case hearing [in accordance with §371.1615 of this division (relating to Appeals); OIG will impose the sanction].

#### §371.1615. Appeals.

(a) A person who receives a final notice of a sanction, including notice of a payment hold, may appeal the imposition of the sanction. An [Depending upon the sanction being imposed, an] appeal may consist of an administrative contested case hearing, [an informal review, or both. OIG must receive a written request for an administrative contested case hearing no later than the 15th day after the date the person receives the final notice of sanction; however, a request for an expedited administrative contested case hearing must be received in accordance with subsection (d) of this section.]

#### (b) Request for hearing.

(1) A request for an administrative contested case hearing at HHSC Appeals Division or SOAH on a final notice of overpayment must be received in writing by OIG no later than 15 days after the date the person receives the final notice of overpayment.

(2) When a person is entitled to a payment hold hearing at SOAH, OIG must receive the written request for the hearing no later than 30 days of the notice of the payment hold.

(3) [(b)] A written request for an administrative contested case hearing or payment hold hearing must:

(A) [(1)] be sent by certified mail to the address specified in the notice letter;

(B) [(2)] timely arrive at the address specified in the final notice of sanction, including notice of payment hold [exclusion no later than 15 days after receipt by the person of the notice];

(C) [(3)] include a statement as to the specific issues, findings, and/or legal authority in the notice letter with which the person disagrees;

(D) [(4)] state the basis for the person's contention that the specific issues or findings and conclusions of OIG are incorrect; [and]

(E) specify whether the person requests an administrative contested case hearing at HHSC Appeals Division or SOAH; and

(F) [(5)] be signed by the person or an attorney for the person. No other person or party may request a [an administrative contested case] hearing for or on behalf of the subject of the sanction.

(4) An administrative contested case hearing for a final sanction may be held at the HHSC Appeals Division or at SOAH. A payment hold hearing will be held at SOAH.

(5) The costs for an administrative contested case hearing or payment hold hearing held at SOAH will be borne by OIG and the provider unless otherwise determined by the administrative law judge for good cause at the hearing.

(A) OIG and the provider will each be responsible for:

(i) one-half of the costs charged by SOAH;

(ii) one-half of the costs for attending and transcribing the hearing by the court reporter;

(iii) the party's own costs related to the hearing, including the costs associated with preparation for the hearing, discovery, depositions, and subpoenas, service of process and witness expenses, travel expenses, and investigation expenses; and

(iv) all other costs associated with the hearing that are incurred by the party, including attorney's fees.

(B) If the person or an attorney for the person submits a timely written request for an administrative contested case hearing or a payment hold hearing at SOAH, OIG will:

(i) contact the person about scheduling the hearing;

(ii) confer with the person or person's attorney to determine an estimate of how many days the hearing is anticipated to last;

(iii) provide the person or person's attorney with an estimate of the costs charged by SOAH and by the court reporter for attending and transcribing the hearing based on the number of days;

(iv) collect a security cash deposit from the person for one-half of the estimated costs in the form of either a certified or cashier's check or money order payable to OIG to be retained in an account established by OIG until OIG reimburses SOAH upon receipt of its bill;

(v) base the payment on the schedule of estimated costs as posted on OIG's website; and

(vi) provide an accounting of the funds expended by the person and OIG for SOAH and transcription costs upon payment to SOAH and the court reporter.

(6) OIG will contact the HHSC Appeals Division or SOAH after receipt of the security deposit, as applicable, to request that the

hearing be docketed. OIG will file a docketing request not later than the 60th day after completing the informal resolution process and receiving the cash security deposit, if applicable.

~~[(e) On timely written request for an administrative contested case hearing, OIG will contact the person about scheduling the hearing. OIG will also contact the HHSC Appeals Division or the State Office of Administrative Hearings to request that the hearing be docketed, subject to subsection (g) of this section.]~~

~~[(d) When a person is entitled to an expedited administrative contested case hearing, the written request for an expedited hearing must be received by OIG no later than ten calendar days after receipt of the notice by the person. The request for an expedited hearing must meet all of the requirements of subsection (b) of this section. Upon receipt of a timely request, OIG will file a request for an expedited hearing at the State Office of Administrative Hearings, subject to subsection (g) of this section.]~~

~~(7) [(e)] Administrative contested case hearings conducted by the HHSC Appeals Division will be governed by Chapter 357 of this title (relating to Hearings).~~

~~(8) [(f)] Administrative contested case hearings conducted by SOAH [the State Office of Administrative Hearings] will be governed by Chapters 155, 157, 159, 161, and 163 of this title (relating to Rules of Procedure; Temporary Administrative Law Judges; Rules of Procedure for Administrative License Suspension Hearings; Requests for Records; and Arbitration Procedures for Certain Enforcement Actions of the Texas Department of Aging and Disability Services).~~

~~(c) [(g)] If a provider is subject to a payment hold [If a person is entitled to] and requests both an administrative contested case hearing and an informal resolution meeting [review], OIG will schedule and conduct the informal resolution process [review] before setting the hearing. The hearing and all discovery will be abated until the informal resolution process has [review discussions have] been exhausted without settlement or resolution of the payment hold [sanction].~~

~~(d) Following an administrative contested case hearing, other than a payment hold requested by the state's Medicaid fraud control unit, a provider may appeal a final administrative order by filing a petition for judicial review in a district court in Travis County.~~

~~(e) If a person who has received notice of a final sanction fails to timely request an administrative contested case hearing, the sanction will become final and unappealable.~~

§371.1617. *Finality and Collections.*

(a) Unless otherwise provided in this subchapter, a sanction becomes final upon any of the following events:

(1) expiration of 30 calendar days after receipt of the notice of final sanction if no timely request for appeal of imposition of the sanction is received by OIG;

(2) execution of a settlement agreement with OIG; or

(3) a final order entered by the Executive Commissioner or his designee after an administrative contested case hearing.

(b) The effect of a final sanction resulting in recoupment, restricted reimbursement, assessment of damages, penalties, recoupment of audit overpayments, or other financial recovery is to create a final debt in favor of the State of Texas. Within 30 days after the date on which the sanction becomes final, the person must:

(1) pay the amount of the overpayment, assessment of damages, penalties, or other costs;

(2) negotiate and execute a payment plan, the terms of which are granted at the sole discretion of OIG; or

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

(c) If a final payment plan agreement is not executed by all parties or full restitution is not received within 30 calendar days after finality, the debt will be delinquent and one or more vendor holds may be placed on the provider's payment claims and account by HHSC, the Medicaid/CHIP division, the state Comptroller, the OAG Collection Division, or any other state agency with authority to interrupt payments in satisfaction of a debt to the state.

(d) ~~[The] OIG may, at its sole discretion, agree to suspend any vendor holds pending negotiations of payment plan terms.~~

(e) When a debt is delinquent, ~~[the] OIG may collect funds owed. Collection methods may include:~~

(1) placing the person on prepayment or postpayment hold. Funds withheld by a payment hold may be used to satisfy any portion of an unpaid assessment of overpayments, damages, or penalties;

(2) using a collection agency;

(3) collecting from Medicare for Medicaid debts;

(4) requesting the State Comptroller to place a hold on all state voucher revenue for the person from all state agencies;

(5) requesting the OAG's Collection Division to file suit in district court or engage in other collection efforts;

(6) requesting the OAG to seek an injunction prohibiting the person from disposing of an asset(s) identified by ~~[the] OIG~~ as potentially subject to recovery due to the person's fraud or abuse;

(7) applying any funds derived from forfeited asset(s), after offsetting any expenses attributable to the sale of those assets; and

(8) receiving and reporting credit information on a person with outstanding debts.

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 January 13, 2014.

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Texas Health and Human Services Commission

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



**DIVISION 2. GROUNDS FOR ENFORCEMENT**

**1 TAC §§371.1653, 371.1655, 371.1659, 371.1663, 371.1667, 371.1669**

**Legal Authority**

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which pro-



vide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §32.0322, which directs HHSC to establish certain provider screening, disclosure, and verification criteria by rule.

In addition, Texas Government Code §531.102(g)(4) requires HHSC and the State Office of Administrative Hearings to jointly adopt rules regarding security that a provider must advance before a payment hold administrative hearing; and §531.102(g)(7) requires HHSC, in consultation with the state's Medicaid fraud control unit, to establish exclusions from payment holds.

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

*§371.1653. Claims and Billing.*

A person is subject to administrative actions or sanctions if the person submits, or causes to be submitted, a claim for payment by the Medicaid or other HHS program:

- (1) for an item or service for which the person knew or should have known the claim or cost report was false or fraudulent;
- (2) for an item or service that was not provided as claimed;
- (3) for an item or service that requires prior authorization, prior order, or prescription, where prior authorization, prior order, or prescription was not properly obtained, including where prior authorization, prior order, or prescription requirements were met by misrepresentation or omission;
- (4) for an item or service that requires the name and National Provider Number of the supervising, ordering, or referring person for prior authorization, where the correct name and National Provider Number of the supervising, ordering, or referring person were not provided;
- (5) based on a code that would result in greater payment than the code applicable to the item or service that was actually provided;
- (6) for an item or service that was not coded, bundled, or billed in accordance with standards required by statute, regulation, contract, Medicaid or other HHS program policy or provider manual, and that, if used, has the potential of increasing any individual or state provider payment rate or fee;
- (7) for an item or service that was not reimbursable by, permitted by, or associated with the Medicaid or other HHS program, including an item or service substituted without authorization by the Medicaid or other HHS program and a prescription drug substituted without authorization by an HHS program;
- (8) for any order or prescription in which a false statement, misrepresentation, or omission of pertinent facts was made by the ordering or prescribing person on a claim, attachments to a claim, medical record, documentation used to adjudicate a claim for payment or to support representations on cost reports, used by the provider to show the medical necessity, or on documents used to establish fees, daily payment rates, or vendor payments;
- (9) for an item or service where the charges for that item or service are in excess of the usual and customary fee the person charges to the public, privately insured persons, or private-pay persons for the same item or service, including a claim submitted under Title XVIII (Medicare);

(10) for an item or service where the charges or costs for that item or service were discounted for the public, privately insured persons, or private-pay persons for the same item or service, including a claim submitted under Title XVIII (Medicare);

(11) for an item or service that is furnished, prescribed, or otherwise ordered or presented by a person that is excluded, terminated, or otherwise prohibited from participation in an HHS program or any state or federally funded health care program, except an order or prescription that was:

(A) written before the exclusion or termination of a physician or other practitioner legally authorized to write a prescription; and

(B) delivered within 30 days of the effective date of such exclusion or termination;

(12) for a home health service for which no in-person evaluation of the recipient was performed within the 12-month period preceding the date of the order or other authorization for the home health service;

(13) for durable medical equipment for which the physician, physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse-midwife that ordered or otherwise authorized the durable medical equipment has failed to certify on the order or authorization that he or she conducted an in-person evaluation of the recipient within the 12-month period preceding the date of the order or other authorization; [øf]

(14) for an item or service for which the provider knowingly made, used, or caused the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under the Medicaid program, or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to this state under the Medicaid program;

(15) for an item or service that constitutes a violation of §32.039(b) or §36.002 of the Texas Human Resources Code;

(16) for an item or service rendered to a child who was not accompanied by an authorized adult or who was accompanied by the provider or its affiliate to treatment; or

(17) [(14)] for damages, costs, or penalties collected or assessed by OIG.

*§371.1655. Program Compliance.*

A person is subject to administrative actions or sanctions if the person:

- (1) is excluded or terminated for cause on or after January 1, 2011, under Title XVIII of the Social Security Act or under the Medicaid program or CHIP of any other state;
- (2) commits an act for which sanctions, damages, penalties, or liability could be or are assessed by OIG;
- (3) fails to repay overpayments or other assessments after receiving written notice of the overpayment or of delinquency by OIG or any HHS program or HHS agency;
- (4) fails to repay overpayments within 60 calendar days of self-identifying or discovering an overpayment that was made to the person by the Medicaid, CHIP or other HHS program;
- (5) fails to comply, when required for participation in Medicaid or other HHS program or award, with financial record and supporting document retention requirements designed to ensure that a person's claims or costs may be reviewed objectively for accuracy and validity. Such requirements include compliance with:



- (A) 42 CFR §1001.801 (failure of HMOs and CMPs to furnish medically necessary items or services);
- (B) 42 CFR §1001.901 (false or improper claims);
- (C) 42 CFR §1001.951 (fraud and kickbacks and other prohibited activities);
- (D) 42 CFR §1001.1001 (exclusion of entities owned or controlled by a sanctioned person);
- (E) 42 CFR §1001.1051 (exclusion of individuals with ownership or control interest in sanctioned entities);
- (F) 42 CFR §1001.1101 (failure to disclose certain information);
- (G) 42 CFR §1001.1501 (default of health education loan or scholarship obligations);
- (H) 42 CFR §1001.1601 (violations of the limitations on physician charges); or
- (I) 42 CFR §1001.1701 (billing for services of assistant at surgery during cataract operations); ~~or~~[-]

(31) commits or conspires to commit a violation of §32.039(b) of the Texas Human Resources Code.

*§371.1659. Compliance with Health Care Standards.*

A person is subject to administrative actions or sanctions if the person:

- (1) engages in any negligent or abusive practice that results in death, injury, or substantial probability of death or injury to a recipient;
- (2) fails to provide an item or service to a recipient in accordance with accepted medical community standards or standards required by statute, regulation, or contract, including statutes and standards that govern occupations;
- (3) furnishes or orders services or items for a recipient under the Medicaid or other HHS program that substantially exceed a recipient's needs, are not medically necessary, are not provided economically or are of a quality that fails to meet professionally recognized standards of health care;
- (4) is the subject of a voluntary or involuntary action taken by a licensing or certification agency or board, which action is based upon the agency or board's receipt of evidence of noncompliance with licensing or certification requirements;
- (5) has its license to provide health care revoked, suspended, or probated by any state's licensing or certification authority, or surrenders a license or certification while a formal disciplinary proceeding is pending before any state's licensing or certification authority;
- (6) fails to abide by applicable statutes and standards governing providers;
- (7) fails to comply with the security, privacy, marketing, disclosure, notification, business associate and breach requirements [~~privacy standards~~] of the Health Insurance Portability and Accountability Act (HIPAA) and regulations promulgated under HIPAA or the Texas Medical Records Privacy Act in Chapter 181 of the Texas Health and Safety Code and regulations promulgated under that Act;
- (8) fails to timely provide notice of electronic disclosure to a recipient for whom the person creates or receives protected health information that is subject to electronic disclosure;
- (9) electronically discloses or permits the electronic disclosure of a recipient's protected health information to any person without

a separate, documented authorization from the recipient or the recipient's legally authorized representative for each disclosure, unless the disclosure is:

(A) to a covered entity as defined by §181.001 of the Health and Safety Code or to a covered entity as that term is defined by §602.001 of the Insurance Code for the purpose of:

- (i) treatment;
- (ii) payment;
- (iii) health care operations; or
- (iv) performing an insurance or health maintenance organization function as described by §602.053 of the Insurance Code; or

(B) as otherwise authorized by state or federal law; ~~or~~

(10) employs any treatment modality that has been declared unsafe or ineffective by the Food and Drug Administration (FDA), CMS, the Public Health Service (PHS), or other state or federal agency with regulatory authority; ~~or~~[-]

(11) fails to comply with eligibility or meaningful use or other standards of the Health Information Technology for Economic and Clinical Health (HITECH) Act incentive programs and regulations promulgated under the Act.

*§371.1663. Managed Care.*

A person is subject to administrative action or sanctions if the person:

- (1) is an MCO or an MCO provider and fails to provide a health care benefit, service, or item that the MCO or MCO provider is required to provide according to the terms of its contract with an operating agency, its fiscal agent, or other contract to provide health care services to Medicaid or HHS program recipients;
- (2) is an MCO or MCO provider and fails to provide to an individual a health care benefit, service, or item that the MCO or MCO provider is required to provide by state or federal law, regulation, or program rule;
- (3) is an MCO and engages in actions that indicate a pattern of wrongful denial, excessive delay, barriers to treatment, authorization requirements that exceed professionally recognized standards of health care, or other wrongful avoidance of payment for a health care benefit, service or item that the organization is required to provide under its contract with an operating agency;
- (4) is an MCO and engages in actions that cause a delay in making payment for a health care benefit, service or item that the organization is required to provide under its contract with an operating agency, and the delay results in processing or paying the claim on a date later than that allowed by the MCO's contract;
- (5) is an MCO or MCO provider and engages in fraudulent activity or misrepresents or omits material facts in connection with the enrollment in the MCO's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance;
- (6) is an MCO or MCO provider and receives a capitation payment, premium, or other remuneration after enrolling a member in the MCO's managed care plan who the MCO knows or should have known is not eligible for medical assistance;
- (7) is an MCO or MCO provider and discriminates against MCO-enrollees or prospective MCO-enrollees in any manner, including marketing and disenrollment, and on any basis, including, without limitation, age, gender, ethnic origin, or health status;

(8) is an MCO or MCO provider and fails to comply with any term of a contract with a Medicaid or other HHS program or operating agency or other contract to provide health care services to Medicaid or HHS program recipients and the failure leads to patient harm, creates a risk of fiscal harm to the state, or results in fiscal harm to the state;

(9) is an MCO or an MCO provider and fails to provide, in the form requested, to the relevant operating agency or its authorized agent upon written request, encounter data or other information contractually or otherwise required to document the services and items delivered by or through the MCO to recipients;

(10) is an MCO or an MCO provider and files a cost report or other report with the Medicaid or other HHS program that violates any of the cost report violations in §371.1665 of this division (relating to Cost Report Violations);

(11) is an MCO or MCO provider and misrepresents, falsifies, makes a material omission, or otherwise mischaracterizes any facts on a request for proposal, contract, report, or other document with respect to the MCO's ownership, provider network, credentials of the provider network, affiliated persons, solvency, special investigative unit, plan for detecting and preventing fraud, waste, and abuse, or any other material fact;

(12) is an MCO or MCO provider and fails to maintain the criteria and conditions supporting an application and grant of a waiver to HHSC, or fails to demonstrate the results that were contemplated, based upon representations by the MCO or provider in its proposal submissions or contract negotiations when the waiver was granted, if the failure is related to representations made by the MCO in its proposal, readiness review, contract, marketing materials, audit management responses, or other written representation submitted to the state, and the failure leads to patient harm, creates a risk of fiscal harm to the state, or results in fiscal harm to the state;

(13) is an MCO or MCO provider and misrepresents, falsifies, makes a material omission, or otherwise mischaracterizes any facts on a patient assessment or any other document that would have the effect of increasing the MCO's capitation or reimbursement rate, would increase incentive payments or premiums, would decrease the amount of capitation at risk, or would decrease the experience rebate owed to the Medicaid program;

(14) is an MCO or MCO provider and fails to immediately and contemporaneously notify OIG and the OAG in writing of the discovery of fraud or abuse in the Medicaid or CHIP program;

(15) is an MCO and fails to ensure that any payment recovery efforts in which the MCO engages are in accordance with applicable law, contract requirements, and other applicable procedures established by the Executive Commissioner;

(16) is an MCO and engages in payment recovery of an amount sought that exceeds \$100,000 and that is related to fraud or abuse in the Medicaid or CHIP program:

(A) without first immediately and contemporaneously notifying OIG and the OAG in writing of the discovery of fraud or abuse in the Medicaid or CHIP program;

(B) within 10 business days after notification of OIG or the OAG of the discovery of fraud or abuse in the Medicaid or CHIP program; or

(C) after receipt of a notice from OIG or the OAG indicating that the MCO is not authorized to proceed with recovery efforts;

(17) is an MCO and fails to timely submit a quarterly report to OIG detailing the amount of money recovered after any and all payment recovery efforts engaged in as a result of the discovery of fraud or abuse in the Medicaid or CHIP program; [e¶]

(18) notwithstanding the terms of any contract, is an MCO or MCO provider and fails to timely comply with the requirements of the Texas Medicaid Managed Care program or with the terms of the MCO contract with the Commission or other contract to provide health care services to Medicaid or HHS program recipients, and the failure leads to patient harm, creates a risk of fiscal harm to the state, or results in fiscal harm to the state;[-]

(19) is an MCO or MCO provider and engages in marketing services in violation of §531.02115 of the Texas Government Code, the program rules or contract and has not received prior authorization from the program for the marketing campaign;

(20) is an MCO or an MCO provider and fails to use prior authorization and utilization review processes to reduce authorizations of unnecessary services and inappropriate use of services; or

(21) is an MCO or MCO provider and commits or conspires to commit a violation of §32.039(b) of the Texas Human Resources Code.

*§371.1667. Records and Documentation.*

A person is subject to administrative actions or sanctions if the person:

(1) fails to make, maintain, retain, or produce adequate documentation according to Medicaid or other HHS policy, state or federal law, rule or regulation, or contract for a minimum period of:

(A) five years from the date of service or until all audit questions, administrative hearings, investigations, court cases, or appeals are resolved;

(B) six years or until all audit questions, administrative hearings, investigations, court cases, or appeals are resolved if the person is a Freestanding Rural Health Clinic; and

(C) ten years or until all audit questions, administrative hearings, investigations, court cases, or appeals are resolved if the person is a hospital-based Rural Health Clinic;

(2) fails to provide originals or complete and correct copies of records or documentation as requested upon reasonable request by a Requesting Agency; or

(3) fails to grant immediate access to the premises, records, documentation, or any items or equipment determined necessary by [the] OIG to complete its official functions related to a fraud, waste, or abuse investigation upon request by a Requesting Agency. Failure to grant immediate access may include, but is not limited to, the following:

(A) failure to allow OIG or any Requesting Agency to conduct any duties that are necessary to the performance of their official functions;

(B) failure to provide to OIG or a Requesting Agency, upon request and as requested, for the purpose of reviewing, examining, and securing custody of records, access to, disclosure of, and custody of copies or originals of any records, documents, or other requested items, as determined necessary by OIG or a Requesting Agency to perform official functions;

(C) failure to produce or make available records within 24 hours of a request for production, for the purpose of reviewing, examining, and securing custody of records upon reasonable request, as determined by OIG or a Requesting Agency except where OIG or a

Requesting Agency reasonably believes that requested documents are about to be altered or destroyed or that the request may be completed at the time of the request and/or in less than 24 hours;

(D) failure to grant access to a person's premises at the time of a reasonable request;

(E) failure to provide access to records at the time of a request, for the purpose of reviewing, examining, and securing custody of records upon reasonable request, when OIG or a Requesting Agency has reason to believe that:

(i) requested documents are about to be altered or destroyed; or

(ii) in the opinion of OIG or a Requesting Agency, the request could be met at the time of the request or in less than 24 hours;

(F) failure to relinquish custody of records and documents as directed by OIG or a Requesting Agency;

(G) failure to complete a records affidavit, business records affidavit, evidence receipt, or patient record receipt, at the direction of OIG or a Requesting Agency and to attach these documents to the records or documentation requested; or

(4) fails to make, maintain, retain, or produce documentation sufficient to demonstrate compliance with any federal or state law, rule, regulation, contract, Medicaid or other HHS policy, or professional standard in order to:

(A) participate in the Medicaid or other HHS program;

(B) support a claim for payment;

(C) verify delivery of services or items provided;

(D) establish medical necessity, medical appropriateness, or adherence to the professional standard of care related to services or items provided;

(E) determine appropriate payment for items or services delivered in accordance with established rates;

(F) confirm the eligibility of a person to participate in the Medicaid or other HHS program;

(G) demonstrate solvency of risk-bearing providers;

(H) support a cost or expenditure;

(I) verify the purchase and actual cost of products, items, or services; or

(J) establish compliance with applicable state and federal regulatory requirements.

#### §371.1669. *Self-Dealing.*

A person is subject to administrative actions or sanctions if the person:

(1) rebates or accepts a fee or a part of a fee or charge for a Medicaid or other HHS program patient referral;

(2) solicits recipients or causes recipients to be solicited, through offers of transportation or otherwise, for the purpose of claiming payment related to those recipients;

(3) knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency or HHS agency;

(4) knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency, subject to the exceptions enumerated in Chapter 102, Occupations Code;

(5) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the Medicaid or other HHS program, provided that this paragraph does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(6) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the Medicaid or other HHS program;

(7) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the Medicaid or other HHS program, provided that this paragraph does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(8) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the Medicaid or other HHS program;

(9) provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by this section or §102.001, Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding:

(A) selection of a provider or receipt of a good or service under the Medicaid or other HHS program;

(B) the use of goods or services provided under the Medicaid or other HHS program; or

(C) the inclusion or exclusion of goods or services available under the Medicaid program;

(10) is a physician and refers a Medicaid or other HHS program recipient to an entity with which the physician has a financial relationship for the furnishing of designated health services, payment for which would be denied under Title XVIII (Medicare) pursuant to §1877 and §1903(s) of the Social Security Act, codified at 42 U.S.C. §1395nn, §1396b(s) (Stark I, II, and III), the federal Anti-Kickback Statute, the Affordable Care Act, or other state or federal law prohibiting self-dealing or self-referral; [ø]

(11) engages in marketing services in violation of §531.02115 of the Texas Government Code, program rules, or contract

and has not received prior authorization from the program for the marketing campaign; or

(12) [(44)] fails to disclose documentation of financial relationships necessary to establish compliance with §1877 and §1903(s) of the Social Security Act or 42 C.F.R. §§411.350-389 (Stark I, II, and III), the federal Anti-Kickback Statute, The Affordable Care Act, or other state or federal law prohibiting self-dealing or self-referral.

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 January 13, 2014.

TRD-201400109

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Chief Counsel

Texas Health and Human Services Commission

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



### DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

**1 TAC §§371.1703, 371.1705, 371.1707, 371.1709, 371.1711, 371.1713, 371.1715, 371.1717, 371.1719**

#### Legal Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §32.0322, which directs HHSC to establish certain provider screening, disclosure, and verification criteria by rule.

In addition, Texas Government Code §531.102(g)(4) requires HHSC and the State Office of Administrative Hearings to jointly adopt rules regarding security that a provider must advance before a payment hold administrative hearing; and §531.102(g)(7) requires HHSC, in consultation with the state's Medicaid fraud control unit, to establish exclusions from payment holds.

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

#### §371.1703. Termination of Enrollment or Contract.

(a) OIG may terminate the enrollment or contract of a person by debarment, suspension, revocation, or other deactivation of participation, as appropriate. OIG may terminate a person's enrollment or contract if it determines that the person committed an act for which a person is subject to administrative actions or sanctions.

(b) When OIG establishes the following by prima facie evidence, OIG must terminate the enrollment or contract from the Medicaid program or any other HHS program of:

(1) a provider [when the provider] or any person with an ownership interest in the provider has been convicted of a criminal of-

fense related to that person's involvement with the Medicare, Medicaid, or CHIP program in the last ten years;

(2) a provider that is terminated or revoked for cause, excluded, or debarred under Title XVIII of the Social Security Act or under the Medicaid program or CHIP program of any other state;

(3) a provider that fails to permit access to any and all provider locations for unannounced or announced on-site inspections required during the provider screening process as provided by rule;

(4) a provider when any person with an ownership or control interest or who is an agent or managing employee of the provider fails to submit timely and accurate information, including fingerprints if required by CMS or state rule, and cooperate with any and all screening methods required during the provider screening process as provided by rule, statute, rule, or regulation;

(5) a provider that fails to submit sets of fingerprints in a form and manner to be provided by rule;

(6) a person that fails to repay overpayments under the Medicaid program or CHIP;

(7) a person that owns, controls, manages, or is otherwise affiliated with and has financial, managerial, or administrative influence over a provider who has been suspended or prohibited from participating in Medicare, Medicaid or CHIP; [øf]

(8) a provider that fails to identify or disclose in the provider screening process for any HHS program:

(A) all persons with a direct or indirect ownership or control interest, as defined by 42 CFR §455.101;

(B) all information required to be disclosed in accordance with 42 CFR §1001.1101, 42 CFR Chapter 455, or other by statute, rule, or regulation; or

(C) all agents or subcontractors of the provider:

(i) if the provider or a person with an ownership interest in the provider has an ownership interest in the agent or subcontractor; or

(ii) if the provider engages in a business transaction with the agent or subcontractor that meets the criteria specified by 42 CFR §455.105; or [-]

(9) a provider that has been excluded or debarred from participation in a state or federally funded health care program as a result of:

(A) a criminal conviction or finding of civil or administrative liability for committing a fraudulent act, theft, embezzlement, or other financial misconduct under a state or federally funded health care program; or

(B) a criminal conviction for committing an act under a state or federally funded health care program that caused bodily injury to:

(i) a person who is 65 years of age or older;

(ii) a person with a disability; or

(iii) a person under 18 years of age.

(c) When OIG establishes the following by prima facie evidence, OIG may terminate the enrollment or contract from the medical assistance program or any other HHS program of:

(1) a provider if a criminal history check reveals a prior criminal conviction;

(2) a provider that has failed to bill for medical assistance or refer clients for medical assistance within a 12-month period;

(3) a provider that has been excluded or debarred from participation in any federally funded health care program not described in subsection (b)(2) of this section;

(4) a provider that has falsified any information on its application for enrollment as determined by OIG;

(5) a provider whose identity on an application for enrollment cannot be verified by OIG;

(6) a person that commits a program violation;

(7) a person that is affiliated with a person who commits a program violation;

(8) a person that commits an act for which sanctions, damages, penalties, or liability could be or are assessed by OIG; or

(9) a person that may be terminated for any other reason specified by statute or regulation.

(d) Exceptions.

(1) OIG need not terminate participation if the person or provider voluntarily resigned from participation under Title XVIII of the Social Security Act or under the Medicaid program or CHIP program of any other state, and the resignation was not in lieu of or to avoid exclusion, termination, or any other sanction.

(2) OIG need not terminate participation based on a conviction described in subsection (b)(1) of this section, a termination described in subsection (b)(2) of this section, or a failure to allow access described in subsection (b)(3) of this section if OIG:

(A) determines that termination is not in the best interests of the Medicaid program; and

(B) documents that determination and the rationale in writing.

(e) Notice. Notice of termination includes:

(1) a description of the termination;

(2) the basis for the termination;

(3) the effect of the termination;

(4) the duration of the termination;

(5) whether re-enrollment will be required after the period of termination; and

(6) a statement of the person's right to request an informal resolution meeting [review] or an administrative hearing regarding the imposition of the termination.

(f) Due process.

(1) After receiving [A person may request an informal review after receipt of] a notice of termination, a person has a right to the informal resolution process in accordance with §371.1613 of this subchapter (relating to Informal Resolution Process). [Review]. OIG must receive the written request for the informal review no later than the 30th calendar day after the date the person receives the notice. A request for an informal review does not expand the time allowed to the provider to request an administrative hearing.]

[(2) Within 30 days of receipt of the notice of termination, the person receiving the notice may submit to OIG, any documentary evidence or written argument regarding whether termination is warranted and any related issues to be considered during the informal re-

view. Submission of documentary evidence or written argument, however, is no guarantee that OIG will not ultimately terminate the person.]

(2) [(3)] A person may request an administrative hearing after receipt of a notice of termination in accordance with §371.1615 of this subchapter (relating to Appeals). OIG must receive the written request for a hearing no later than the 15 days [15th calendar day] after the date the person receives the notice.

[(4) If both an informal review and an administrative hearing are requested, the administrative hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues.]

(g) Scope and effect of termination.

(1) A person's enrollment agreement or contract will be nullified on the effective date of the termination.

(2) Once a person has been terminated, no items or services furnished will be reimbursed by the Medicaid or other HHS program during the period of termination.

(3) When the termination period expires, the person may need to re-enroll in order to participate as a provider in the Medicaid or other HHS program. Re-enrollment will require the provider to meet all applicable screening requirements, including the payment of any application fees. Re-enrollment will be required if the person was terminated for any grounds in subsection (b) or (c)(1) - (3) of this section.

(4) A person may be terminated from participation in the Medicare program and in the Medicaid program of every other state as a result of the termination.

(5) If, after the effective date of the termination, a terminated person submits or causes to be submitted claims for services or items furnished within the period of termination, the person may be liable to repay any submitted claims or subject to civil monetary penalty liability under §1128A(a)(1)(D), and criminal liability under §1128B(a)(3) of the Social Security Act in addition to sanctions or penalties by OIG.

(6) The termination will become effective and final on the date reflected on the notice of termination in the following circumstances:

(A) OIG determines that the person subject to termination may be placing the health or safety of persons receiving services under Medicaid at risk;

(B) the person who is subject to termination fails:

(i) to grant immediate access to OIG or to a Requesting Agency upon reasonable request;

(ii) to allow OIG or a Requesting Agency to conduct any duties that are necessary to the performance of their official functions; or

(iii) to provide to OIG or a Requesting Agency as requested copies or originals of any records, documents, or other items, as determined necessary by OIG or the Requesting Agency.

(7) If the person timely filed a written request for an administrative hearing, the effective date of termination is the date the hearing officer's or administrative law judge's decision to uphold the termination becomes final; however, if the administrative law judge upholds a termination for grounds described in paragraph (6) of this subsection, the effective date will be made retroactive to the date of the notice of termination.

(8) Unless otherwise provided in this section, the termination will become final as provided in §371.1617(a) of this subchapter (relating to Finality and Collections).

(h) Reinstatement.

(1) OIG may reinstate a provider's enrollment if OIG finds:

(A) good cause to determine that it is in the best interest of the medical assistance program; and

(B) the person has not committed an act that would require revocation of a provider's enrollment or denial of a person's application to enroll since the person's enrollment was revoked.

(2) OIG must support a determination made under this section with written findings of good cause for the determination.

*§371.1705. Mandatory Exclusion.*

(a) OIG must exclude from participation in Titles V, XIX, XX and CHIP programs, as applicable, any person if it determines that the person:

(1) has been excluded from participation in Medicare or any other federal health care programs;

(2) is a provider whose health care license, certification, or other qualifying requirement to perform certain types of service is revoked, suspended, voluntarily surrendered, or otherwise terminated such that the provider is unable to legally perform their profession due to loss of their license, certification, or other qualifying requirement;

(3) has been convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program;

(4) has been convicted, under federal or state law, of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct:

(A) in connection with the delivery of a health care item or service, including the performance of management or administrative services relating to the delivery of such items or services; or

(B) with respect to any act or omission in a health care program (other than Medicare and a State health care program) operated by, or financed in whole or in part, by any federal, state or local government agency;

(5) has been convicted, under federal or state law, of a felony relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as defined under federal or state law. This applies to a person that:

(A) is, or has ever been, a health care practitioner, person, or supplier;

(B) holds, or has held, a direct or indirect ownership or control interest (as defined in §1124(a)(3) of the Social Security Act) in an entity that is a health care person or supplier, or is, or has ever been, an officer, director, agent or managing employee (as defined in §1126(b) of the Social Security Act) of such an entity; or

(C) is or has ever been, employed in any capacity in the health care industry;

(6) is an MCO or other entity furnishing services under a waiver approved under §1915(b)(1) of the Social Security Act that has an affiliate relationship with a person, and that person:

(A) has been convicted:

(i) of an offense that is a ground for mandatory exclusion under this section;

(ii) of an offense under federal or state law consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct:

(I) in connection with the delivery of a health care item or service;

(II) with respect to any act or omission in a health care program (other than those specifically described in paragraph (1) of this subsection) operated by or financed in whole or in part by any federal, state, or local government agency; or

(III) relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any federal, state, or local government agency;

(iii) of an offense under federal or state law in connection with the interference with or obstruction of any investigation related to:

(I) an offense that is a ground for mandatory exclusion under this section; or

(II) the use of funds received, directly or indirectly, from any federal health care program;

(iv) of an offense under federal or state law for acts that took place after January 1, 2010, in connection with the interference with or obstruction of any audit related to:

(I) an offense that is a ground for mandatory exclusion under this section; or

(II) the use of funds received, directly or indirectly, from any federal health care program;

(v) has had civil money penalties or assessments imposed under §1128A of the Social Security Act (federal false claims); or

(vi) has been excluded from participation in Medicare or any of the state health care programs or CHIP; and

(B) that person:

(i) has an ownership interest in the entity;

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity or any of the property assets thereof, in which whole or part interest is equal to or exceeds five (5) percent of the total property and assets of the entity;

(iii) is an officer or director of the entity, if the entity is organized as a corporation;

(iv) is a partner in the entity, if the entity is organized as a partnership;

(v) is an agent of the entity;

(vi) is a managing employee, that is, a person (including a general manager, business manager, administrator, or director) who exercises operational or managerial control over the entity or part thereof, or directly or indirectly conducts the day-to-day operations of the entity or part thereof; or

(vii) was formerly described in clauses (i) - (vi) of this subparagraph, but is no longer so described because of a transfer



of ownership or control interest to an immediate family member or a member of the person's household in anticipation of or following a conviction, assessment of a civil monetary penalty, or imposition of an exclusion;

(7) is an individual and has an ownership or control interest or a substantial contractual relationship in or is an officer or managing employee of a sanctioned entity, and who knew or should have known of an action that constituted the basis for a conviction or mandatory exclusion of the sanctioned entity; or

(8) is convicted, pleads guilty or pleads nolo contendere to an offense arising from a fraudulent act under the Medicaid program, which results in injury to a person age 65 or older, a person with a disability, or a person younger than 18 years of age.

(b) OIG may exclude a person without sending prior notice of intent to exclude in the following circumstances:

(1) OIG determines that the person is subject to mandatory exclusion under subsection (a) of this section and the person may be placing the health and/or safety of persons receiving services under an HHS program at risk; or

(2) a person who is subject to mandatory exclusion under subsection (a) of this section fails:

(A) to grant immediate access to OIG or to a Requesting Agency upon reasonable request;

(B) to allow OIG or a Requesting Agency to conduct any duties that are necessary to the performance of their official functions; or

(C) to provide to OIG or a Requesting Agency as requested copies or originals of any records, documents, or other items, as determined necessary by OIG or the Requesting Agency.

(c) Notice.

(1) Except as provided in subsection (b) of this section, when OIG proposes to exclude any person on mandatory grounds, it gives written notice of its intent to exclude, which will include:

(A) the basis for the potential exclusion;

(B) the potential effect of the exclusion; and

(C) whether OIG also proposes to cancel any agreement held by the person to be excluded.

(2) When OIG makes a final determination to exclude a person on mandatory grounds or when the exclusion is based upon the grounds described in subsection (b) of this section, OIG issues a final notice of exclusion, which will include:

(A) a description of the final exclusion;

(B) the basis of the final exclusion;

(C) the effect of the final exclusion;

(D) the duration of the final exclusion;

(E) the earliest date on which OIG will consider a request for reinstatement;

(F) the requirements and procedures for reinstatement; and

(G) a statement of the person's right to request a formal administrative appeal hearing regarding the exclusion.

(d) Due process.

(1) After receiving a notice of intent to exclude, a [A] person has a right to the [may request an] informal resolution process [review] in accordance with §371.1613 of this subchapter (relating to Informal Resolution Process). [Review] after receipt of a notice of intent to exclude. OIG must receive the written request for the informal review no later than the thirtieth (30th) calendar day after the date the person receives the potential notice. A request for an informal review does not expand the time allowed to the provider to request an administrative hearing.]

[(2) Within 30 days of receipt of the notice of potential exclusion, the person receiving the notice may submit to OIG, any documentary evidence or written argument regarding whether exclusion is warranted and any related issues to be considered during the informal review. Submission of documentary evidence or written argument, however, is no guarantee that OIG will not ultimately exclude the person.]

(2) [(3)] A person may request an administrative appeal hearing in accordance with §371.1615 of this subchapter (relating to Appeals) after receipt of a final notice of exclusion. OIG must receive the written request for an appeal no later than 15 days [the 15th calendar day] after the date the person receives final notice.

[(4) If both an informal review and an administrative hearing are requested after a final notice of exclusion, OIG may elect, in its sole discretion, to conduct an informal review. The administrative hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues.]

(3) [(5)] When the exclusion is based on the existence of a criminal conviction, a civil fraud finding, a civil judgment imposing liability by federal, state, or local court, a determination by another government agency or board, any other prior determination, or provisions within a settlement agreement, the basis for the underlying determination is not reviewable and the individual or entity may not collaterally attack the underlying determination, either on substantive or procedural grounds, in an administrative appeal.

(e) Scope and effect of exclusion.

(1) The period of exclusion begins on the effective date. An exclusion becomes effective on the following:

(A) the date the person's health care services or items became ineligible for federal financial participation as described in subsection (a)(1) of this section;

(B) the effective date the person lost their license, certification, or other qualifying requirement as described in subsection (a)(2) of this section;

(C) the date of the criminal judgment of conviction as described in subsection (a)(3) - (5) and (8) of this section;

(D) the date of the criminal judgment of conviction, or effective date of the assessment of civil monetary penalties or exclusion as described in subsection (a)(6) of this section;

(E) the effective date of final determination of liability pursuant to Texas Human Resources Code §32.039(c) as described in subsection (a)(8) of this section;

(F) the date reflected on the final notice of exclusion if the exclusion is based on a health or safety risk as described in subsection (b)(1) of this section;

(G) the date of the original request for records if the exclusion is based on failure to provide access as described in subsection (b)(2) of this section;

(H) unless otherwise provided, twenty (20) days after the person's receipt of the final notice of exclusion if the provider does not timely file a written request for an appeal that satisfies the requirements of §371.1615 of this subchapter; or

(I) if the person timely filed a written request for appeal, the date the hearing officer's or administrative law judge's decision to uphold the exclusion becomes final; however, if the administrative law judge upholds an exclusion, the effective date will be made retroactive to the applicable effective date described in this paragraph.

(2) An exclusion remains in effect for the period indicated in the final notice of exclusion. The person is not eligible to apply for reinstatement or reenrollment as a provider until the exclusion period has elapsed. The minimum length of exclusion is determined as follows:

(A) The minimum length of exclusion is the federally mandated exclusion period plus one additional year if the exclusion is based upon a conviction as described in subsection (a)(3), (4), or (5) of this section.

(B) An MCO will be excluded for the same period as the related person was excluded, as described in subsection (a)(6) of this section.

(C) An individual will be excluded for the same period as the sanctioned entity in which the individual held an ownership, control interest, or substantial contractual relationship as described in subsection (a)(7) of this section.

(D) The exclusion is effective for ten years if the exclusion is based upon an assessment of civil monetary penalties pursuant to Texas Human Resources Code §32.039(c) arising out of injury to a person who is 65 years of age or older, a person with a disability, or a person under 18 years of age as described in subsection (a)(8) of this section.

(E) The exclusion is effective for three years if the exclusion is based upon an assessment of civil monetary penalties pursuant to Texas Human Resources Code §32.039(c).

(F) The exclusion is permanent if the exclusion is based upon a criminal conviction for committing a fraudulent act under the Medicaid program that results in injury to a person who is 65 years of age or older, a person with a disability, or a person under 18 years of age as described in subsection (a)(8) of this section.

(G) Unless otherwise provided, the length of exclusion will be determined by OIG in its discretion. OIG will consider the factors enumerated in §371.1603(f)(1) of this subchapter (relating to Legal Basis and Scope) in determining the length of exclusion.

(3) Unless a person is first reinstated and then re-enrolled as a provider in the Texas Medicaid program, no payment will be made by the Medicaid program for any item or service furnished or requested by an excluded person on or after the effective date of exclusion.

(4) An excluded person is prohibited from:

(A) personally or through a clinic, group, corporation, or other association or entity, billing or otherwise requesting or receiving payment for any Title V, VIII, XIX, XX, or CHIP program for items or services provided on or after the effective date of the exclusion;

(B) providing any service under the Medicaid program, whether or not the excluded person directly requests Medicaid program payment for such services;

(C) assessing care or ordering or prescribing services, directly or indirectly, to Title V, XIX, XX, or CHIP recipients after the effective date of the person's exclusion; and

(D) accepting employment by any person whose revenue stream includes funds from a Title V, VIII, XIX, XX, or CHIP program.

(5) If, after the effective date of an exclusion, an excluded person submits or causes to be submitted claims for services or items furnished within the period of exclusion, the person may be subject to civil monetary penalty liability under §1128A(a)(1)(D), and criminal liability under §1128B(a)(3) of the Social Security Act in addition to sanctions or penalties by OIG.

(6) In accordance with federal and state requirements, when OIG excludes a person, OIG may notify each state agency administering or supervising the applicable state health care program, as well as the appropriate state or local authority or agency responsible for licensing or certifying the person excluded. If issued, notification will include:

(A) the facts, circumstances, and period of exclusion;

(B) a request that appropriate investigations be made and any necessary sanctions or disciplinary actions be imposed in accordance with applicable law and policy; and

(C) a request that the state or local authority or agency fully and timely inform [the] OIG with respect to any actions taken in response to [the] OIG's request.

(7) OIG notifies the public of all persons excluded.

(8) A person who has been excluded from the Texas Medicaid or CHIP program will be excluded from the Medicaid and/or CHIP program in every other state and from the Medicare program pursuant to each program's applicable state or federal authority. When exclusion from the Texas Medicaid and/or CHIP program is based on the person's exclusion from Medicare, or from another state's Medicaid or CHIP program, the prohibitions enumerated in paragraph (4) of this subsection may apply.

§371.1707. *Permissive Exclusion.*

(a) OIG may exclude from participation in Titles V, VIII, XIX, XX, or CHIP programs any person if it determines that the person:

(1) commits a program violation;

(2) is affiliated with a person who commits a program violation;

(3) commits an act for which damages, penalties, or liability could be or are assessed by OIG;

(4) is a person not enrolled as a provider whose health care license, certification, or other qualifying requirement to perform certain types of service is revoked, suspended, voluntarily surrendered, or otherwise terminated such that the provider is unable to legally perform their profession due to loss of their license, certification, or other qualifying requirement;

(5) could be excluded for any reason for which the Secretary of the U.S. Department of Health and Human Services, its Office of Inspector General, or its agents could exclude such person under 42 U.S.C. §1320a-7(b) or 42 CFR Parts 1001 or 1003;

(6) is found liable for any violation under subsection (c) of Human Resources Code §32.039 that resulted in injury to a person who is 65 years of age or older, a person with a disability, or a person younger than 18 years of age;

(7) is found liable for any violation under subsection (c) of Human Resources Code §32.039 that did not result in injury to a person 65 years of age or older, a person with a disability, or a person younger than 18 years of age; or

(8) has been excluded from participation in Medicare or any other federal health care programs.

(b) OIG may exclude a person without sending prior notice of intent to exclude in the following circumstances:

(1) OIG determines that the person is or may be placing the health and/or safety of persons receiving services under a HHS program at risk;

(2) a person fails:

(A) to grant immediate access to OIG or to a Requesting Agency upon reasonable request;

(B) to allow OIG or a Requesting Agency to conduct any duties that are necessary to the performance of their official functions; or

(C) to provide to OIG or a Requesting Agency as requested copies or originals of any records, documents, or other items, as determined necessary by OIG or the Requesting Agency;

(3) the person engages in acts that violate 42 CFR §1001.1401 (hospital's failure to comply with corrective action plan required by the Centers for Medicare and Medicaid Services);

(4) the person engages in acts that violate 42 CFR §1001.1501 (default on health education loan or scholarship obligations);

(5) the person engages in acts that violate 42 CFR §1001.901 (false or improper claims);

(6) the person engages in acts that violate 42 CFR §1001.951 (fraud and kickbacks and other prohibited activities);

(7) the person engages in acts that violate 42 CFR §1001.1601 (violations of the limitations on physician charges);

(8) the person engages in acts that violate 42 CFR §1001.1701 (billing for services of assistant at surgery during cataract operations); or

(9) the person has been excluded from the Medicaid program and obtains a new provider number without first completing the reinstatement and re-enrollment process as required by §371.1719 of this division (relating to Recoupment of Overpayments Identified by Audit).

(c) Notice.

(1) Except as provided in subsection (b) of this section, OIG will issue a notice of intent to exclude when it proposes to exclude any person on permissive grounds. The notice of intent to exclude will include:

(A) the basis for the potential exclusion;

(B) the potential effect of the exclusion; and

(C) whether OIG also proposes to cancel any agreement held by the person to be excluded.

(2) When OIG makes a final determination to exclude the person or when the exclusion is based upon the grounds enumerated in subsection (b) of this section, OIG issues a final notice of exclusion, which will state:

(A) a description of the final exclusion;

(B) the basis of the final exclusion;

(C) the effect of the final exclusion;

(D) the duration of the final exclusion;

(E) the earliest date on which OIG will consider a request for reinstatement;

(F) the requirements and procedures for reinstatement;

(G) whether OIG will also cancel any agreement held by the person to be excluded; and

(H) a statement of the person's right to request a formal administrative appeal hearing regarding the exclusion.

(d) Due process.

(1) ~~After receiving a notice of intent to exclude, a [A] person has a right to the [may request an] informal resolution process [review] in accordance with §371.1613 of this subchapter (relating to Informal Resolution Process). [Review] after receipt of a notice of intent to exclude. OIG must receive the written request for the informal review no later than the thirtieth (30th) calendar day after the date the person receives the notice. A request for an informal review does not expand the time allowed to the provider to request an administrative hearing].~~

~~{(2) Within 30 days of receipt of the notice of intent to exclude, the person receiving the notice may submit to OIG, any documentary evidence or written argument regarding whether exclusion is warranted and any related issues to be considered during the informal review. Submission of documentary evidence or written argument, however, is no guarantee that OIG will not ultimately exclude the person.}~~

~~(2) [(3)] A person may request an administrative appeal hearing in accordance with §371.1615 of this subchapter (relating to Appeals) after receipt of a final notice of exclusion. OIG must receive the written request for an appeal no later than the 15th calendar day after the date the person receives final notice.~~

~~{(4) If both an informal review and an administrative hearing are requested after a final notice of exclusion, OIG may elect, in its sole discretion, to conduct an informal review. The administrative hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues.}~~

(e) Scope and effect of exclusion.

(1) The period of exclusion begins on the effective date. An exclusion becomes effective on the following:

(A) the date reflected on the final notice of exclusion if the exclusion is based on a health or safety risk as described in subsection (b)(1) of this section;

(B) the date of the original request for records if the exclusion is based on failure to provide access as described in subsection (b)(2) of this section;

(C) unless otherwise provided, 30 days after the person's receipt of the final notice of exclusion if the provider does not

timely file a written request for an appeal that satisfies the requirements of §371.1615 of this subchapter; or

(D) if the person timely filed a written request for appeal, the date the hearing officer or administrative law judge upholds the decision to exclude; however, if the administrative law judge upholds an exclusion based upon subsection (b)(1) of this section, the effective date will be made retroactive to the date of the final notice, and if the judge upholds an exclusion based upon subsection (b)(2) of this section, the effective date will be made retroactive to the date of the original request for records.

(2) An exclusion remains in effect for the period indicated in the final notice of exclusion. The person is not eligible to apply for reinstatement or re-enrollment as a provider until the exclusion period has elapsed.

(3) Unless a person is first reinstated and then re-enrolled as a provider in the Texas Medicaid program, no payment will be made by the Medicaid program for any item or service furnished or requested by an excluded person on or after the effective date of exclusion.

(4) An excluded person is prohibited from:

(A) personally or through a clinic, group, corporation, or other association or entity, billing or otherwise requesting or receiving payment from any Title V, VIII, XIX, XX, or CHIP programs for items or services provided on or after the effective date of the exclusion;

(B) providing any service pursuant to the Medicaid program, whether or not the excluded person directly requests Medicaid program payment for such services;

(C) assessing care or ordering or prescribing services, directly or indirectly, to Title V, XIX, XX or CHIP recipients after the effective date of the person's exclusion; and

(D) accepting employment by any person whose revenue stream includes funds from a Title V, VIII, XIX, XX, or CHIP program.

(5) If, after the effective date of an exclusion, an excluded person submits or causes to be submitted claims for services or items furnished within the period of exclusion, the person may be subject to civil monetary penalty liability under §1128A(a)(1)(D) and criminal liability under §1128B(a)(3) of the Social Security Act in addition to sanctions or penalties by OIG.

(6) In accordance with federal and state requirements, when OIG excludes a person, OIG may notify each state agency administering or supervising the applicable state health care program, as well as the appropriate state or local authority or agency responsible for licensing or certifying the person excluded. If issued, notification will include:

(A) the facts, circumstances, and period of exclusion;

(B) a request that appropriate investigations be made and any necessary sanctions or disciplinary actions be imposed in accordance with applicable law and policy; and

(C) a request that the state or local authority or agency fully and timely inform [the] OIG with respect to any actions taken in response to [the] OIG's request.

(7) OIG notifies the public of all persons excluded.

(8) A person who has been excluded from the Texas Medicaid or CHIP program will be excluded from the Texas Medicaid and/or CHIP program in every other state and from the Medicare program

pursuant to each program's applicable state or federal authority. When exclusion from the Texas Medicaid and/or CHIP program is based on the person's exclusion from Medicare, or from another state's Medicaid or CHIP program, the prohibitions enumerated in paragraph (4) of this subsection may apply.

§371.1709. *Payment Hold.*

(a) OIG may impose a payment hold against any person if it determines that the person committed an act for which a person is subject to administrative actions or sanctions, including the following:

(1) is subject to a suspension of payments by the U.S. Department of Health and Human Services for Medicare violations;

(2) commits a program violation;

(3) is affiliated with a person who commits a program violation; or

(4) for any other reason provided by statute or regulation.

(b) OIG imposes a payment hold against a person:

(1) to compel the production records or documents when a request made by a Requesting Agency is refused;

(2) when requested by the state's Medicaid Fraud Control Unit; or

(3) upon determination [receipt of reliable evidence that verifies] a credible allegation of fraud exists.

(c) Whenever OIG's investigation leads to the initiation of a payment hold in whole or part, OIG will make a fraud referral to the Medicaid Fraud Control Unit as required by 42 CFR §455.23(d).

(d) [(e)] Notice.

(1) Unless OIG receives a request from a law enforcement agency to temporarily withhold notice to a person of payment hold, OIG provides written notice of a payment hold no later than the fifth (5th) business day after the date the payment hold is imposed. A law enforcement agency may request a delay in sending notice for up to 30 days. The request may be renewed up to twice and in no event may exceed 90 days.

(2) Notice of payment hold includes:

(A) a description of the hold;

(B) the basis for the hold;

(C) the effect of the hold;

(D) the duration of the hold; and

(E) a statement of the person's right to request an informal resolution meeting [review] or a payment hold [an expedited administrative appeal] hearing regarding the imposition of the payment hold.

(3) If the payment hold is based on [reliable evidence that verifies] a credible allegation of fraud, written notice will also:

(A) state that the payments are being suspended according to 42 CFR §455.23;

(B) state the general allegations as to why the payment hold has been imposed;

(C) state that the hold is for a temporary period and will be lifted after either:

(i) OIG or a prosecuting authority determines that there is insufficient evidence of fraud by the person; or

(ii) legal proceedings related to the person's alleged fraud are completed;

(D) specify the types of Medicaid claims or business units to which the payment suspension is effective; ~~and~~

(E) inform the provider of the right to submit written evidence for consideration by the agency; ~~and~~

(F) state the specific basis for the hold, including identification of the claims supporting the allegation at that point in the investigation and a representative sample of any documents that form the basis for the hold; and

(G) describe administrative and judicial due process remedies, including the provider's right to seek informal resolution, a formal administrative appeal hearing, or both.

(c) ~~(d)~~ Due process.

(1) After receiving ~~[A person may request an expedited informal review after receipt of]~~ a notice of payment hold, a person has a right to the informal resolution process in accordance with §371.1613~~(e)~~ of this subchapter (relating to Informal Resolution Process). A ~~[Review].~~ OIG must receive the written request for an IRM ~~[the informal review no later than the tenth calendar day after the date the person receives the notice. A request for an informal review] does not expand the time allowed to the provider to request an administrative hearing.~~

~~{(2) Within ten days of receipt of the notice of payment hold, the person receiving the notice may submit to OIG any documentary evidence or written argument regarding whether payment hold is warranted and any related issues to be considered during the informal review. Submission of documentary evidence or written argument, however, is no guarantee that OIG will not ultimately maintain imposition of the hold.}~~

(2) ~~{(3)}~~ A person may request a payment hold ~~[an expedited administrative appeal] hearing after receipt of a notice of payment hold in accordance with §371.1615(d) of this subchapter (relating to Appeals). OIG must receive the written request for an appeal no later than 30 days ~~[the tenth calendar day]~~ after the date the person receives the notice.~~

~~{(4) If both an informal review and an administrative hearing are requested, the administrative hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues.}~~

(f) ~~(e)~~ Scope and effect of payment hold.

(1) Once a person is placed on payment hold, payment of Medicaid or other HHS program claims for specific procedures or services and any other payments to the person from an HHS agency will be limited or denied.

(2) If the state's Medicaid fraud control unit or any other law enforcement agency accepts a fraud referral from the office for investigation, a payment hold based on a credible allegation of fraud may be continued until:

(A) that investigation and any associated enforcement proceedings are complete; or

(B) the state's Medicaid fraud control unit, another law enforcement agency, or other prosecuting authorities determine that there is insufficient evidence of fraud by the provider.

(3) If the state's Medicaid fraud control unit or any other law enforcement agency declines to accept a fraud referral from OIG for investigation, a payment hold based on a credible allegation of fraud will be discontinued unless the commission has alternative federal or state authority under which it may impose a payment hold or the office makes a fraud referral to another law enforcement agency.

(4) ~~{(2)}~~ After a payment hold is terminated for any reason, OIG may retain the funds accumulated during the payment hold to offset any overpayment, criminal restitution, penalty or other assessment, or agreed-upon amount that may result from ongoing investigation of the person, including any payment amount accepted by the prosecuting authorities made in lieu of a prosecution to reimburse the Medicaid or other HHS program.

(5) ~~{(3)}~~ The payment hold may be terminated or partially lifted upon the following events:

(A) OIG or a prosecuting authority determines that there is insufficient evidence of fraud by the person if the hold is based upon an allegation of fraud;

(B) legal proceedings related to the person's alleged fraud are completed if the hold is based upon an allegation of fraud;

(C) the Medicaid Fraud Control Unit asks OIG to lift the hold if the hold is based upon the Unit's request;

(D) the duration of the hold expires if the hold was imposed for a specific, limited time;

(E) OIG and the person have agreed to lift the hold in whole or in part during an informal resolution;

(F) OIG determines in its sole discretion that there is insufficient evidentiary or legal basis for maintaining the hold;

(G) OIG determines in its sole discretion that it is in the best interests of the Medicaid program to lift the hold;

(H) OIG determines that a payment hold would adversely affect clients' access to care;

(I) an administrative law judge or judge of any court of competent jurisdiction orders OIG to lift the hold in whole or in part; or

(J) all proceedings against the provider, including any appeals and judicial review, have been exhausted and all overpayments and other reimbursements are satisfied.

#### *§371.1711. Recoupment of Overpayments and Debts.*

(a) OIG recovers overpayments made to providers within the Medicaid or other HHS programs, whether the overpayment resulted from error by the provider, the claims administrator, or an operating agency, misunderstanding, or a program violation.

(b) Application. OIG may recoup from any person if it determines that the person committed an act for which a person is subject to administrative actions or sanctions, including the following:

(1) commits a program violation that leads to the payment of an overpayment;

(2) has failed to pay a debt owed to Medicare or to any Medicaid program as the result of fraudulent or abusive actions by a person participating in such program;

(3) is affiliated with a person who commits a program violation that leads to the payment of an overpayment;

(4) commits an act for which sanctions, damages, penalties, or liability could be or are assessed by OIG; or

(5) who causes or receives an overpayment.

(c) Notice.

(1) Notice of Proposed Recoupment of Overpayment or Debt. [~~potential overpayment.~~] When OIG proposes to recoup overpayments or debts, it gives written notice of its intent to recoup by sending a notice of proposed recoupment of [potential] overpayment or debt. A notice of proposed recoupment [Notice] of [potential] overpayment or debt includes:

- (A) a description of the recoupment, including the amount of the potential identified overpayment;
- (B) the basis for the recoupment;
- (C) the effect of the recoupment;
- (D) the duration of the recoupment; and
- (E) a statement of the person's right to request an informal resolution meeting (IRM). [~~review or administrative appeal.~~]

(2) Notice of any proposed recoupment of an overpayment or debt and any damages or penalties related to a proposed recoupment of an overpayment or debt arising out of a fraud or abuse investigation will include:

- (A) the specific basis for the overpayment or debt;
- (B) a description of facts and supporting evidence;
- (C) a representative sample of any documents that form the basis for the overpayment or debt;
- (D) the extrapolation methodology;
- (E) the calculation of the overpayment or debt amount;
- (F) the amount of damages and penalties, if applicable;

and

(G) a description of administrative and judicial due process remedies, including the provider's right to seek informal resolution, a formal administrative appeal hearing, or both.

(3) [(2)] Final notice of overpayment and notice of recoupment of debt. A final notice of overpayment and a notice of recoupment of debt includes:

- (A) a description of the recoupment, including the amount of the identified final overpayment or debt;
- (B) the basis of the recoupment;
- (C) the effect of the recoupment;
- (D) the duration of the recoupment;
- (E) the requirements of the person for repayment of the overpayment or debt; and
- (F) a statement of the person's right to request a formal administrative appeal hearing regarding the recoupment.

(d) Due process.

(1) After receiving a notice of proposed recoupment or overpayment of debt, a person has a right to the informal resolution process in accordance with §371.1613 of this subchapter (relating to Informal Resolution Process). [A person may request an informal review after receipt of a notice of potential recoupment in accordance with §371.1613 of this subchapter (relating to Informal Review). OIG must receive the written request for the informal review no later than the thirtieth (30th) calendar day after the date the person receives the

notice. A request for an informal review does not expand the time allowed to the provider to request an administrative hearing.]

[(2) Within 30 days of receipt of the notice of potential recoupment, the person receiving the notice may submit to OIG any documentary evidence or written argument regarding whether recoupment is warranted and any related issues to be considered during the informal review. Submission of documentary evidence or written argument, however, is no guarantee that OIG will not enforce the recoupment action.]

(2) [(3)] A person may request an administrative appeal hearing after receipt of a [final] notice of potential recoupment in accordance with §371.1615 of this subchapter (relating to Appeals). OIG must receive the written request for an appeal no later than 15 days [the 15th calendar day] after the date the person receives [final] notice.

[(4) If both an informal review and an administrative hearing are requested after a final notice of recoupment, OIG may elect, in its sole discretion, to conduct another informal review. The administrative hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues.]

(e) Scope and effect of recoupment. The person who is the subject of a recoupment of overpayment or recoupment of a debt is responsible for payment of all overpayment amounts or debts assessed, plus OIG's and other HHS program's costs related to an administrative appeal and all investigative and administrative costs related to the investigation that resulted in recoupment, if applicable. A final notice of overpayment will become final as provided in §371.1617(a) of this subchapter (relating to Finality and Collections).

§371.1713. *Restricted Reimbursement.*

(a) Application. OIG may restrict the reimbursement of claims for specific procedures, specific services, or both if it determines that the person committed an act for which a person is subject to administrative actions or sanctions, including the following:

- (1) commits a program violation;
- (2) is affiliated with a person who commits a program violation; or
- (3) commits an act for which sanctions, damages, penalties, or liability could be or are assessed by OIG.

(b) Other reasons. OIG may also restrict the reimbursement of claims for specific procedures, specific services, or both, for any other reason specified by statute or regulation.

(c) Notice. Notice of restricted reimbursement includes:

- (1) a description of the restricted reimbursement;
- (2) the basis for the restricted reimbursement;
- (3) the effect of the restricted reimbursement;
- (4) the duration of the restricted reimbursement; and
- (5) a statement of the person's right to request an informal resolution meeting (IRM) [~~review~~] or an administrative hearing regarding the imposition of the restricted reimbursement.

(d) Due process.

(1) After [A person may request an informal review after] receipt of a notice of restricted reimbursement, a person has a right to the informal resolution process in accordance with §371.1613 of this subchapter (relating to Informal Resolution Process). [~~Review~~]. OIG must receive the written request for the informal review no later than

the thirtieth (30th) calendar day after the date the person receives the notice. A request for an informal review does not expand the time allowed to the provider to request an administrative hearing.]

~~[(2) Within 30 days of receipt of the notice of restricted reimbursement, the person receiving the notice may submit to OIG, any documentary evidence or written argument regarding whether restricted reimbursement is warranted and any related issues to be considered during the informal review. Submission of documentary evidence or written argument, however, is no guarantee that OIG will not ultimately place the person on restricted reimbursement.]~~

~~(2) [(3)] A person may request an administrative appeal hearing after receipt of a notice of restricted reimbursement in accordance with §371.1615 of this subchapter (relating to Appeals). OIG must receive the written request for an appeal no later than 15 days [the 15th calendar day] after the date the person receives the notice.~~

~~[(4) If both an informal review and an administrative hearing are requested, the administrative hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues.]~~

(e) Scope and effect of restricted reimbursement.

(1) Once a person is placed on restricted reimbursement, payment of Medicaid or other HHS program claims for specific procedures or services will be limited or denied indefinitely or for a specified period of time.

(2) A person may be eligible to be paid for certain other services during the time the person is on restricted reimbursement.

(3) The restricted reimbursement will become effective and final on the date reflected on the notice of restricted reimbursement in the following circumstances:

(A) OIG determines that the person subject to restricted reimbursement may be placing the health or safety of persons receiving services under Medicaid at risk; or

(B) [the] a person who is subject to restricted reimbursement fails:

(i) to grant immediate access to OIG or to a Requesting Agency upon reasonable request;

(ii) to allow OIG or a Requesting Agency to conduct any duties that are necessary to the performance of their official functions; or

(iii) to provide to OIG or a Requesting Agency as requested copies or originals of any records, documents, or other items, as determined necessary by OIG or the Requesting Agency.

(4) If the person timely filed a written request for appeal, the effective date of restricted reimbursement is the date the hearing officer's or administrative law judge's decision to uphold the restricted reimbursement becomes final; however, if the administrative law judge upholds a restricted reimbursement for grounds described in paragraph (3) of this subsection, the effective date will be made retroactive to the date of the notice of restricted reimbursement.

(5) Unless otherwise provided in this section, the restricted reimbursement will become final as provided in §371.1617(a) of this subchapter (relating to Finality and Collections).

§371.1715. *Damages and Penalties.*

(a) Application. OIG may assess administrative damages, penalties, or both against any person if it determines that the person

committed an act for which a person is subject to administrative actions or sanctions, including the following:

(1) presents or causes to be presented to OIG or its fiscal agent, a claim that contains a statement or representation the person knows or should know to be false;

(2) commits an act of self-dealing in violation of §371.1669 of this subchapter (relating to Self-Dealing);

(3) commits a managed care violation prohibited by §371.1663 of this subchapter (relating to Managed Care);

(4) fails to maintain adequate documentation to support a claim for payment in accordance with the requirements specified by rule or policy of Medicaid or Texas Medicaid Managed Care program policy; or

(5) engages in any other conduct that OIG has defined as a program violation.

(b) Exceptions.

(1) Unless the provider submitted information to OIG for use in preparing a voucher that the provider knew or should have known was false or failed to correct information that the provider knew or should have known was false when provided an opportunity to do so, this section does not apply to a claim based on the voucher if OIG calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature.

(2) Subsection (a)(2) of this section does not prohibit a person from engaging in generally accepted business practices, including:

(A) conducting a marketing campaign;

(B) providing token items of minimal value that advertise the person's trade name;

(C) providing complimentary refreshments at an informational meeting promoting the person's goods or services;

(D) providing a value-added service if the person is an MCO; or

(E) other conduct specifically authorized by law, including conduct authorized by federal safe harbor regulations (42 CFR §1001.952).

(c) Notice.

(1) Notice of preliminary report. If after an examination of the facts OIG determines by prima facie evidence that a person commits a violation that subjects the person to assessment of damages or penalties, OIG may issue a preliminary report stating the facts on which it based its conclusion, its proposal that administrative damages or penalty under this section be imposed, and stating the amount of the proposed damages or penalty. OIG will issue notice of the preliminary report to the person subject to the assessment.

(2) Content of the notice of preliminary report. The notice of preliminary report will include:

(A) a brief summary of the facts forming the basis for the assessment;

(B) a statement of the amount of the proposed damages or penalty; and

(C) a statement of the person's right to an informal resolution meeting (IRM) [review] of the alleged violation, the amount of the damages or penalty, or both the alleged violation and the amount of the damages or penalty.

(3) Notice of final assessment. The notice of final assessment of damages or penalty includes:

- (A) a brief summary of the facts forming the basis for the assessment;
- (B) a statement of the amount of the damages or penalty;
- (C) a statement of the effect of the assessment; and
- (D) a statement of the person's right to an appeal of the alleged violation, the amount of the damages or penalty, or both the alleged violation and the amount of the damages or penalty.

(d) Due process.

(1) After receipt of a notice of preliminary report, a [A] person has a right to the [may request an] informal resolution process [review] in accordance with §371.1613 of this subchapter (relating to Informal Resolution Process). [Review] after receipt of a notice of preliminary report. ~~OIG must receive the written request for the informal review no later than the thirtieth (30th) calendar day after the date the person receives notice of preliminary report. A request for an informal review does not expand the time allowed to the provider to request an administrative hearing.]~~

~~[(2) Within 30 days of receipt of the notice of preliminary report, the person receiving the notice may submit to OIG any documentary evidence or written argument regarding whether damages or penalties are warranted and any related issues to be considered during the informal review. Submission of documentary evidence or written argument, however, is no guarantee that OIG will not assess damages or penalties.]~~

~~(2) [(3)] A person may request an administrative appeal hearing in accordance with §371.1615 of this subchapter (relating to Appeals) after receipt of a notice of final assessment. OIG must receive the written request for an appeal no later than 15 days [the 15th calendar day] after the date the person receives the notice of final assessment.~~

~~[(4) If both an informal review and an administrative hearing are requested after a notice of final assessment, OIG may elect, in its sole discretion, to conduct another informal review. The administrative hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative hearing will be abated until all informal review discussions have concluded without settlement or resolution of the issues.]~~

(e) Scope and effect of assessment of damages and penalties.

(1) A person who violates subsection (a)(1) - (3) of this section is liable for:

(A) damages equal to the amount paid, if any, as a result of the violation and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; plus

(B) an administrative penalty of an amount not to exceed twice the amount paid, if any, as a result of the violation, plus:

(i) an administrative penalty of an amount not less than \$5,500 or more than \$15,000 for each violation that results in injury to a person who is 65 years of age or older, a person with a disability, or a person younger than 18 years of age; or

(ii) an administrative penalty of an amount not more than \$11,000 for each violation that does not result in injury to a person who is 65 years of age or older, a person with a disability, or a person younger than 18 years of age.

(2) A person who violates subsection (a)(4) or (a)(5) of this section is liable for:

(A) the amount paid in response to the claim for payment; or

(B) the payment of an administrative penalty in an amount not to exceed \$500 for each violation, as determined by OIG.

(3) Additionally, a person against whom damages or penalties have been assessed may be responsible for OIG's and other HHS program's costs related to the investigation that resulted in the assessment and the costs of any administrative hearing arising out of the assessment.

(4) In determining the amount of administrative damages or penalties to be assessed, OIG considers:

(A) the seriousness of the violation;

(B) whether the person had previously committed a violation; and

(C) the amount necessary to deter the person from committing future violations.

(5) The assessment of damages or penalty will become final as provided in §371.1617(a) of this subchapter (relating to Finality and Collections).

#### §371.1717. Reinstatement.

(a) A person who has been excluded from Medicaid or any state health care program by [the] OIG may be reinstated by [the] OIG. A person excluded from the Medicaid program may submit to the Inspector General a written request for reinstatement at any time after the period of exclusion has ended. The request for reinstatement must establish good cause for granting reinstatement.

(b) [The] OIG may require the requestor to furnish specific information and authorization for [the] OIG to obtain information from private health insurers, peer review bodies, probation officers, professional associates, investigative agencies, and others as may be necessary to determine whether reinstatement should be granted.

(c) The request for reinstatement may be approved, abated, postponed, or denied by [the] OIG. [The] OIG will grant reinstatement only if it is reasonably certain that the types of actions that formed the basis for the original exclusion have not recurred and will not recur. In making this determination, [the] OIG will consider:

(1) the conduct of the provider or person before and after the date of the notice of exclusion;

(2) whether all fines, damages, penalties, and any other debts due and owing to any federal, state, or local government have been paid, or satisfactory arrangements have been made that fulfill these obligations;

(3) the accessibility of other health care to the recipient population that would be served by the person who has been excluded;

(4) the person's previous conduct, including conduct during participation in the Titles XVIII, XIX, XX, and V, CHIP, and any HHS programs in any state, or any conduct or action for which a sanction could have been taken, as described in this subchapter;

(5) any previous criminal convictions of the person regardless of its relation to Titles XVIII, XIX, XX, V, CHIP, or other HHS programs;

(6) whether the person complies with or has made satisfactory arrangements to fulfill the applicable conditions of participation or supplier conditions for coverage under the statutes and regulations;



(7) whether the person has, during the period of exclusion, submitted claims, or caused claims to be submitted or payment to be made by the Medicaid program or any state health care program, for items or services the excluded party furnished, ordered or prescribed, including health care administrative services; and

(8) any other factors or circumstances deemed by [the] OIG to be relevant to the determination of reinstatement.

(d) If an entity, association, or affiliation seeks reinstatement, and any affiliate of that entity, as defined by §371.1607 of this subchapter (relating to Definitions), was also excluded on grounds arising out of the same program violations, [the] OIG may approve reinstatement of the entity, association, or affiliation if it determines that the excluded principal for the entity or association:

(1) has terminated his or her ownership or control interest in the entity;

(2) is no longer an officer, director, agent, consultant, managing employee, or bears any other title with the same duties, ownership, or control of the entity; or

(3) has been reinstated in accordance with this section.

(e) Notice.

(1) Approval of request for reinstatement. If [the] OIG approves the request for reinstatement, OIG will provide written notice to the excluded person and will enter the fact of that person's reinstatement into [the] OIG exclusion database. OIG must support a determination granting reinstatement after termination with written findings that support the decision. The notice of approval will include:

(A) any conditions precedent to reinstatement and the date by which they must be satisfied;

(B) any limiting conditions on the person's continued participation in the Medicaid program;

(C) the provider's obligations to re-enroll as a Medicaid provider; and

(D) the effective date of reinstatement.

(2) Denial of request for reinstatement. If [the] OIG denies the request for reinstatement, it will give written notice to the requesting person, which will include:

(A) notice of the denial; and

(B) a description of the person's right for a desk review.

(3) Desk review results. After concluding a desk review, [the] OIG will send the provider written notice, which will include:

(A) notice of approval of reinstatement as specified in paragraph (1) of this subsection; or

(B) notice the request was denied and that a subsequent request for reinstatement will not be considered until at least one year after the date of denial.

(f) Due process.

(1) The excluded person may submit a request for a desk review of a denial of reinstatement. The request must be received by OIG within 30 calendar days of receipt of the notice of denial. The request must include any documentary evidence and written argument against the continued exclusion. Upon timely receipt of a request for desk review, [the] OIG will review the evidence and argument and notify the person of the results.

(2) The denial of reinstatement is an administrative action, not a sanction. A reinstatement decision does not give rise to additional due process or notice requirements.

(3) A determination with respect to reinstatement is not subject to administrative or judicial review. An administrative law judge or judge may not require reinstatement of an individual or entity in accordance with this section. The determination is subject only to informal resolution meeting [review] by [the] OIG.

(g) Scope and effect of reinstatement.

(1) Reinstatement will not be effective until OIG grants the request and provides notice under this section. Reinstatement will be effective as provided in the notice. The provider may apply for re-enrollment on or after the effective date of reinstatement.

(2) An excluded person may not be granted a contract or provider agreement in the Medicaid program unless and until:

(A) reinstatement is approved by [the] OIG;

(B) the exclusion status is removed; and

(C) the person re-enrolls and is admitted as a provider.

(3) If a person circumvents the reinstatement and reenrollment requirements specified in subsections (a), (b), and (e) of this section and receives a new Medicaid program provider number before being reinstated, the person may be excluded without prior notice. The person may also be subject to recoupment of all of the Medicaid provider payments made to that provider number and imposition of administrative penalties.

(4) If a person submits claims or causes claims to be submitted or payments to be made by the programs for items or services furnished, ordered or prescribed, including administrative and management services or salary, during the period of exclusion and before reinstatement has been granted and re-enrollment completed, OIG may deny reinstatement on that basis. This section applies regardless of whether a person has obtained a program provider number or equivalent, either as an individual or as a member of a group, prior to being reinstated. The person is subject to imposition of recoupment of any payments made and administrative penalties.

*§371.1719. Recoupment of Overpayments Identified by Audit.*

(a) OIG may recoup an overpayment if the overpayment was identified in an audit that found claims or cost reports resulted in money paid in excess of what the person is or was entitled to receive under an HHS program, contract, or grant. This section does not include overpayments identified by a Recovery Audit Contractor (RAC) pursuant to 42 CFR §455.506.

(b) Audit procedures.

(1) An audit conducted by OIG or its contractor must:

(A) be conducted and reported in accordance with Generally Accepted Governmental Auditing Standards (GAGAS) or other appropriate standards recognized by the United States Government Accountability Office;

(B) limit the period covered by an audit to five years;

(C) notify the person, and the person's corporate headquarters if the person is incorporated, of the impending audit not later than the seventh day before the date the site visit, if any, begins, except when an element of surprise is critical to the audit objective, such as surprise audits, cash counts, or fraud-related procedures; and

(D) permit the person to produce, for consideration, documentation to address any exception found during an audit not

later than the 10th calendar day after the date the exit conference, if any, is completed, or by a later date as specified by the auditor.

(2) If an exit conference is conducted after the site visit, the auditor must allow the person to:

- (A) orally respond to questions by the auditor; and
- (B) orally comment on the initial findings of the auditor.

(c) Notice.

(1) Point of contact. A person may designate a specific address and individual point of contact to receive all correspondence related to the audit by sending the designated individual's contact information to the auditor and to [the] OIG Sanctions unit. OIG will begin sending all notices and correspondence to the designated point of contact within 30 calendar days after receiving the designation.

(2) Draft audit report. After the field work is completed, OIG or its auditor will deliver written notice of a draft audit report in accordance with §371.1609 of this subchapter (relating to Notice, Service, and Subpoena Authority).

(3) Revised draft audit report and additional revisions. The auditor may elect whether to issue a revised draft audit report or to issue a final report. The auditor may revise the draft audit report as needed to incorporate the management responses and reconsideration of any initial findings. A revised draft audit report will be delivered to the person in accordance with §371.1609 of this subchapter.

(A) The auditor, in its discretion, may consider additional management or HHS agency staff responses to the revised draft audit report and make additional revisions.

(B) If additional revisions are made that modify the basis or rationale for determining that an overpayment exists or that increase the overpayment amount, OIG or its auditor will provide written notice of the revised draft audit report.

(4) Notice of final audit report. OIG or its auditor delivers written notice of a final audit report in accordance with §371.1609 of this subchapter. The final audit report must include:

- (A) a statement of the auditor's compliance with GAGAS;
- (B) the management response, which may be summarized;
- (C) the final determination of overpayment amount;
- (D) reconsideration results and the revisions of any initial findings; and
- (E) a recitation of the person's rights and obligations as set forth in subsections (d) and (e) of this section.

(5) Notice of appeal results. After the conclusion of any appeal hearing, OIG will deliver written notice of the appeal results in accordance with §371.1609 of this subchapter. The written notice will identify the final overpayment amount.

(d) Due process.

(1) Draft audit report. A person who is the subject of a draft audit report may request an informal appeal, may make a written management response, or both. OIG or its auditor, as designated in the notice letter, must receive a written request for the informal appeal or written management response no later than the 30th calendar day after the date the person receives the draft audit report, or by the date specified by the auditor, whichever is earlier. The informal appeal,

if requested, will consist of a desk review by the auditing division or entity at OIG or its auditor.

(2) Revised draft audit report. If the person is the subject of a revised draft audit report that modifies the basis or rationale for determining that an overpayment exists or that increases the overpayment amount, the person may request an informal appeal, may make a written management response, or both. OIG or its auditor, as designated in the notice letter, must receive a written request for the informal appeal or written management response no later than the 30th calendar day after the date the person receives the revised draft audit report, or by the date specified by the auditor, whichever is earlier. The informal appeal, if requested, will consist of a desk review by the auditing division or entity at OIG or its auditor.

(3) Response to final audit report. A person who receives a final audit report must respond in one of the following ways:

(A) The person can refund the overpayment within 60 calendar days after receipt of the final audit report.

(B) The person can timely request and execute a final payment plan agreement that has been approved by OIG. A written request for a final payment plan agreement must be received by OIG within fifteen (15) calendar days after the person received the final audit report. The request must be signed by the person or its attorney and contain a statement that the person agrees not to dispute the findings of the final audit report for purposes of the overpayment recoupment sanction at issue and waives its right to an appeal of any findings for which a payment plan agreement is sought.

(i) The request for a final payment plan agreement is not binding upon OIG. A resolution is not final until the person and OIG execute a written final payment plan agreement.

(ii) A request for a final payment plan agreement does not abate the imposition of a final debt in accordance with subsection (e) of this section.

(iii) OIG may agree to toll the repayment obligation deadline pending negotiations of payment plan terms. OIG will send written notice to the person of any decision to toll the repayment obligations or to discontinue further payment plan negotiations.

(iv) OIG retains discretion to determine when payment plan negotiations have been exhausted.

(C) The person can timely request an administrative hearing appeal. To request an appeal of the final audit report, the person must file a written request for an appeal, which must be received by OIG within 15 calendar days after receipt of the final audit report. The request must:

- (i) be signed by the person or its attorney;
- (ii) contain a statement as to the specific issues, findings, or legal authority in the final audit report being challenged, and the basis for the person's contention that the specific issues or findings and conclusion are incorrect; and

(iii) with respect to any audit findings that are not being challenged on appeal, indicate whether the person intends to remit payment within 60 calendar days or whether the person seeks a payment plan in accordance with this section. Recoupment of overpayments at issue on appeal will not be initiated by OIG until the appeal has been finally determined.

(4) Request for a hearing to appeal. Upon timely receipt of a proper written request for appeal, OIG will notify the HHSC Appeals Division of the provider's hearing request. The appeal will then proceed

pursuant to Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act).

(e) Scope and effect.

(1) The effect of a final overpayment identified in an audit is to create a final debt in favor of the State of Texas.

(2) A final audit report becomes final and unappealable if a written request for an appeal is not received by OIG within fifteen (15) calendar days after the person's receipt of the final audit report.

(3) If a duly requested final payment plan agreement is not executed by all parties or full restitution is not received within 60 calendar days after receipt by the person of an unappealed final audit report or final disposition of an administrative appeal, one or more vendor holds may be placed on the person's payment claims and account; however, OIG may agree to toll the imposition of any vendor holds pending negotiations of payment plan terms. OIG will send written notice to the person of any decision to toll the imposition of any vendor holds.

(4) If the person has duly requested an appeal, the contested amount of the overpayment becomes final 30 days after the person receives written notice of the appeal results. Recoupment of any overpayments at issue on appeal will not be initiated until the appeal has been finally determined.

(f) Reporting.

(1) For purposes of refunding the federal share of any questioned costs, the final audit report constitutes the State's written notice of the identified overpayment amount. The date of the written notice of overpayment accompanying a final audit report constitutes the date of discovery.

(2) If a person appeals a final audit report, the state will issue a written notice of the identified overpayment amount at the conclusion of the appeal, and the date of that notice of final audit report will constitute the date of discovery.

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 January 13, 2014.

TRD-201400110

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 23, 2014

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



## 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 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

### 19 TAC §101.3017

The Texas Education Agency (TEA) proposes new §101.3017, concerning student assessment. The proposed new section would require the release of state-developed assessments administered for the 2013-2014 school year before the end of that school year.

As required by the Texas Education Code (TEC), §39.023(e-2) and (e-3), added by House Bill (HB) 5, 83rd Texas Legislature, 2013, the TEA shall release the 2013-2014 assessment instruments administered under the TEC, §39.023(a), (b), (c), (d), and (l), before the 2014-2015 school year. Proposed new 19 TAC §101.3017, Release of Tests, would specify that the release of the assessments administered in the 2013-2014 school year would occur after the last time the assessments are administered in the 2013-2014 school year. The proposed new section would also specify that this release would exclude those assessments used for retesting or in subsequent administrations.

The TEC, §39.023(e-1), as added by HB 5, requires the TEA, by commissioner rule, to release the 2012-2013 assessments after the last time the assessments were administered for the school year. This release excluded assessments used for retesting. The TEA already released these assessments prior to the 2013-2014 school year. As a result, no commissioner rule action is proposed to govern the release of the 2012-2013 assessments.

With the TEC, §39.023(e), as amended by HB 5, during the 2014-2015 and 2015-2016 school years, the TEA is required to annually release all administered tests for those school years developed under the TEC, §39.023, after the last time the assessments are administered for the year. These releases exclude any assessment instruments used for retesting. Rule authority for the release of tests reverts back to the State Board of Education after the 2015-2016 school year.

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

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. The public and students would benefit from the availability of recent state assessment test items and answer keys. 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 January 24, 2014, and ends February 24, 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](mailto: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 January 24, 2014.

The new section is proposed under the Texas Education Code (TEC), §7.021, which authorizes the agency to administer and monitor compliance with education programs required by federal or state law, and the TEC, §39.023(e-2) and (e-3), as added by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013, which require the TEA, under rules adopted by the commissioner for the 2013-2014 school year, to release the specified questions and answer keys for certain assessment instruments administered during the 2013-2014 school year.

The new section implements the TEC, §7.021 and §39.023(e-2) and (e-3).

*§101.3017. Release of Tests.*

During the 2013-2014 school year, the Texas Education Agency shall release all test items and answer keys for primary administration assessment instruments under the Texas Education Code, §39.023(a), (b), (c), (d), and (l), after the last time the assessment is administered for the school year. The test release shall exclude any test items or test forms used in subsequent test administrations.

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 January 8, 2014.

TRD-201400068

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 23, 2014

For further information, please call: (512) 475-1497



### DIVISION 3. SECURITY OF ASSESSMENTS, REQUIRED TEST ADMINISTRATION PROCEDURES AND TRAINING ACTIVITIES

#### 19 TAC §101.3031

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §101.3031(b)(2) is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 24, 2014, issue of the Texas Register.)*

The Texas Education Agency (TEA) proposes an amendment to §101.3031, concerning student assessment. The section addresses required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The proposed amendment would adopt the *2014 Test Security Supplement* as part of the Texas Administrative Code (TAC). The earlier versions of the security supplement will remain in effect with respect to the year for which they were developed.

Through the adoption of 19 TAC §101.3031, the commissioner exercised rulemaking authority relating to the administration of assessment instruments adopted or developed under the Texas Education Code, §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses purpose, administrative procedures, training activities, and records retention. As part of the administrative procedures, school districts and charter schools are required to comply with test security and confidentiality requirements delineated annually in test administration materials. TEA legal counsel has advised that procedures related to test security be adopted as part of the TAC.

The proposed amendment to 19 TAC §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, would update the rule by adopting the *2014 Test Security Supplement* as Figure: 19 TAC §101.3031(b)(2). The *2014 Test Security Supplement* describes the security procedures and guidelines that school districts and charter schools shall be required to follow during the 2014 testing year.

The *2014 Test Security Supplement* includes information regarding a new process, to begin in spring 2014, for districts to submit a Plan of Action when reporting testing irregularities that specifies the steps a district will take to prevent a reoccurrence of the irregularity. Information provided in district reports, specifically the Plan of Action, will be used by TEA in fall 2015 during an audit of selected districts to verify that corrective actions have been implemented in response to the irregularity.

The amendment would also add language to specify that the security supplements adopted for prior years will remain in effect with respect to a given year.

The proposed amendment would establish in rule the test security procedures outlined in the *2014 Test Security Supplement*. Applicable procedures will be adopted each year as annual versions of the test security supplement are published.

The proposed amendment would have no additional effect on the paperwork required and maintained by school districts and charter schools.

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

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to inform the public of the security procedures for the 2014 test administrations. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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 January 24, 2014, and ends February 24, 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](mailto: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 January 24, 2014.

The amendment is proposed under Texas Education Code (TEC), §39.0301, which authorizes the commissioner to establish procedures for the administration of assessment instruments adopted or developed under TEC, §39.023, including procedures designed to ensure the security of the assessment instruments; and the TEC, §39.0304, which authorizes the commissioner to adopt rules necessary to implement training in assessment instrument administration.

The amendment implements the TEC, §39.0301 and §39.0304.

*§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.*

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

- (1) general testing program information;
- (2) requirements for ensuring test security and confidentiality described in the *2014 [2013] Test Security Supplement* provided in this paragraph [subsection];  
Figure: 19 TAC §101.3031(b)(2)  
[Figure: 19 TAC §101.3031(b)(2)]
- (3) procedures for test administration;
- (4) responsibilities of personnel involved in test administration; and
- (5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for a minimum of five years.

(e) Applicability. The test administration procedures and required training activities established in the annual test security supplements for prior years [~~prior to 2013~~] remain in effect for all purposes with respect to the prior year to which it applies [years].

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 January 8, 2014.

TRD-201400069

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 23, 2014

For further information, please call: (512) 475-1497

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 9. TITLE INSURANCE

The Texas Department of Insurance (TDI) proposes the repeal of 28 Texas Administrative Code (TAC) §§9.11, 9.21, 9.30, 9.31, 9.40, and 9.501. The repeal of these sections of the TAC is necessary because the amendments to the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual)* that were adopted by reference in those TAC sections have been readopted by reference in 28 TAC §9.1, which superseded the TAC sections now proposed for repeal.

In compliance with Government Code §2001.039, which requires TDI to review a rule every four years and to readopt, readopt with amendments, or repeal the rule, a notice of the proposed rule review of Chapter 9, Title Insurance, was published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10259). The General Counsel division reviewed and considered all of the sections in Chapter 9 for readoption, revision, or repeal. Repealing the sections is necessary because the sections have been superseded. Each of these sections adopted or amended certain title rules or forms, by reference, as part of the *Basic Manual*. In 2010, and several times before this, the entire *Basic Manual* was adopted by reference into 28 TAC §9.1. Because the title rules and forms that these sections incorporated into the *Basic Manual* were readopted as part of §9.1, the sections are duplicative and are no longer necessary. Their removal will help keep the TAC clear, relevant, and current.

TDI did not receive any comments on the review. The adopted rule review of Chapter 9 was published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4392).

FISCAL NOTE. Marilyn Hamilton, director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that, for each year of the first five years the repeal of the sections is in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Additionally, Ms. Hamilton does not anticipate the proposal will have any measurable effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Ms. Hamilton has determined that, for each year of the first five years the repeal of the sections is in effect, the anticipated public benefit will be the elimination of unnecessary provisions to help the TAC remain clear, relevant, and current. There is no anticipated economic cost to people who are affected by or required to comply with the proposed repeal. Additionally, there is no anticipated difference in compliance cost between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), TDI has

determined that this proposed repeal will not have an adverse economic effect on small or micro businesses because it is a repeal of rules that have been superseded. Because there are no adverse economic effects, TDI is not required to prepare a regulatory flexibility analysis.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal. This proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, so, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** If you wish to comment on this proposal you must do so in writing no later than 5:00 p.m. on February 24, 2014. Send comments to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov). Please simultaneously submit an additional copy of the comment to Marilyn Hamilton, Director, Personal and Commercial Lines Office, Property and Casualty Section, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to [marilyn.hamilton@tdi.texas.gov](mailto:marilyn.hamilton@tdi.texas.gov). You must submit any request for a public hearing separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov) before the close of the public comment period. If a hearing is held, you may present written and oral comments for consideration at the hearing.

## SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

### 28 TAC §§9.11, 9.21, 9.30, 9.31, 9.40

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

**STATUTORY AUTHORITY.** TDI proposes the repeal of 28 TAC §§9.11, 9.21, 9.30, 9.31, and 9.40 under Insurance Code §36.001 and §2551.003, and Government Code §2001.039. 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. Section 2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance. Government Code §2001.039 requires TDI to review a rule every four years and to readopt, readopt with amendments, or repeal the rule.

**CROSS REFERENCE TO STATUTE.** This proposal implements the following statutes: Insurance Code §36.001 and §2551.003

§9.11. *Amendments to the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas from a Public Hearing.*

§9.21. *Procedural Rule for Construction of Terms in a Policy of Title Insurance (USA).*

§9.30. *Procedural Rules, Rates, and Forms Relating to Home Equity.*

§9.31. *Rate Rule for Subsequent Issuance of Mortgagee Policy.*

§9.40. *Procedural Rules, Rates and Forms Relating to Mineral Interests.*

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 January 10, 2014.

TRD-201400092

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 23, 2014

For further information, please call: (512) 463-6327



## SUBCHAPTER D. PERSONAL PROPERTY TITLE INSURANCE

### 28 TAC §9.501

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

**STATUTORY AUTHORITY.** TDI proposes the repeal of 28 TAC §9.501 under Insurance Code §36.001 and §2551.003, and Government Code §2001.039. 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. Section 2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance. Government Code §2001.039 requires TDI to review a rule every four years and to readopt, readopt with amendments, or repeal the rule.

**CROSS REFERENCE TO STATUTE.** This proposal implements the following statutes: Insurance Code §36.001 and §2551.003

§9.501. *Amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

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 January 10, 2014.

TRD-201400093

Sara Waitt  
General Counsel  
Texas Department of Insurance  
Earliest possible date of adoption: February 23, 2014  
For further information, please call: (512) 463-6327



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

##### SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

###### 37 TAC §380.9337

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

The Texas Juvenile Justice Department (TJJD) proposes the repeal of §380.9337, concerning Alleged Sexual Abuse.

The repeal will allow for a significantly revised rule to be published in its place.

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the repeal is in effect, there will be no significant fiscal impact to state or local government as a result of enforcing or administering the repeal.

Teresa Stroud, Senior Director of State Programs and Facilities, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be the availability of a rule that more accurately represents TJJD's responsibilities to enforce a zero-tolerance policy regarding sexual abuse and to implement federal regulations related to the Prison Rape Elimination Act.

Brett Bray, General Counsel, has 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 repeal as proposed. No private real property rights are affected by adoption of this proposal.

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 by email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

The repeal is proposed under Texas 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.

§380.9337. *Alleged Sexual Abuse.*

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 January 13, 2014.

TRD-201400111  
Brett Bray  
General Counsel  
Texas Juvenile Justice Department  
Earliest possible date of adoption: February 23, 2014  
For further information, please call: (512) 490-7014



###### 37 TAC §380.9337

The Texas Juvenile Justice Department (TJJD) proposes new §380.9337, concerning Zero-Tolerance for Sexual Abuse, Sexual Activity, and Sexual Harassment.

The new section will establish TJJD's zero-tolerance policy for any form of sexual abuse, sexual harassment, or sexual activity involving youth in the agency's care. The section will also address TJJD's obligations under federal Prison Rape Elimination Act standards for preventing, detecting, and responding to sexual abuse and sexual harassment.

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the section is in effect, there will be no significant fiscal impact to local government as a result of enforcing or administering the section.

Mr. Meyer has determined that there will be a fiscal impact on state government as a result of administering this section. However, the impact cannot be estimated at this time due to the uncertainty surrounding the number and configuration of facilities that will be in operation.

Teresa Stroud, Senior Director of State Programs and Facilities, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the protection of youth in TJJD's care from being victimized by sexual abuse, sexual activity, or sexual harassment.

Brett Bray, General Counsel, has 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 proposal.

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 by email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

The new section is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions, and Code of Federal Regulations, Title 28, Part 115, which establishes national standards for compliance with the Prison Rape Elimination Act.

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

§380.9337. Zero-Tolerance for Sexual Abuse, Sexual Activity, and Sexual Harassment.

(a) Purpose. The purpose of this rule is to establish the Texas Juvenile Justice Department's (TJJD's) zero-tolerance policy for any form of sexual abuse, sexual harassment, or sexual activity involving youth in the agency's care. This rule also addresses TJJD's obligations under federal Prison Rape Elimination Act (PREA) standards for pre-

venting, detecting, and responding to sexual abuse and sexual harassment.

(b) Applicability. Unless stated otherwise, this rule applies to all residential facilities operated by TJJD or under contract with TJJD.

(c) Definitions.

(1) Exigent Circumstances--any set of temporary and unforeseen circumstances that require immediate action to combat a threat to the security or institutional order of a facility.

(2) Residential Facilities--high restriction facilities and medium restriction facilities as defined in §380.8527 of this title.

(3) Sexual Abuse--includes sexual abuse of a youth by another youth or sexual abuse of a youth by a staff member, contractor, or volunteer.

(4) Sexual Abuse of a Youth by Another Youth--includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(5) Sexual Abuse of a Youth by a Staff Member, Contractor, or Volunteer--includes any of the following acts, with or without consent of the youth:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(F) any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in subparagraphs (A) - (E) of this paragraph;

(G) any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a youth; and

(H) voyeurism by a staff member, contractor, or volunteer.

(6) Sexual Activity--includes any form of sexual misconduct, as defined in §380.9503 of this title, that does not meet the definition of sexual abuse.

(7) Sexual Harassment--includes:

(A) repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth directed toward another; and

(B) repeated verbal comments or gestures of a sexual nature to a youth by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(8) Voyeurism--an invasion of a youth's privacy by a staff member, contractor, or volunteer for reasons unrelated to official duties, such as:

(A) peering at a youth who is using a toilet in his or her cell to perform bodily functions;

(B) requiring a youth to expose his or her buttocks, genitals, or breasts; or

(C) taking images of all or part of a youth's naked body or of a youth performing bodily functions.

(d) General Provisions.

(1) It is the policy of TJJD to ensure that any form of conduct that meets the definition of sexual abuse, sexual activity, or sexual harassment, regardless of consensual status, is strictly prohibited. Such conduct, if confirmed, will result in administrative disciplinary action and may result in criminal prosecution.

(2) It is the policy of TJJD to comply with all applicable PREA-related standards adopted by the U.S. Department of Justice.

(e) Prevention Planning.

(1) PREA Coordinator and PREA Compliance Managers.

(A) TJJD designates an upper-level staff member as the agency-wide PREA coordinator. This staff member's duties must be structured to allow sufficient time and authority to develop, implement, and oversee agency efforts to comply with PREA standards in all TJJD-operated residential facilities.

(B) TJJD designates a PREA compliance manager at each TJJD-operated residential facility. This staff member's duties must be structured to allow sufficient time and authority to coordinate the facility's efforts to comply with PREA standards.

(2) Contracting with Other Entities for Confinement of Youth. In all new or renewed contracts for residential placement of TJJD youth, TJJD includes a clause requiring the contractor to adopt and comply with applicable PREA standards.

(3) Youth Supervision and Monitoring.

(A) Staffing Plans.

(i) Each TJJD-operated residential facility develops and implements a written staffing plan to provide adequate levels of staffing and video monitoring to protect youth against sexual abuse.

(ii) Deviations from the staffing plan are permitted only during limited and discrete exigent circumstances. The facility documents each deviation and the reason for the deviation.

(iii) At least once each year, the division director over residential services, in consultation with the TJJD PREA coor-



dinator, reviews and documents whether any adjustments are needed to each TJJJ-operated facility's:

(I) staffing plan;

(II) prevailing staffing patterns;

(III) deployment of video monitoring systems and other monitoring technologies; and

(IV) resources available to ensure adherence to the staffing plan.

(B) Staff Ratios. Each TJJJ-operated high restriction facility maintains staff ratios in accordance with §380.9955 of this title.

(C) Unannounced Rounds.

(i) At each TJJJ-operated high restriction facility, a staff member with management responsibilities conducts and documents unannounced rounds to identify and deter sexual abuse and sexual harassment. The unannounced rounds must be conducted at least twice per month on each shift.

(ii) At each TJJJ-operated medium restriction facility, a staff member with management responsibilities conducts and documents unannounced rounds to identify and deter sexual abuse and sexual harassment. The unannounced rounds must be conducted at least once per month on each shift.

(iii) Staff members are prohibited from notifying other staff members that unannounced rounds are occurring, unless such notification is related to the legitimate operational functions of the facility.

(4) Limits to Cross-Gender Viewing and Searches.

(A) TJJJ maintains restrictions and limitations on cross-gender searches in accordance with §380.9709 of this title.

(B) TJJJ does not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status. The status may be determined during conversations with the youth, by reviewing medical records, or as part of a broader medical examination conducted in private by a medical practitioner.

(C) In TJJJ-operated residential facilities, staffing patterns and physical barriers are implemented to enable youth to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine room checks.

(D) In TJJJ-operated residential facilities, staff who are not the same gender as the youth must announce their presence when entering:

(i) a dormitory pod or wing at a high restriction facility, but only if there are no other staff of the opposite gender already in the pod or wing; or

(ii) a sleeping room at a medium restriction facility.

(5) Youth with Disabilities and Youth who are Limited English Proficient.

(A) TJJJ takes appropriate steps to ensure that youth with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps include providing access to:

(i) interpreters; and

(ii) written materials provided in formats or through methods that ensure effective communication.

(B) TJJJ takes reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment for youth who are limited English proficient, including the use of interpreters.

(C) When using interpreters to meet requirements of this paragraph:

(i) TJJJ attempts to select interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary; and

(ii) TJJJ does not use other youth to interpret, read, or otherwise assist except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise safety, the performance of first-response duties, or an investigation.

(6) Hiring and Promotion Decisions.

(A) TJJJ does not hire or promote anyone who may have contact with youth and does not use the services of any contractor who may have contact with youth if the person:

(i) has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution, as defined in 42 U.S.C. 1997; or

(ii) has been convicted or civilly or administratively adjudicated of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.

(B) For any person who may have contact with juveniles, TJJJ considers any incidents of sexual harassment in determining whether to hire, promote, or contract for services.

(C) Before hiring new employees who may have contact with youth, TJJJ:

(i) performs a criminal background records check;

(ii) consults the child abuse registry maintained by Texas Department of Family and Protective Services (DFPS); and

(iii) makes its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(D) Before enlisting the services of a contractor who may have contact with youth, TJJJ:

(i) performs a criminal background records check;

(ii) consults the DFPS child abuse registry.

(E) TJJJ conducts periodic criminal background records checks on current employees and contractors in accordance with §385.8181 of this title.

(F) TJJJ asks applicants and employees who may have contact with youth directly about previous misconduct described in subparagraph (A) of this paragraph in written applications or interviews for hiring or promotion and in any interviews or written self-evaluations conducted as part of reviews of current employees. TJJJ employees have a continuing affirmative duty to disclose any such misconduct. Material omissions regarding such misconduct or the provision of materially false information is grounds for termination of employment.

(G) Unless prohibited by law, TJJD provides information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom the former employee has applied to work.

(7) Upgrades to Facilities and Technologies.

(A) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, TJJD considers the effect of the design, acquisition, expansion, or modification on the agency's ability to protect youth from sexual abuse.

(B) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, TJJD considers how such technology may enhance the agency's ability to protect youth from sexual abuse.

(f) Responsive Planning.

(1) Evidence Protocol and Forensic Medical Examinations.

(A) TJJD follows a uniform evidence protocol when responding to allegations of sexual abuse. The evidence protocol must be developmentally appropriate for youth.

(B) When evidentiarily or medically appropriate, TJJD transports youth who experience sexual abuse to a hospital, clinic, or emergency room that can provide for medical examination by a Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), or other qualified medical practitioners. All such medical examinations are provided at no financial cost to the youth.

(C) If requested by a youth who experiences sexual abuse, a victim advocate will accompany and support the youth through the forensic medical examination and investigatory interviews. The victim advocate provides emotional support, crisis intervention, information, and referrals.

(D) TJJD seeks to secure victim advocacy services from local rape crisis centers. If a rape crisis center is not available, TJJD makes these services available through a qualified staff member from a community-based organization or from a qualified TJJD staff member who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues.

(2) Policies to Ensure Referrals of Allegations for Investigations.

(A) The TJJD Office of Inspector General (OIG) reviews all allegations of sexual abuse and sexual harassment and assigns each allegation to the appropriate TJJD department to complete a criminal investigation, administrative investigation, or both.

(B) Under Texas Human Resources Code §242.102, the OIG is authorized to conduct criminal investigations.

(g) Training and Education.

(1) Employee Training.

(A) TJJD provides PREA-related training to all employees who may have contact with youth. The training is tailored to the unique needs and attributes of youth in juvenile facilities and to the specific gender(s) represented at the facility. The training addresses:

(i) the zero-tolerance policy for sexual abuse, sexual harassment, and sexual activity;

(ii) how to fulfill employees' responsibilities to prevent, detect, report, and respond to sexual abuse and sexual harassment;

(iii) youths' right to be free from sexual abuse and sexual harassment;

(iv) the right of youth and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(v) the dynamics of sexual abuse and sexual harassment in juvenile facilities;

(vi) the common reactions of juvenile victims of sexual abuse and sexual harassment;

(vii) how to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between youth;

(viii) how to avoid inappropriate relationships with youth;

(ix) how to communicate effectively and professionally with youth, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming youth;

(x) how to comply with relevant laws related to mandatory reporting of sexual abuse; and

(xi) relevant laws and rules regarding consent.

(B) TJJD requires all employees to receive the PREA-related training annually. An employee must receive additional training if he/she is reassigned from a male-only facility to a female-only facility or vice versa.

(C) TJJD documents employees' written verification that they understand the training they have received.

(2) Volunteer and Contractor Training. TJJD ensures and documents that all volunteers and contractors who have direct access to youth have been trained on and understand their responsibilities under this rule and any other related TJJD policies and procedures.

(3) Youth Education.

(A) During the admission process, TJJD provides youth with age-appropriate information about the agency's zero-tolerance policy and how to report incidents or suspicions of sexual abuse, sexual harassment, or sexual activity.

(B) Within 10 calendar days after admission, TJJD provides comprehensive, age-appropriate education to youth about:

(i) their rights to be free from sexual abuse, sexual harassment, and retaliation for reporting such incidents; and

(ii) agency policies and procedures for responding to such incidents.

(C) When a youth is transferred to a different TJJD-operated facility, TJJD provides the information in subparagraphs (A) and (B) of this paragraph to youth.

(D) TJJD provides the information in formats accessible to all youth, including those who:

(i) are limited English proficient;

(ii) are deaf, visually impaired, or otherwise disabled; and

(iii) have limited reading skills.

(4) Specialized Training: Investigations.

(A) TJJD staff members who investigate allegations of sexual abuse receive specialized training that includes:

(i) techniques for interviewing juvenile sexual abuse victims;

(ii) proper use of Miranda and Garrity warnings;

(iii) sexual abuse evidence collection in confinement settings; and

(iv) criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(B) TJJD maintains documentation that such training has been completed.

(5) Specialized Training: Medical and Mental Health Care. TJJD ensures and maintains documentation that all full and part-time medical and mental health practitioners who work in TJJD-operated facilities have been trained in how to:

(A) detect and assess signs of sexual abuse and sexual harassment;

(B) preserve physical evidence of sexual abuse;

(C) respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and

(D) report allegations or suspicions of sexual abuse and sexual harassment and to whom such reports must be made.

(h) Screening for Risk of Sexual Victimization and Abusiveness.

(1) Obtaining Information from Youth.

(A) Within 72 hours after a youth's admission to TJJD, TJJD uses an objective screening instrument to obtain information about the youth's personal history and behavior to reduce the risk of sexual abuse by or upon another youth. Periodically throughout the youth's stay, information from the screening instrument is used to reassess housing and supervision assignments.

(B) TJJD establishes appropriate controls to prevent sensitive information obtained from these screenings from being exploited to the youth's detriment by staff or other youth.

(2) Placement of Youth in Housing, Bed, Program, Education, and Work Assignments.

(A) TJJD uses all information obtained under paragraph (1) of this subsection to make housing, bed, program, education, and work assignments for youth.

(B) Except under limited situations involving self-injury set forth in §380.9745 of this title, TJJD does not place youth in isolation as a means of protection.

(C) Lesbian, gay, bisexual, transgender, or intersex youth are not placed in particular housing, bed, or other assignments solely on the basis of such identification or status. TJJD does not consider such identification or status as an indicator of likelihood of being sexually abusive.

(D) For each transgender or intersex youth, TJJD:

(i) makes a case-by-case determination when assigning the youth to a male or female facility and when making other housing and programming assignments, considering the youth's health and safety and any management or security concerns;

(ii) gives serious consideration to the youth's own views concerning his/her own safety when making placement and programming assignments;

(iii) reassesses the placement and programming assignments at least twice each year to review any threats to safety experienced by the youth; and

(iv) provides the opportunity to shower separately from other youth.

(i) Reporting.

(1) Reports from Youth and Third Parties.

(A) Youth may report sexual abuse, sexual harassment, retaliation by others for reporting sexual abuse or harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents by:

(i) filing a written grievance in accordance with §380.9331 of this title;

(ii) calling the 24-hour, toll-free hotline maintained by the OIG without being heard by staff or other youth;

(iii) telling any staff member, volunteer, or contract employee, who must then call the OIG hotline; or

(iv) calling the toll-free number maintained by the Office of Independent Ombudsman (OIO), which is a separate state agency, without being heard by staff or other youth.

(B) TJJD accepts verbal and written reports made anonymously or by third parties and promptly documents verbal reports. Anonymous and third-party reports may be submitted to TJJD by calling the toll-free hotline maintained by the OIG. TJJD publicly distributes information on how to report alleged abuse or sexual harassment on behalf of a youth by posting this information on the agency's website.

(C) TJJD provides youth with access to grievance forms in accordance with §380.9331 of this title. TJJD provides all staff with access to telephones to privately call the OIG hotline immediately if the staff member has reason to believe a youth has been a victim of sexual abuse or harassment.

(2) Administrative Remedies.

(A) TJJD investigates all allegations of sexual abuse regardless of how much time has passed since the alleged incident.

(B) As established by §380.9331 of this title, youth are not required to use the youth grievance system or the informal conference request system to report an allegation of sexual abuse. Youth are not required to attempt to resolve the allegation with staff.

(C) If a youth uses the grievance system or the conference request system to report an allegation of sexual abuse, the allegation is immediately forwarded to the OIG for assignment and investigation.

(D) TJJD does not refer allegations of sexual abuse to staff members who are the subject of the allegation.

(3) Youth Access to Outside Support Services and Legal Representation.

(A) TJJD provides youth with access to outside victim advocates for emotional support services related to sexual abuse by making available mailing addresses and telephone numbers, including toll-free numbers of any local, state, or national victim advocacy or rape crisis organizations. TJJD also provides youth with on-site access to representatives of such advocacy organizations in accordance with §385.8183 of this title. TJJD enables reasonable communication between youth and these organizations and agencies in as confidential a manner as possible. TJJD informs youth, prior to giving them access,

of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(B) TJJD maintains or seeks to enter into agreements with community service providers that are able to provide youth with confidential emotional support services related to sexual abuse. TJJD maintains documentation of such agreements or attempts to enter into such agreements.

(C) TJJD provides youth with reasonable and confidential access to their:

(i) attorneys or other legal representatives, in accordance with §380.9311 of this title; and

(ii) parents or legal guardians, in accordance with §§380.9312, 380.9313, and 380.9315 of this title.

(j) Official Response Following a Report of Alleged Sexual Abuse or Sexual Harassment.

(1) Staff and Agency Reporting Duties.

(A) All TJJD staff members must immediately report to OIG, in accordance with agency policy, any knowledge, suspicion, or information they receive regarding:

(i) an incident of sexual abuse;

(ii) an incident of sexual harassment;

(iii) retaliation against youth or staff who reported such an incident; and

(iv) any staff neglect or violation of responsibilities that may have contributed to such an incident or retaliation.

(B) The requirement to report applies to incidents occurring in any residential facility, whether or not it is operated by TJJD.

(C) The requirement to report includes staff members whose personal communications may otherwise be privileged, such as an attorney, member of the clergy, medical practitioner, social worker, or mental health practitioner. Upon the initiation of services, these staff members must inform the youth of the staff member's duty to report abuse and the limits of confidentiality.

(D) In addition to the reporting requirement in subparagraph (A) of this paragraph, TJJD staff must comply with mandatory child abuse reporting laws in Texas Family Code Chapter 261 and with applicable professional licensure requirements.

(E) Any TJJD staff who receives a report of alleged sexual abuse is prohibited from revealing any information to anyone other than to the extent necessary, as specified in §380.9333 of this title, to make treatment, investigation, and other security and management decisions.

(F) Upon receiving an allegation of sexual abuse, the facility administrator or his/her designee must promptly report the allegation to the alleged victim's parents or legal guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified. If the alleged victim is under the conservatorship of DFPS, the report is made to DFPS.

(G) OIG assigns all reports of alleged sexual abuse and sexual harassment, including third-party and anonymous reports, to the appropriate investigator.

(2) Agency Protection Duties. Upon receipt of a report that alleges a youth is subject to a substantial risk or imminent sexual abuse, TJJD takes immediate action to protect the youth.

(3) Reporting to Other Confinement Facilities.

(A) Any staff member must immediately notify the OIG if he/she receives an allegation that a youth was sexually abused while confined at a juvenile facility not operated by TJJD and not operated under contract with TJJD.

(B) The OIG must notify the head of the facility or the appropriate office of the agency where the abuse is alleged to have occurred and the appropriate investigative agency as soon as possible, but within 72 hours after receiving the allegation.

(4) Staff First Responder Duties. Upon learning of an allegation that a youth was sexually abused, the first staff member to respond to the report must:

(A) separate the alleged victim and alleged abuser;

(B) preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; and

(C) if the alleged abuse occurs within a time period that still allows for the collection of physical evidence:

(i) request that the alleged victim not take any actions that could destroy physical evidence, including as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(ii) ensure that the alleged abuser does not take any actions that could destroy physical evidence.

(5) Coordinated Response. TJJD maintains a written plan to coordinate the actions taken among staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse.

(6) Preservation of Ability to Protect Youth from Contact with Abusers. TJJD will not enter into any agreement that limits its ability to remove alleged staff sexual abusers from contact with youth pending the outcome of an investigation or a determination of whether and to what extent discipline is warranted.

(7) Agency Protection against Retaliation. Retaliation by a youth or staff member against a youth or staff member who reports sexual abuse or sexual harassment or who cooperates with an investigation is strictly prohibited. To help prevent retaliation, TJJD:

(A) designates certain staff members to monitor the person who reported the allegation and the alleged victim to determine whether retaliation is occurring;

(B) uses multiple measures to protect youth and staff from retaliation, such as housing transfers, removal of the alleged abuser from contact with the alleged victim, and emotional support services for youth or staff who fear retaliation;

(C) for at least 90 days (except when the allegation is determined to be unfounded):

(i) monitors the reporter and the alleged victim for signs of retaliation including items such as disciplinary reports, housing or program changes, staff reassignments, and negative performance reviews; and

(ii) conducts periodic status checks on the alleged victim;

(D) acts promptly to remedy any retaliation; and

(E) takes appropriate measures to protect any other individual who cooperates with the investigation who expresses a fear of retaliation.

(8) Post-Allegation Protective Custody. TJJJ does not use segregated housing to protect a youth who is alleged to have suffered sexual abuse.

(k) Investigations.

(1) Criminal and Administrative Agency Investigations.

(A) TJJJ conducts prompt, thorough, and objective investigations for all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports.

(B) For investigations of alleged sexual abuse, TJJJ uses investigators who have received special training in sexual abuse investigations involving juvenile victims.

(C) TJJJ investigators must:

(i) gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;

(ii) interview alleged victims, suspected perpetrators, and witnesses; and

(iii) review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(D) TJJJ will not terminate an investigation solely because the source of the allegation recants the allegation.

(E) When the quality of evidence appears to support criminal prosecution, TJJJ may conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(F) TJJJ investigators must assess the credibility of an alleged victim, suspect, or witness on an individual basis and must not determine credibility by the person's status as a youth or staff.

(G) TJJJ does not require youth who allege sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation.

(H) In addition to meeting requirements set forth in §380.9333 of this title, administrative investigations of sexual abuse must:

(i) include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(ii) be documented in a written report that includes a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(I) Criminal investigations conducted by the OIG must be documented in a written report that includes:

(i) a thorough description of physical, testimonial, and documentary evidence; and

(ii) copies of all documentary evidence, when feasible.

(J) Substantiated allegations of conduct that appear to be criminal are referred for prosecution.

(K) TJJJ maintains all criminal and administrative investigation reports for as long as the alleged abuser is incarcerated by TJJJ or employed by TJJJ, plus at least five years.

(L) TJJJ does not terminate investigations solely on the basis that the alleged abuser or victim is no longer in the custody of TJJJ or employed by TJJJ.

(M) If an outside agency conducts an investigation into an allegation of sexual abuse, TJJJ staff must cooperate with the outside investigators. TJJJ management will attempt to remain informed about the progress of the investigation.

(2) Evidentiary Standard for Administrative Investigations. In administrative investigations into allegations of sexual abuse or sexual harassment, the investigator's findings must be based on a preponderance of the evidence.

(3) Reporting to Youth. The notification requirements in this paragraph apply until the youth is discharged from TJJJ. TJJJ documents all notifications and attempted notifications.

(A) Following an investigation into a youth's allegation of sexual abuse suffered in a TJJJ facility, TJJJ informs the youth whether the allegation is substantiated, unsubstantiated, or unfounded. If TJJJ did not conduct the investigation, TJJJ management will request the information from the investigating agency so that the youth may be informed.

(B) Following a youth's allegation that a staff member has committed sexual abuse against the youth, TJJJ informs the youth whenever the following events occur, except when the allegation is determined to be unfounded:

(i) the staff member is no longer posted within the youth's housing unit;

(ii) the staff member is no longer employed at the facility;

(iii) TJJJ learns that the staff member has been indicted on a charge related to the sexual abuse; or

(iv) TJJJ learns that the staff member has been convicted on a charge related to the sexual abuse.

(C) Following a youth's allegation that he/she has been sexually abused by another youth, TJJJ informs the alleged victim whenever the following events occur:

(i) TJJJ learns that the alleged abuser has been indicted on a charge related to the sexual abuse; or

(ii) TJJJ learns that the alleged abuser has been convicted on a charge related to the sexual abuse.

(l) Discipline.

(1) Disciplinary Sanctions for Staff.

(A) Staff members are subject to disciplinary sanctions up to and including termination of employment for violating TJJJ sexual abuse or sexual harassment policies.

(B) Termination of employment is the presumptive disciplinary sanction for staff members who have engaged in sexual abuse.

(C) Disciplinary sanctions for violations of TJJJ policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) are commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(D) TJJJ reports the following actions to any relevant licensing bodies:

(i) terminations of employment for violations of agency sexual abuse or sexual harassment policies; and

(ii) resignations by staff members who would have been terminated if they had not resigned.

(2) Corrective Action for Contractors and Volunteers.

(A) If a contractor or volunteer engages in sexual abuse,

TJJD:

(i) prohibits the contractor or volunteer from having any contact with TJJD youth; and

(ii) reports the finding of abuse to any relevant licensing bodies.

(B) If a volunteer or contractor violates TJJD sexual abuse or sexual harassment policies but does not actually engage in sexual abuse, TJJD takes appropriate remedial measures and considers whether to prohibit further contact with TJJD youth.

(3) Interventions and Disciplinary Sanctions for Youth.

(A) A youth may be subject to disciplinary sanctions for engaging in sexual abuse only when:

(i) there is a criminal finding of guilt or an administrative finding that the youth engaged in youth-on-youth sexual abuse; and

(ii) the discipline is determined through a Level II due process hearing held in accordance with §380.9555 of this title.

(B) Any disciplinary sanctions must be commensurate with the nature and circumstances of the abuse committed, the youth's disciplinary history, and the sanctions imposed for comparable offenses by other youth with similar histories.

(C) The disciplinary process must consider whether a youth's mental disabilities or mental illness contributed to his/her behavior when determining what type of sanction, if any, should be imposed.

(D) TJJD does not impose isolation as a disciplinary sanction.

(E) TJJD offers youth abusers counseling and other interventions designed to address and correct underlying reasons or motivations for the abuse. TJJD may require participation in such counseling and interventions as a condition of access to behavior-based incentives, but not as a condition to access general programming or education.

(F) A youth may be disciplined for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(G) TJJD may not discipline a youth if the youth made a report of sexual abuse in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(H) In accordance with §380.9503 of this title, TJJD may also discipline a youth for engaging in prohibited sexual activity that does not meet the definition of abuse.

(m) Medical and Mental Care.

(1) Medical and Mental Health Screenings; History of Sexual Abuse.

(A) Regardless of the results of the screening in subsection (h)(1) of this section, TJJD offers all youth an appointment with a medical and mental health practitioner within 14 days after the intake screening.

(B) Any information obtained related to sexual victimization or abusiveness that occurred in an institutional setting must be strictly limited to medical and mental health practitioners and other

staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by law.

(C) Medical and mental health practitioners must obtain informed consent from youth before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the youth is under the age of 18.

(2) Access to Emergency Medical and Mental Health Services.

(A) TJJD ensures that youth victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(B) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders must take preliminary steps to protect the victim and must immediately notify the appropriate medical and mental health practitioners.

(C) TJJD ensures that youth victims of sexual abuse while incarcerated are offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(D) TJJD provides treatment services to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising from the incident.

(3) Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers.

(A) TJJD offers medical and mental health evaluation and, as appropriate, treatment to all youth who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(i) The evaluation and treatment of such victims includes, as appropriate:

(I) follow-up services;

(II) treatment plans; and

(III) referrals for continued care following their transfer to other facilities or their release from custody.

(ii) TJJD provides such victims with medical and mental health services consistent with the community level of care.

(B) TJJD offers pregnancy tests to youth victims of sexually abusive vaginal penetration while incarcerated. If pregnancy results, TJJD ensures the youth is provided timely and comprehensive information about and timely access to all lawful pregnancy-related medical services. See §380.9195 of this title for additional information about services for pregnant youth.

(C) TJJD ensures that tests for sexually transmitted infections are offered, as medically appropriate, to youth victims of sexual abuse while incarcerated.

(D) TJJD provides treatment services to a victim of sexual abuse while incarcerated without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising from the incident.

(E) TJJD attempts to conduct a mental health evaluation of all known youth-on-youth abusers within 60 days after learning of

such abuse history and offers treatment when deemed appropriate by mental health practitioners.

(n) Sexual Abuse Incident Reviews.

(1) TJJJ conducts an incident review at the conclusion of every sexual abuse investigation unless the allegation is determined to be unfounded.

(2) Managers, supervisors, investigators, and medical or mental health practitioners participate in the review.

(3) The review team:

(A) considers whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(B) considers whether the incident or allegation was motivated by race; ethnicity; gender identity; status or perceived status as lesbian, gay, bisexual, transgender, or intersex; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(C) examines the area where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(D) assesses the adequacy of staffing levels in that area during different shifts;

(E) assesses whether monitoring technology should be used or enhanced to supplement supervision by staff; and

(F) submits a report of its findings and recommendations to the facility administrator, the local PREA compliance manager, and other appropriate staff members.

(4) The facility where the incident allegedly occurred must implement the review team's recommendations or document its reasons for not doing so.

(o) Data Collection and Storage.

(1) TJJJ collects data for every allegation of sexual abuse at TJJJ-operated facilities using a standardized instrument and set of definitions and aggregates the data at least once each year. TJJJ also

maintains, reviews, and collects data as needed from all available incident-based documents, such as reports, investigation files, and sexual abuse incident reviews.

(2) TJJJ develops its data collection instrument to include the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the U.S. Department of Justice.

(3) TJJJ obtains incident-based and aggregate data from each residential facility operating under a contract with TJJJ.

(4) TJJJ securely retains all sexual abuse data it collects.

(p) Publication of Sexual Abuse Data.

(1) TJJJ reviews aggregate sexual abuse data to assess and improve the effectiveness of its policies, practices, and training. Following this review, TJJJ prepares an annual report of its findings and corrective actions for each facility and the agency as a whole. The report will be posted on the agency's website.

(2) Annually, TJJJ posts on its website all aggregated sexual abuse data from TJJJ-operated and contracted facilities.

(q) Audits of PREA Standards. TJJJ conducts audits pursuant to 28 CFR §§115.401 - 115.405.

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 January 13, 2014.

TRD-201400112

Brett Bray

General Counsel

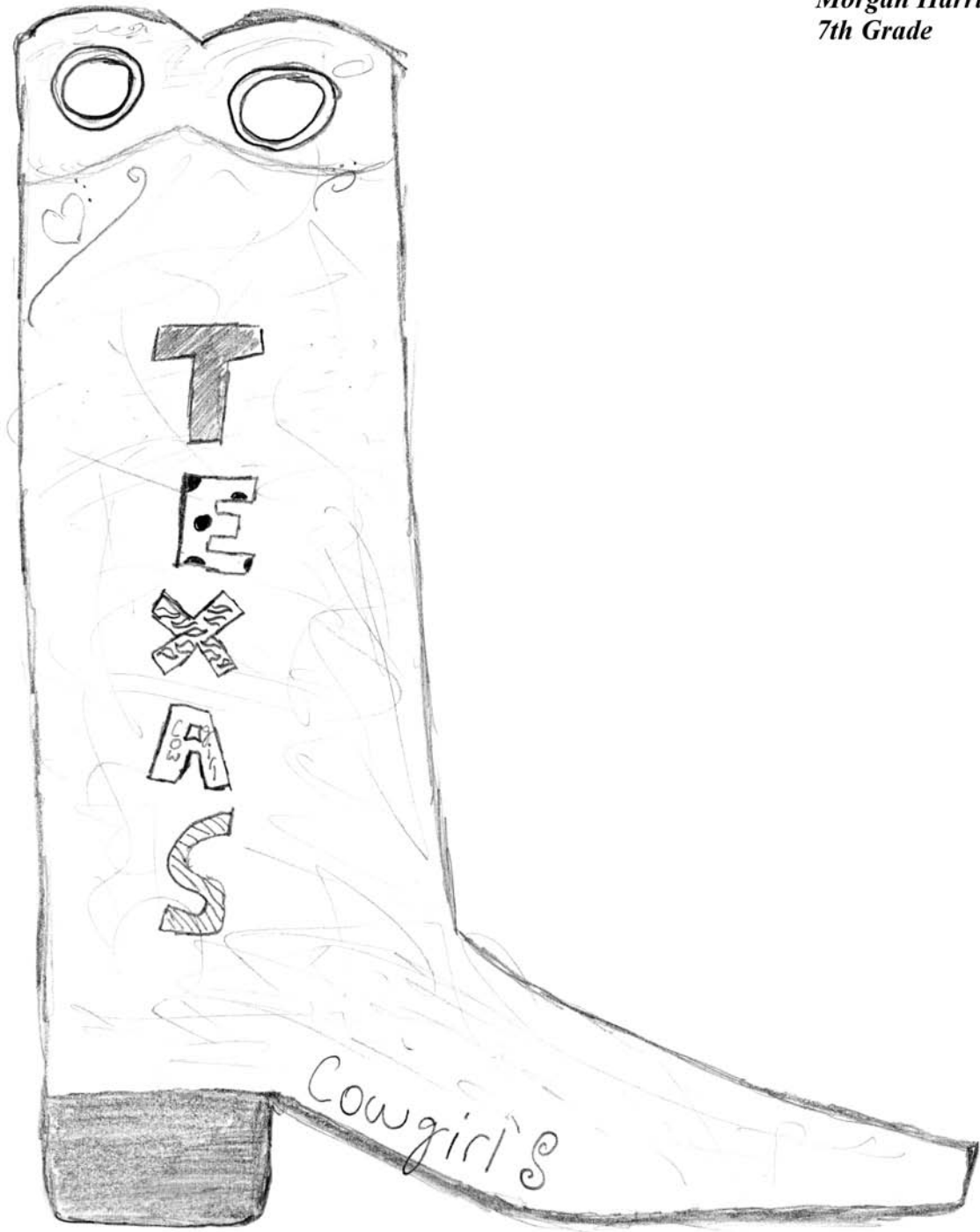
Texas Juvenile Justice Department

Earliest possible date of adoption: February 23, 2014

For further information, please call: (512) 490-7014



*Morgan Harris*  
*7th Grade*





# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 32. TEXAS MEDICAID WELLNESS PROGRAM

##### 1 TAC §354.1416

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1416, concerning Eligibility Criteria, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7539) and will not be republished.

##### Background and Justification

The Texas Medicaid Wellness Program is a whole-person care management service that supports Medicaid clients' individual health needs and challenges. The program serves clients receiving Medicaid through the fee-for-service system who are not in another Medicaid waiver program. The majority of the clients served are children under the age of 21 receiving Supplemental Security Income (SSI) Medicaid. In the published proposed preamble, HHSC mistakenly referred to the population as receiving "Social Security Income (SSI) Medicaid" instead of "Supplemental Security Income (SSI) Medicaid." However, this error was solely related to the background and summary of the program and has no impact on the proposed rule change.

Historically, all clients who are dually eligible for Medicare and Medicaid have been excluded from the Texas Medicaid Wellness Program. The adopted rule allows fee-for-service dual-eligible members under the age of 21 to participate in the program.

##### Comments

The 30-day comment period ended on December 1, 2013. During this period, HHSC did not receive comments regarding the amended rule.

##### Statutory Authority

The amendment is adopted under Texas Government Code §531.033 and §531.055, which provide the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The 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 January 13, 2014.

TRD-201400098

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 2, 2014

Proposal publication date: November 1, 2013

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



#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER M. MISCELLANEOUS PROGRAMS

#### DIVISION 5. DEPARTMENT OF STATE HEALTH SERVICES HOME AND COMMUNITY-BASED SERVICES - ADULT MENTAL HEALTH

##### 1 TAC §355.9070

The Texas Health and Human Services Commission (HHSC) adopts new §355.9070, concerning Reimbursement Methodology for Department of State Health Services (DSHS) Home and Community-Based Services - Adult Mental Health (HCBS-AMH) program, and amends the title of 1 TAC Chapter 355, Subchapter M. The new rule and amended title are adopted without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7177) and will not be republished.

##### Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, is adopting new §355.9070 to establish a reimbursement methodology for the DSHS HCBS-AMH program. The HCBS-AMH program provides home and community-based services to adults with extended tenure in state psychiatric facilities in lieu of their remaining long-term residents of those facilities.

In September 2010, DSHS created and charged the Continuity of Care Task Force with developing recommendations for resolving barriers to discharging individuals with complex needs from state psychiatric facilities. The task force, which included Local Mental Health Authority leadership, advocates, consumers,

law enforcement, judges, inpatient providers and agency staff, conducted public meetings, key informant interviews, meetings with key professional groups and four public forums in various locations of the state and advised that the state consider implementing a home and community-based program. In response to this recommendation, DSHS sought and obtained funding to implement the program through the 2014-2015 General Appropriations Act, 83rd Legislature, Regular Session, 2013 (Article II, Department of State Health Services, Rider 81). The rider directs that appropriated funds be used to develop a program for adults with complex needs and extended or repeated state inpatient psychiatric stays.

For Medicaid-eligible individuals within the target population, §1915(i) of the Social Security Act could enable Texas to obtain federal matching funds for a HCBS-AMH program via a Medicaid State Plan Amendment (SPA) if approved by the federal Centers for Medicare and Medicaid Services (CMS). DSHS and HHSC are currently working to submit an SPA to CMS.

This new rule describes the reimbursement methodology for the DSHS HCBS-AMH program. HHSC may require a contracted provider to submit a cost report for any service provided through this program; if HHSC requires a cost report, providers must follow cost reporting and allowable and unallowable cost guidelines. HHSC may excuse a provider from the requirement to submit a cost report.

Because the new §355.9070 implements a reimbursement methodology for a program that serves both eligible Medicaid recipients and individuals not eligible for Medicaid, the title of Subchapter M is renamed "Miscellaneous Programs."

#### Comments

The 30-day comment period ended November 17, 2013. During this period, HHSC received no comments regarding the proposed new rule.

#### Statutory Authority

The new rule is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties under Texas Government Code, Chapter 531; Texas Government Code §531.0055(e) and (g), which authorizes the Executive Commissioner to adopt rules for the operation of and provision of health and human services by the health and human services agencies, including any rate of payment or similar provision required by law to be adopted or approved by the agency; 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)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 January 13, 2014.

TRD-201400097

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: March 1, 2014

Proposal publication date: October 18, 2013

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (department) adopts amendments to Chapter 7, Subchapter C, §7.22 and §7.25, concerning licensing of pesticide applicators; and Subchapter H, Division 2, §7.125 and §7.126, concerning examinations and license expiration and renewal for structural pest control applicators. Section 7.125 is adopted with changes to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8332). Sections 7.22, 7.25, and 7.126 are adopted without changes and will not be republished.

The amendments are adopted to meet the requirements of amendments to the Texas Occupations Code, Chapter 55, made by Senate Bill 162, 83rd Regular Session, 2013 (SB 162). The amendments add provisions to expedite the applications for licensing of military spouses and provide for the issuance of a license to a qualified military spouse who holds a license issued by another jurisdiction that has substantially equivalent licensing requirements; and provide that credit for relevant military experience, training and education shall be given to military service members and military veterans so long as they meet all other licensing requirements. In addition, the amendments to §7.22 are adopted to consolidate the general standards examination and the laws and safety examination into one exam for commercial and non-commercial pesticide applicators. The adopted changes to §7.22 also allow for fees to be charged for any retakes of examinations that may be necessary, in order to recover the cost of examination administration.

One comment was received on the proposal from Roger Borgelt, Chairman of the Structural Pest Control Advisory Committee, recommending a clarification to the language in §7.125(e) to make clear that applications submitted by military service members, military veterans, and military spouses will be evaluated to determine if experience equivalent to the requirements of §7.125(b) and (c) have been met, and credit will be applied accordingly. The department accepts the clarification and has adopted that change to the proposal.

#### SUBCHAPTER C. LICENSING

##### 4 TAC §7.22, §7.25

The amendments to §7.22 and §7.25 are adopted pursuant to the Texas Occupations Code, §55.005, as added by SB 162, which requires the expedition of licensing for military spouses and the issuance of a license to a qualified military spouse who holds a license issued by another jurisdiction that has substantially equivalent licensing requirements; and §55.007, as added by SB 162, which requires the department to adopt rules to credit verified military service, training, or education toward its licensing requirements for military service members and military vet-

erans; and Texas Agriculture Code, §76.004, which provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76, including rules providing for testing and licensing of pesticide applicators.

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 January 9, 2014.

TRD-201400088

Dolores Alvarado Hibbs  
General Counsel

Texas Department of Agriculture

Effective date: January 29, 2014

Proposal publication date: November 22, 2013

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



## SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE DIVISION 2. LICENSES

### 4 TAC §7.125, §7.126

The amendments to §7.125 and §7.126 are adopted pursuant to the Texas Occupations Code (the Code), §55.005, as added by SB 162, which requires the expedition of licensing for military spouses and the issuance of a license to a qualified military spouse who holds a license issued by another jurisdiction that has substantially equivalent licensing requirements; and §55.007, as added by SB 162, which requires the department to adopt rules to credit verified military service, training, or education toward its licensing requirements for military service members and military veterans.

#### *§7.125. Examinations.*

(a) To take an appropriate examination administered by the department, an applicant must submit to the department not later than thirty (30) days prior to the scheduled examination session the appropriate form specifying the examination category desired and pay the fee for each exam requested. An individual who has previously qualified by written examination in a category shall receive a certified applicators license for the qualified category without reexamination upon renewal of a certified applicator license and meeting all requirements of these regulations. Each individual not previously qualified by written examination in the category or categories for which the license is requested must secure a certified applicator license by passing an appropriate examination administered by the department.

(b) In addition to passing the appropriate category examination, and in order to be eligible to obtain a certified commercial applicator license, the applicant must meet one of the following requirements:

(1) Have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least twelve (12) months out of the past twenty-four (24) months and must have possessed a technician license for at least six (6) months.

(2) Furnish proof of previous verifiable employment, experience in the pest control industry, including out-of-state experience in pest control of at least twelve (12) months out of the past twenty-four (24) months from a previous occupation. The proof of experience must be provided by the applicant in the form of a notarized statement or a letter from the appropriate licensing entity.

(3) Have a degree or certificate in an area of the biological sciences, related to pest control, from an accredited two (2) or four (4) year college or university;

(4) An applicant with equivalent technical pest or pesticide field experience from a previous occupation; and

(5) Qualifies under the hardship clause outlined in §7.128 of this title (relating to Loss of Responsible Certified Applicator or Business License Holder).

(6) Each applicant testing for a certified applicator license must pass the general standards examination administered by the department to be eligible to be licensed in any of the categories in subsection (d)(20) of this section, Categories of Examinations.

(c) In addition to passing the appropriate category examination, and in order to be eligible to obtain a certified noncommercial applicators license, the applicant must meet one of the following requirements:

(1) Have a degree or certificate in an area of the biological sciences related to pest control from an accredited two (2) or four (4) year college or university;

(2) Have verifiable employment experience in the pest control industry, including out-of-state experience in pest control of at least twelve (12) months out of the past twenty-four (24) months from a previous occupation. The proof of experience must be provided by the applicant in the form of a notarized statement or a letter from the appropriate licensing entity;

(3) Complete a Board approved minimum six (6) hour certified noncommercial technician training course;

(4) Have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least twelve (12) months out of the past twenty-four (24) months and must have possessed a technician license for at least six (6) months.

(d) Examination standards and requirements.

(1) Examinations will be given at least once each quarter based on the calendar year. The department may schedule more frequent examinations as resources permit.

(2) A fee shall be charged for each examination administered by the department.

(3) All examination fees are to be paid by the method determined by the department and payment must be submitted with the completed application.

(4) Applicants must present a photo identification from the Texas Department of Public Safety or its equivalent from another state prior to taking an examination.

(5) All examinations shall be maintained and administered by the department.

(6) The applicant must take an examination, which may be in written or electronic form and in general, cover the subject of the categories designated on the application.

(7) A grade of 70% will be the minimum grade required for passing.

(8) Examinations shall only be administered in English.

(9) Examinations are closed book.

(10) Cheating is prohibited. Cheating consists of giving or receiving unauthorized assistance in answering examination questions,

bringing unauthorized materials into the exam room or using unauthorized materials to answer examination questions, copying answers or using answers from another examinee, copying questions or answers to examination questions to take from the examination room, removing an examination booklet, answer sheet, or scratch paper from the examination room, or any other action which undermines the integrity of the examination process or that has the intent or effect of providing answers to examination questions that do not reflect each examinee's own work or knowledge.

(11) "Unauthorized assistance" means the use of any written or electronic information or communication during the examination, unless expressly permitted by written instruction or rule, or the receipt or provision of any verbal or written communication, that has the intent or effect of providing answers to examination questions that do not reflect the examinee's own work or knowledge.

(12) No written materials, scratch paper, or electronic devices, other than calculators, may be brought into the examination room or used during the examination.

(13) Scratch paper will be provided by the department as necessary and must be returned to the examination proctor at the end of each examination.

(14) The hands, arms, other body parts, or clothing or other possessions of the examinee may not contain any notes, formulas, or other markings, except for permanent tattoos which do not reproduce any information necessary for answering examination questions.

(15) If an examinee is caught cheating, the examination proctor will confiscate or require the removal of any prohibited materials or information and will mark all answer sheets of the examinee to identify the examination as potentially tainted. The examinee will be asked to leave the examination room and will not be allowed to continue with the examination.

(16) The examination proctor will file a report with the Structural Pest Control Service, along with all potentially tainted examination answer sheets, and a final determination will be made regarding the alleged cheating. The Service's determination will be communicated to the examinee in writing. If the Service determines that cheating occurred, the examinee will have 30 days to file a written appeal on the decision. If the appeal is denied, the examinee will not be allowed to take an examination again during the 12-month period immediately following the date of the exam in question and all examination fees will be forfeited. If the appeal is upheld or if the Service determines that no cheating occurred, the examinee will be allowed to retake any tests scheduled for the date of the alleged cheating at no additional cost.

(17) Upon a final determination that an examinee has cheated, any existing license of any type currently held by the licensee is subject to suspension or revocation.

(18) Applicants who do not take a scheduled examination may not receive a refund of their examination fee unless they notify the department in writing at least ten (10) business days in advance of the examination date. Exceptions may be granted if there is an emergency such as a death or serious illness in the family.

(19) Persons who make a passing grade and qualify for a certified applicator license must obtain a license within (12) twelve months of the grade notification date or be retested.

(20) Examinations will be administered, maintained, and evaluated on a routine basis as determined by department examination policy in the following categories.

(A) Pest Control--This category includes persons engaged in the inspection or control of pests in and around structures or pest animals which may invade homes, restaurants, stores, and other buildings, attacking their contents or furnishings or being a general nuisance, but do not normally attack the building itself. Examples of such pests are cockroaches, silverfish, ants, fleas, ticks, flies, mosquitoes, rats, mice, skunks, raccoons, opossums, etc.

(B) Termite and Wood Destroying Insect Control--This category includes persons engaged in the inspection or control of termites, beetles, or other wood destroying insects and wood preservation by means other than fumigation in buildings, including homes, warehouses, stores, docks, or any other structures. This category includes the treatment of termites in trees in and around structures.

(C) Lawn and ornamental--This category includes persons engaged in the inspection or control of pests or diseases of trees, shrubs, or other plantings in a park or in and around structures, business establishments, industrial parks, institutional buildings or streets.

(D) Weed Control--This category includes persons engaged in the inspection or control of weeds around homes and industrial environs.

(E) Structural Fumigation--This category includes persons engaged in pest inspection or control through fumigation of structures not primarily intended to contain food, feed or grains.

(F) Commodity Fumigation--This category includes persons engaged in pest inspection or control through fumigation of commodities or structures normally used to contain commodities. This category does not include raw agricultural commodities.

(G) Wood Preservation--This category includes persons engaged in that phase of pest control that involves the addition of preservatives to wood products to extend the life of the wood products by protecting them from damage caused by insects, fungi, and marine borers. Examples of wood products may include, cross-ties, poles, and posts. This includes the retreatment of power-line poles with wood preservative pesticide including fumigants.

(21) Each applicant testing for a certified applicator license must pass the general standards examination administered by the department to be eligible to be licensed in any of the categories in this section.

(e) License applications submitted by military service members, military veterans, and military spouses as defined in the Texas Occupations Code, Chapter 55, will be evaluated to determine if experience equivalent to subsections (b) and (c) of this section have been met, and credit will be applied accordingly.

(f) License applications of military spouses, as defined in Texas Occupations Code, Chapter 55, shall be processed on an expedited basis.

(g) If a qualified military spouse applicant has held a license issued by another jurisdiction for twelve (12) months out of the past twenty-four (24) months, the department shall allow the applicant to forego registering as an apprentice and the subsequent training requirement as well as the technician level of license, and take certified applicator exams. For purposes of this subsection, proof of having held a license issued by another jurisdiction must be in the form of a letter from the appropriate licensing entity stating the type of license held and how long the applicant has held the license.

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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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

##### SUBCHAPTER C. GRANT POLICIES

#### DIVISION 1. GENERAL GRANT GUIDELINES

##### 13 TAC §2.119

The Texas State Library and Archives Commission adopts an amendment to §2.119, regarding the submission of multiple applications for competitive grants, without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5813).

The amendment will help clarify for applicants the requirements for submitting multiple applications to the Texas State Library and Archives Commission competitive grant programs.

One comment was received. The comment suggested adding an example of a program to the rule to ensure lack of confusion. The agency responds that the use of the terms "program" and "category" will be consistent in its materials and that this will address possible confusion in a more comprehensive manner than an example in rule that could become outdated.

The amendment is adopted under the authority of Government Code §441.135 that directs the commission to establish grant programs and §441.1381 that authorizes the commission to design and implement the programs.

The amendment affects Government Code §441.135 and §441.1381.

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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Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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Proposal publication date: September 6, 2013

For further information, please call: (512) 463-5459



## DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS

##### 13 TAC §2.310

The Texas State Library and Archives Commission adopts an amendment to §2.310, regarding goals and purposes of the Library Cooperation competitive grant program, without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5814).

The amendment will help clarify the goals and purposes and eligibility requirements for the Library Cooperation competitive grant program.

One comment was received. The comment suggested clarifying the term "multi-year" by specifying the number of years required. The agency responds that the purpose of specifying "multi-year" cooperative programs is to clarify the requirement, but is not intended to be prescriptive. Different types of projects may have different durations, from almost permanent agreements to a more limited scope, and leaving the wording as written allows for this flexibility.

The amendment is adopted under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system; §441.127 that directs the commission to establish membership standards; §441.135 that directs the commission to establish grant programs; and §441.1381 that authorizes the commission to design and implement the programs.

The amendment affects Government Code §§441.123, 441.127, 441.135, and 441.1381.

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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Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



## DIVISION 5. LIBRARY SERVICES AND TECHNOLOGY ACT, TEXTREASURES GRANTS

##### 13 TAC §2.512

The Texas State Library and Archives Commission adopts an amendment to §2.512, regarding the award criteria for the Text-Treasures competitive grant program, without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5814).

The amendment will help reviewers evaluate more accurately the applications submitted, thereby resulting in better applica-

tions being chosen for funding under the TexTreasures competitive grant program.

No comments were received on the proposal.

The amendment is adopted under the authority of Government Code §441.222 that directs the commission to establish the TexShare consortium and §441.230 that authorizes the commission to award grants to member institutions.

The amendment affects Government Code §441.222 and §441.230.

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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Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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## DIVISION 7. TEXAS READS GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

### 13 TAC §2.711

The Texas State Library and Archives Commission adopts an amendment to §2.711, regarding the eligibility of applicants for the Texas Reads competitive grant program, without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5815).

The amendment will help clarify the eligibility requirements for the Texas Reads competitive grant program and increase the opportunity for libraries to apply from year to year.

No comments were received on the proposal.

The amendment is adopted under the authority of Government Code §441.0092 that authorizes the commission to establish Texas Reads grant programs.

The amendment affects Government Code §441.0092

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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Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 53. INTEGRATED CARE MANAGEMENT §1915(c) WAIVER SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Chapter 53, consisting of §§53.101, 53.103, 53.105, 53.107, 53.109, 53.111, 53.113, 53.201, 53.203, 53.205, 53.209, 53.211, 53.213, 53.301, 53.401, 53.403, 53.405, 53.407, 53.409, 53.411, 53.413, 53.415, 53.417, 53.501, 53.601, 53.603, 53.605, 53.607, 53.609, 53.611, 53.613, 53.615, 53.617, 53.619, 53.701, 53.703, 53.705, 53.707, 53.709, 53.711, 53.713, 53.715, 53.717, 53.731, 53.733, 53.735, 53.737, 53.739, 53.741, 53.743, 53.745, 53.747, 53.749, 53.751, 53.753, 53.755, 53.761, 53.763, 53.771, 53.781, 53.783, 53.791, 53.793, 53.795, 53.797, 53.799, 53.801, 53.811, 53.821, 53.831, 53.841, 53.843, 53.845, 53.847, 53.849, 53.851, 53.861, 53.863, 53.865, 53.867, 53.869, 53.871, 53.873, 53.875, 53.877, 53.879, 53.881, 53.883, 53.891, 53.893, 53.901, 53.903, 53.905, 53.907, 53.909, 53.911, 53.921, 53.923, 53.925, 53.927, 53.929, 53.931, 53.941, 53.1001, 53.1003, 53.1005, 53.1007, 53.1009, 53.1011, 53.1101, 53.1103, 53.1105, 53.1107, 53.1109, 53.1111, 53.1113, 53.1115, 53.1117, 53.1119, 53.1201, 53.1203, 53.1205, 53.1207, 53.1209, and 53.1211, concerning Integrated Care Management §1915(c) Waiver Services, without changes to the proposal as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7285).

The repeal is adopted to remove rules regarding the Integrated Care Management (ICM) §1915(c) waiver program. ICM was determined to be an ineffective model and was terminated on January 31, 2011.

DADS received no comments regarding adoption of the repeal.

#### SUBCHAPTER A. INTRODUCTION

##### 40 TAC §§53.101, 53.103, 53.105, 53.107, 53.109, 53.111, 53.113

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

The 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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Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
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For further information, please call: (512) 438-4162



## SUBCHAPTER B. INDIVIDUAL ELIGIBILITY

### 40 TAC §§53.201, 53.203, 53.205, 53.209, 53.211, 53.213

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

The 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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Kenneth L. Owens  
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## SUBCHAPTER C. SERVICE COORDINATION TEAM MEETING

### 40 TAC §53.301

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

The 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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Kenneth L. Owens  
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## SUBCHAPTER D. INDIVIDUAL SERVICE PLAN

### 40 TAC §§53.401, 53.403, 53.405, 53.407, 53.409, 53.411, 53.413, 53.415, 53.417

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

The 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 E. SUSPENSION OF SERVICES

### 40 TAC §53.501

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

The 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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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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## SUBCHAPTER F. LTSS PROVIDER REQUIREMENTS

**40 TAC §§53.601, 53.603, 53.605, 53.607, 53.609, 53.611, 53.613, 53.615, 53.617, 53.619**

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

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Department of Aging and Disability Services

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## SUBCHAPTER G. SERVICE REQUIREMENTS DIVISION 1. GENERAL REQUIREMENTS

**40 TAC §§53.701, 53.703, 53.705, 53.707, 53.709, 53.711, 53.713, 53.715, 53.717**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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Kenneth L. Owens

General Counsel

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## DIVISION 2. ADAPTIVE AIDS

**40 TAC §§53.731, 53.733, 53.735, 53.737, 53.739, 53.741, 53.743, 53.745, 53.747, 53.749, 53.751, 53.753, 53.755**

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

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Kenneth L. Owens

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## DIVISION 3. ADULT FOSTER CARE

**40 TAC §§53.761, §53.763**

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive



commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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## DIVISION 4. ASSISTED LIVING SERVICES

### 40 TAC §53.771

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

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## DIVISION 5. CONSUMER DIRECTED SERVICES

### 40 TAC §53.781, §53.783

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

provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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## DIVISION 6. DENTAL SERVICES

### 40 TAC §§53.791, 53.793, 53.795, 53.797, 53.799, 53.801

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

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General Counsel  
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## DIVISION 7. EMERGENCY RESPONSE SERVICES

### 40 TAC §53.811

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

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

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General Counsel

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For further information, please call: (512) 438-4162



## DIVISION 8. HOME-DELIVERED MEALS

### 40 TAC §53.821

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

The 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 January 7, 2014.

TRD-201400040

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: January 27, 2014

Proposal publication date: October 18, 2013

For further information, please call: (512) 438-4162



## DIVISION 9. IN-HOME RESPITE SERVICES

### 40 TAC §53.831

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

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

The 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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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## DIVISION 10. MEDICAL SUPPLIES

### 40 TAC §§53.841, 53.843, 53.845, 53.847, 53.849, 53.851

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

The 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 January 7, 2014.

TRD-201400042

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## DIVISION 11. MINOR HOME MODIFICATIONS

### 40 TAC §§53.861, 53.863, 53.865, 53.867, 53.869, 53.871, 53.873, 53.875, 53.877, 53.879, 53.881, 53.883

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

The 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 January 7, 2014.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## DIVISION 12. OUT-OF-HOME RESPITE SERVICES

### 40 TAC §53.891, §53.893

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

The 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-201400044

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## DIVISION 13. PERSONAL ASSISTANCE SERVICES

### 40 TAC §§53.901, 53.903, 53.905, 53.907, 53.909, 53.911

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

The 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 January 7, 2014.

TRD-201400045

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## DIVISION 14. SKILLED NURSING

### 40 TAC §§53.921, 53.923, 53.925, 53.927, 53.929

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

The 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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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162

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DIVISION 15. THERAPY SERVICES

**40 TAC §53.931**

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

The 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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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162

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DIVISION 16. TRANSITION ASSISTANCE SERVICES

**40 TAC §53.941**

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

The 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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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162

◆ ◆ ◆  
SUBCHAPTER H. DOCUMENTATION

**40 TAC §§53.1001, 53.1003, 53.1005, 53.1007, 53.1009, 53.1011**

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

The 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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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162

◆ ◆ ◆  
SUBCHAPTER I. CLAIMS AND PAYMENTS

**40 TAC §§53.1101, 53.1103, 53.1105, 53.1107, 53.1109, 53.1111, 53.1113, 53.1115, 53.1117, 53.1119**

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

The 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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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## SUBCHAPTER J. LTSS PROVIDER MONITORING

### **40 TAC §§53.1201, 53.1203, 53.1205, 53.1207, 53.1209, 53.1211**

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

study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The 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 January 7, 2014.

TRD-201400051

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

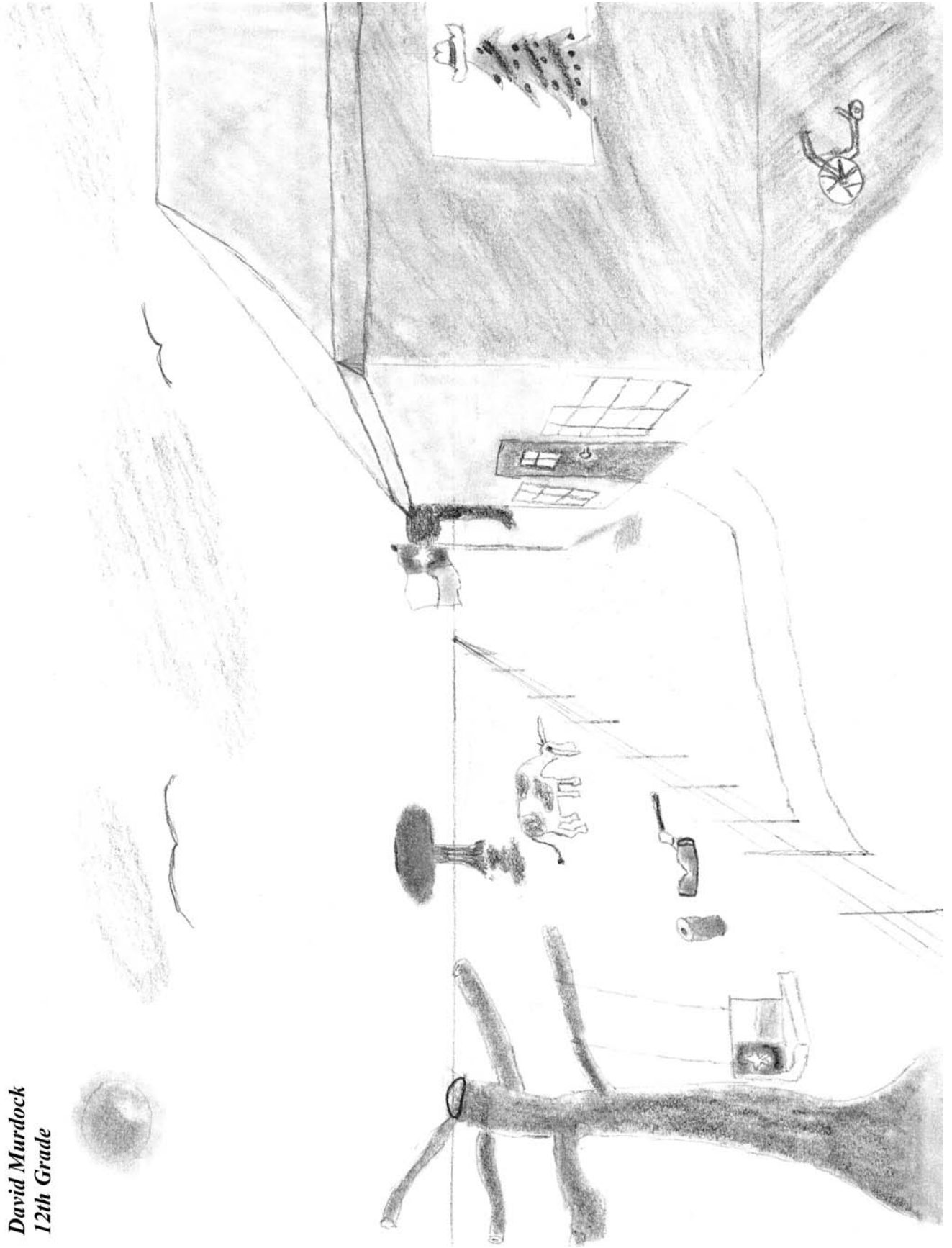
Effective date: January 27, 2014

Proposal publication date: October 18, 2013

For further information, please call: (512) 438-4162



*David Murdock*  
*12th 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.

## Adopted Rule Reviews

Texas Department of Insurance

### Title 28, Part 1

The Texas Department of Insurance has completed its review of all sections of 28 TAC Chapter 10, as required by Texas Government Code §2001.039. The notice of proposed rule review was published in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4515).

The department considered whether the reasons for initially adopting these sections continued to exist and whether these rules should be repealed, readopted, or readopted with amendments. The department also considered whether the sections were obsolete or were consistent with current procedures and practices of the department. Except for §10.102(g), the department has determined that the reasons for adopting the sections of 28 TAC Chapter 10 continue to exist, and the sections are readopted in their present form.

As a result of this Chapter 10 review, the department will propose an amended §10.102(g) in a separate rulemaking under the Texas Administrative Procedure Act.

Any of the readopted sections may be subsequently proposed for revision under the Texas Administrative Procedure Act, Chapter 2001, Texas Government Code, and the department's internal procedures.

Two interested parties provided written comments to the department related to the proposed review of the sections of 28 TAC Chapter 10. Following is a summary of the public comments received and the department's responses.

**Comment:** A commenter suggested amending the definition of "complaint" to clarify that the term and the corresponding complaint process did not relate to billing inquiries.

**Agency Response:** The adopted text tracks the statutory provisions in Insurance Code §1305.004(a)(5). The definitions in both the statute and the rule indicate that medical fee disputes are within the scope of a complaint. Both create an exception for matters that are promptly resolved by providing appropriate information.

**Comment:** A commenter states that subparagraphs (A) - (D) of §10.22(11) require a Health Care Network (HCN) to supply current information on a particular provider's hospital privileges, as well as licensing or facility credentialing information. The commenter notes that both of these data elements are disclosed by providers, and are not within the control of the HCN, which creates a burden on the HCN and places it at risk in the case of an audit. The commenter suggests changing the requirement for the HCN to provide the information only if it is known to the HCN.

**Agency Response:** Section 10.22 establishes the application requirements for a workers' compensation health care network to obtain a certificate to operate in the State of Texas. The department presumes that references in this comment to HCN are to a workers' compensation health care network. The department is not persuaded that an HCN should be certified based on incomplete information from its chosen network providers.

**Comment:** A commenter suggests that the department create parity in the rules between HCN and non-HCN applications, by either requiring both HCN and non-HCN application forms to provide the information outlined in §10.22(16) and (17), or to remove the information requirement from the HCN application form.

**Agency Response:** The department presumes that references in this comment to HCN are to a workers' compensation health care network and references to a non-HCN are to another type of health care network. An HCN is certified to provide health care related to workers' compensation insurance. Section 10.22(16) and (17) requires an entity applying for certification to engage in business as a certified workers' compensation health care network to demonstrate that it meets certain requirements under the Labor Code and the Division of Workers' Compensation rules. A non-HCN is not a certified workers' compensation health care network and it is not required to meet the same standards.

**Comment:** A commenter suggests that the required data elements that an HCN must report to the carriers on a monthly basis under §10.41(a)(7)(A) - (C) should be modified to only require disclosure of those data elements that are passed to the network by the carrier or the carrier's third party administrator that are specific to the network. The commenter suggests that the current section does not fully contemplate the relationship between a third party administrator and a carrier.

**Agency response:** As noted in the response to comments in the order adopting this section (30 TexReg 8099), the information is collected by the Division of Workers' Compensation and is within the scope of Insurance Code §1305.154(c)(7).

**Comment:** Two commenters suggest that the provider appeal process under §10.42(b)(6)(A) - (D) be limited to situations where the provider's network participation is being terminated for cause at the contract level. The commenters state that the current process limits a network's freedom to select and deselect the providers and potentially undermines the ability of the network to provide specific, customized networks for individualized carriers, comprised of carefully-selected providers to deliver high quality care in a cost effective manner.

**Agency Response:** Insurance Code §1305.152(c)(4) requires provider contracts to include a clause regarding appeal by the provider of termination of provider status.

Comment: A commenter suggests that §10.60 restate the text of Insurance Code §1305.005(f).

Agency Response: The absence of the language in the rule does not affect the applicability of Insurance Code §1305.153(f).

Comment: A commenter suggests that the reference to "calendar days" in §10.102(g) be changed to "business days" to create parity between the Texas Administrative Code and Insurance Codes.

Agency Response: The Legislature amended Insurance Code §1305.353(d) in HB 3625, 81st Legislature, effective September 1, 2009. The amendment changed the term "calendar days" to "working days," which is defined in Insurance Code §4201.002. The department will propose an amendment to make §10.102(g) consistent with the statute in a separate rulemaking under the Texas Administrative Procedure Act.

Comment: A commenter suggests that references to Insurance Code Article 21.58 in 28 TAC Chapter 10, Subchapter F, be updated to Insurance Code Chapter 4201.

Agency Response: Under Texas Government Code §311.027, the references in these rules to Insurance Code Article 21.58 continue to apply the reenactment of those provisions in Insurance Code Chapter 4201.

Comment: A commenter suggests that under 28 TAC Chapter 10, Subchapter F, the time frame for issuing a utilization review Notice of Determination letter is very aggressive and that the rules should allow for a "lack of information policy" that would provide a temporary delay in the three-day response requirement.

Agency Response: Insurance Code §1305.353(d) establishes the three-day response requirement.

Comment: A commenter suggests that the required use of certified case managers under 28 TAC Chapter 10, regardless of their role in a particular case, places an unnecessary burden on the utilization review firm to not only retain certified case managers for telephonic management, but also to hire additional certified case managers to perform the field work as well, even if all field work is being performed under the direction of the telephonic case manager. The commenter suggests modifying the rules to permit licensed, noncertified case managers to serve as "field case managers," when under the direct control and supervision of a telephonic licensed and certified case manager.

Agency Response: Quality is the goal of certified networks, and using noncertified case managers would loosen the requirements and could

impact quality. The rules were originally adopted with an exception to allow companies to hire or retain noncertified case managers, and provided a period during which the case managers could become accredited by one of the established accrediting organizations named in the rule. That exception expired January 1, 2007. The industry has demonstrated the ability to sufficiently staff certified case managers since 2007.

This concludes the review of 28 TAC Chapter 10.

TRD-201400090  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: January 10, 2014



Texas Department of Public Safety

**Title 37, Part 1**

The Texas Department of Public Safety (the department) files this notice of readoption of 37 TAC Chapter 9, concerning Public Safety Communications. The department amended Chapter 9 to reflect current department titles. Additional nonsubstantive changes were made throughout for conformity and consistency.

The readoption of Chapter 9 is filed in accordance with the department's Notice of Intent to Review published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9371). No comments were received in response to the proposed rule review.

Texas Government Code §2001.039 requires agencies to review and consider for readoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The department reviewed Chapter 9 and determined that the original justification for the rules continues to exist.

This concludes the department's review of 37 TAC Chapter 9.

TRD-201400094  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Filed: January 10, 2014





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 Department of Agriculture

Request for Applications: Rural Communities Health Care Investment Program

**Statement of Purpose.** The Texas Department of Agriculture (TDA) announces the availability of the Fiscal Year (FY) 2014 funds to assist rural communities in recruiting health care providers, other than physicians, to practice in their community by providing partial student loan reimbursements or stipend payments to non-physicians. The Rural Communities Health Care Investment Program (RCHIP) utilizes funds from a permanent endowment established from the tobacco settlement for the State of Texas and authorized under Texas Government Code §487.558. The authority for this program is provided in Texas Government Code, Chapter 487, Subchapter M, and Texas Administrative Code Chapter 30, Subchapter B.

### Projected Timeline of Events:

January 2014 - Application Availability

May 1, 2014 - Deadline to submit applications

July 2014 - Award notification

**Eligibility.** RCHIP is intended to assist rural communities in recruiting health care providers, *other than physicians*, to practice in their community. The program provides partial student loan reimbursement or stipend payments to **non-physician providers** who practice in a qualifying community upon receiving their license within the last 12 months, or who change employment from a practice site in a large county (over 500,000) to a qualifying community to practice in the field for which they are licensed.

Eligible clinicians include, but are not limited to, dentists and licensed non-physician mental health care providers. **Clinicians must:**

- 1) reside in the State of Texas;
- 2) hold a Texas license to work in a health care field, **other than MD or DO**, and

be newly licensed in the field under which this application is submitted (received first license on or after 01/01/2013); OR

be a licensed clinician practicing in a county with more than 500,000 people and move to practice in a qualifying community, in the field under which this application is submitted;

- 3) begin providing services in a qualifying community not later than 6 months after the award announcement;
- 4) provide services to clients that receive at least one form of indigent care in qualifying community;
- 5) agree to practice in the qualifying community for at least 12 consecutive months; and
- 6) provide services in a county that has either MUA designation or the HPSA designation appropriate for the provider type applying to the program (i.e., dentists apply for a dental HPSA, mental health providers apply for a mental health HPSA, primary care providers for a primary care HPSA).

Please note that for the purposes of this award, services **may not** be provided solely through telehealth.

**Qualifying Communities.** A medically underserved community for the purposes of this program refers to a community that is located in a Texas county with a population of 50,000 or less and has been designated under state or federal law as a Health Professional Shortage Area (HPSA), or a Medically Underserved Area (MUA). A list of eligible counties has been attached to the application.

For more information about HPSA and MUA designations see: <http://www.hrsa.gov/shortage/>.

**CAUTION:** Clinicians currently fulfilling an obligation to provide medical services as part of a scholarship agreement, a student loan agreement, or another student loan repayment program cannot simultaneously receive funding from a state-funded loan repayment program for the same period of service.

**Funding Parameters.** Awards are subject to the availability of funds. If funds are not appropriated or collected for this program, applicants will be informed accordingly.

Awards are made annually and an individual may only receive the RCHIP award once. Applications will be competitively reviewed and approximately 30 selected applicants will receive awards up to \$5,000. RCHIP provides funds for partial reimbursement for student loans, or, for clinicians without a student loan balance, funds are available as a stipend payment. Applicants with loan repayments will be prioritized ahead of stipend applicants.

Selected applicants will be required to submit evidence that they have begun practicing in a qualified community (e.g., letter from employer, pay stub). In addition, award recipients must sign a grant agreement, agreeing to practice in the qualifying community for a minimum of 12 consecutive months.

Payment will be made in two installments, after 6 and 12 months of service has been provided by the award recipient and certified by the employer or community. Failure to remain in full-time practice in the qualifying community for the required service period may result in termination of the award contract and/or a requirement to repay the award to TDA plus penalty fees.

Within 30 days of receipt of award payments to loan repayment recipients, the recipient must provide TDA documentation that the award amount was used towards loan repayment for any loan previously listed in Section B of the application.

**Application Requirements.** To be considered, applications must be complete. Application and information can be downloaded from <http://www.texasagriculture.gov/GrantsServices/GrantsandServices.aspx>.

**Submission Information.** The complete application packet including the proposal with signatures must be **RECEIVED** by **5:00 p.m. (Central Time) on Thursday, May 1, 2014**. It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. *Late or incomplete proposals will not be accepted.* TDA will send an acknowledgement receipt by email indicating the application was received.

Complete application with signature must be submitted to:

Physical Address: Texas Department of Agriculture, State Office of Rural Health, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Texas Department of Agriculture, State Office of Rural Health, P.O. Box 12847, Austin, Texas 78711.

Electronic Versions: Email: RuralHealth@TexasAgriculture.gov, Fax: (888) 216-9867

For questions regarding submission of the proposal and TDA documentation requirements, please contact the State Office of Rural Health at (512) 936-6730 or by email at RuralHealth@TexasAgriculture.gov.

**Texas Public Information Act.** Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201400122

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: January 14, 2014

## Comptroller of Public Accounts

### Certification of the Average Taxable Price of Gas and Oil - December 2013

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 December 2013 is \$75.50 per barrel for the three-month period beginning on September 1, 2013, and ending November 30, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of December 2013 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 December 2013 is \$2.89 per mcf for the three-month period beginning on September 1, 2013, and ending November 30, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2013 from a qualified low-producing well is eligible for a 50% 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 December 2013 is \$97.89 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 December 2013 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 December 2013 is \$4.28 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of December 2013 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-201400117

Ashley Harden

General Counsel

Comptroller of Public Accounts

Filed: January 14, 2014

### Notice of Request for Proposals

Pursuant to Chapter 403, §403.011; Chapter 2155, §2155.001; and Chapter 2156, §2156.121 of the Texas Government Code and Chapter 54, Subchapter F of the Texas Education Code, the Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 207e ("RFP") from qualified banks and financial institutions to assist Comptroller and the Board in providing master trust custodian and related services for the assets held in the Texas Guaranteed Tuition Plan as described in the RFP. If approved by the Board, the successful respondent(s), if any, will be expected to begin performance of the contract on or after September 1, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, January 24, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, February 7, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, February 21, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, March 7, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s). The Board and Comptroller each reserve the right to accept or reject any or all Proposals submitted. The Board and Comptroller are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 24, 2014, after 10:00 a.m. CT; Questions Due - February 7, 2014, 2:00 p.m. CT; Official Responses to Questions posted - February 21, 2014, or as soon thereafter as practical; Proposals Due - March 7, 2014, 2:00 p.m. CT; Contract Execution - August 1, 2014, or as soon thereafter as practical; and Commencement of Work - on or after September 1, 2014. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as an RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201400147

Robin Reilly  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: January 15, 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 01/20/14 - 01/26/14 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/20/14 - 01/26/14 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201400114  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: January 13, 2014

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**Texas Education Agency**

**Notice of Correction: Request for Applications Concerning the 2014-2016 Online College and Career Preparation Technical Assistance Program, Cycle 3**

The Texas Education Agency (TEA) published notice of request for applications (RFA) #701-14-102 concerning the 2014-2016 Online College and Career Preparation Technical Assistance Program, Cycle 3 grant program in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9082).

The TEA is no longer requesting competitive grant applications under RFA #701-14-102.

Further Information. For further information, contact Sara Grunberger, Division of Federal and State Education Policy, TEA, (512) 936-6060.

TRD-201400143  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: January 15, 2014

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**Request for Applications Concerning Adult Education Charter School Pilot Program Guidelines and Application**

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-14-108 from eligible entities to operate an adult education charter school. Eligible entities include any organization that is exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), has a successful history of providing education services to adults 18 years of age and older, and agrees to commit at least \$1 million to the adult education program offered.

**Description.** In accordance with the Texas Education Code (TEC), §29.259, as added by Senate Bill (SB) 1142, 83rd Texas Legislature, Regular Session, 2013, the purpose of the Texas adult education charter school program is to provide a strategy for meeting industry needs for a sufficiently trained workforce within the state while providing Texas adults 19-50 years of age an opportunity to attain an adult high school diploma and industry certification.

The adult education charter school will provide an adult education program for not more than 150 individuals ages 19-50 to successfully complete a high school program that can lead to a diploma and career and technology education courses that can lead to industry certification. A person who is at least 19 years of age and not more than 50 years of age is eligible to enroll in the adult education program if the person has not earned a high school equivalency certificate and has failed to complete the curriculum requirements for high school graduation or has failed to perform satisfactorily on an assessment instrument required for high school graduation. The adult education charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. The adult education charter school program does not have the authority to impose taxes.

The adult education charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, health and safety provisions, and public school accountability. As stated in the TEC, §12.156, in matters related to operation of the charter school, the adult education charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of the adult education charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of the adult education charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

**Dates of Project.** The completed application must be received by the TEA on or before 5:00 p.m. (Central Time), Friday, February 14, 2014, to be eligible for review.

**Project Amount.** The TEC, §29.259, specifies the following.

(j) Funding for an adult education program under this section is provided based on the following: (1) for participants who are 26 years of age and older, an amount per participant from available general revenue funds appropriated for the pilot program equal to the statewide average amount of state funding per student in weighted average daily attendance that would be allocated under the Foundation School Program to an open-enrollment charter school under the TEC, §12.106, were the student under 26 years of age; and (2) for participants who are at least 19 years of age and under 26 years of age, an amount per participant through the Foundation School Program equal to the amount of state funding per student in weighted average daily attendance that would be allocated under the Foundation School Program for the student's attendance at an open-enrollment charter school in accordance with the TEC, §12.106.

(k) The TEC, §12.107 and §12.128, apply as though funds under this section were funds under the TEC, Chapter 12, Subchapter D.

The TEC, §42.003(a)(2), as added by SB 1142, 83rd Texas Legislature, Regular Session, 2013, specifies that a student is entitled to the benefits of the Foundation School Program if, on September 1 of the school year, the student is at least 19 years of age and under 26 years of age and is enrolled in an adult high school diploma and industry certification charter school pilot program under the TEC, §29.259.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. As public schools, a charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An adult education charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

**Selection Criteria.** In accordance with statute, an adult education charter under the TEC, §29.259, may be granted to a single nonprofit entity. A complete description of selection criteria is included in the RFA.

The commissioner of education may approve the adult education charter school as provided in the TEC, §29.259. The commissioner is scheduled to consider awards under RFA #701-14-108 in March 2014.

**Requesting the Application.** An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication *Adult Education Charter School Pilot Program Guidelines and Application* (RFA #701-14-108), which includes an application and procedures, may be obtained by contacting the TEA Division of Charter Schools at [charterschools@tea.state.tx.us](mailto:charterschools@tea.state.tx.us).

**Further Information.** For clarifying information about the adult education charter school application, contact the Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or [charterschools@tea.state.tx.us](mailto:charterschools@tea.state.tx.us).

TRD-201400141

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: January 15, 2014



## Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-14-104 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Friday, February 7, 2014, and Friday, March 7, 2014, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

**Description.** The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

**Dates of Project.** The completed application must be received by the TEA on or before 5:00 p.m. (Central Time), Thursday, March 27, 2014, to be eligible for review.

**Project Amount.** The TEC, §12.106, specifies the following.

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as it existed on January 1, 2009, that would have been received by the school during the 2009-2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by \$120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102-42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

(a-3) In determining funding for an open-enrollment charter school under subsection (a), the commissioner shall apply the regular program adjustment factor provided under the TEC, §42.101, to calculate the regular program allotment to which a charter school is entitled.

(a-4) Subsection (a-3) and this subsection expire September 1, 2015.

The TEC, §12.106(a), to be effective September 1, 2017, specifies that a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

**Selection Criteria.** A complete description of selection criteria is included in the RFA.

The commissioner of education may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 205 charters approved under the TEC, §12.101, and 4 charters approved under the TEC, §12.152. There is a cap of 215 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-14-104 in August 2014.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members.

**Requesting the Application.** An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication *Open-Enrollment Charter Guidelines and Application* (RFA #701-14-104), which includes an application and procedures, may be obtained on the TEA website at <http://www.tea.state.tx.us/charterapp.aspx>.

**Further Information.** For clarifying information about the open-enrollment charter school application, contact the Division of Charter

Schools, Texas Education Agency, at (512) 463-9575 or [charter-schools@tea.state.tx.us](mailto:charter-schools@tea.state.tx.us).

TRD-201400142

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: January 15, 2014

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 24, 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 February 24, 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: 4B GROUP LLC dba Elmo Food Shop; DOCKET NUMBER: 2013-1571-PST-E; IDENTIFIER: RN101432540; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tanks (USTs); 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: \$6,516; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Al S. Jabouri dba Rivers Inn RV Park; DOCKET NUMBER: 2013-1266-PWS-E; IDENTIFIER: RN101262673; LOCATION: Brazoria County; TYPE OF FACILITY: public water

supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual sampling for nitrates to the executive director for the 2008-2012 monitoring periods; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual public health service fees and/or any associated late fees, for TCEQ Financial Administration Account Number 90200585 for Fiscal Years 2003-2013; and 30 TAC §290.122(c)(2)(A), by failing to timely provide public notification of the failure to timely collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected during the month of October 2012; PENALTY: \$300; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Ana Holdings, Incorporated dba Happy Days Grocery; DOCKET NUMBER: 2013-1747-PST-E; IDENTIFIER: RN102047495; LOCATION: Malakoff, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: BENGAL MART INCORPORATED dba Sunmart 154; DOCKET NUMBER: 2013-1617-PST-E; IDENTIFIER: RN102027331; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to make Stage II records immediately available for review upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$8,045; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Kendleton; DOCKET NUMBER: 2013-0572-PWS-E; IDENTIFIER: RN101246247; LOCATION: Kendleton, Fort Bend County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop, maintain on hand, and make available to the executive director upon request an accurate and up-to-date chemical and microbiological monitoring plan that includes, but is not limited to: identifying all sampling locations that are representative of the distribution system, describing the sampling frequency, and specifying the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.42(1), by failing to compile and maintain a current, thorough plant operations manual for the drinking water system for operator use and reference; 30 TAC §290.41(c)(3)(N) and §290.46(s)(1), by failing to calibrate the well meters for Well Numbers 1 and 2 at least once every three years; and 30 TAC §290.46(s)(2)(C), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days; PENALTY: \$260; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Cowtown Gas Processing Partners L.P.; DOCKET NUMBER: 2013-1756-AIR-E; IDENTIFIER: RN105471551; LO-

CATION: Granbury, Hood County; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.145(2)(C) and §122.146(2), Federal Operating Permit (FOP) Number O3044, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a permit compliance certification and semiannual deviation report within 30 days after the end of the certification and reporting period; and 30 TAC §122.143(15) and §122.165(a)(7), FOP Number O3044, GTC, and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness for reports required by the permit; PENALTY: \$6,160; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: C-Store Trands Incorporated dba JR Food Mart; DOCKET NUMBER: 2013-1570-PST-E; IDENTIFIER: RN102713161; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$938; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Flores Retail, Incorporated dba Flores C-Store; DOCKET NUMBER: 2013-1845-PST-E; IDENTIFIER: RN102392594; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 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 underground storage tanks (USTs); 30 TAC §334.7(d)(3), by failing to notify agency of any change or additional information regarding USTs within 30 days of the change or addition; and 30 TAC §334.8(c)(4)(C), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; PENALTY: \$1,986; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: GOLD LAND INVESTORS, LLC dba FAA Food Mart; DOCKET NUMBER: 2013-1257-PST-E; IDENTIFIER: RN102261773; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,129; ENFORCEMENT COORDINATOR: Troy Warden, (512) 239-1050; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: HIGHWAY 117 WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1628-PWS-E; IDENTIFIER: RN101441053; LOCATION: Uvalde County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(5), by failing to provide a water purchase contract that authorizes a maximum hourly purchase rate plus an actual service pump capacity of at least 2.0 gallons per minute (gpm) per connection or provide at least 1,000

gpm and be able to meet peak hourly demands, whichever is less; PENALTY: \$562; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: HOA TRAN CORPORATION dba Tran's Food Store; DOCKET NUMBER: 2013-1639-PST-E; IDENTIFIER: RN103062477; LOCATION: San Leon, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Moore Water Supply Corporation; DOCKET NUMBER: 2013-1596-MWD-E; IDENTIFIER: RN103014924; LOCATION: Moore, Frio County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014239001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1), and TWC, §26.121(a)(1), by failing to comply with permitted effluent limits; TPDES Permit Number WQ0014239001 Monitoring and Reporting Requirements Number 1, and 30 TAC §305.125(17) and §319.7(d), by failing to submit monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0014239001 Monitoring and Reporting Requirements Number 1, and 30 TAC §305.125(17), by failing to submit effluent monitoring results at the intervals specified in the permit; and TPDES Permit Number WQ0014239001 Monitoring and Reporting Requirements Number 3.a. and 30 TAC §319.5(b), by failing to collect and analyze effluent samples at the required frequency; PENALTY: \$13,050; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: San Antonio River Authority; DOCKET NUMBER: 2013-1681-WQ-E; IDENTIFIER: RN101514560; LOCATION: Converse, Bexar County; TYPE OF FACILITY: a collection system; RULE VIOLATED: TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010749001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of untreated wastewater from the collection system; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Scott W. Gray dba Iwanda Mobile Home Park; DOCKET NUMBER: 2013-0739-PWS-E; IDENTIFIER: RN101245751; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2010-2012 monitoring periods; 30 TAC §290.106(e), by failing to provide the results of triennial sampling for minerals and metals to the executive director for the January 1, 2008-December 31, 2010 monitoring period; 30 TAC §290.107(e) and §290.113(e), by failing to provide the results of triennial sampling for Stage I Disinfection By-products and synthetic organic chemical contaminants to the executive director for the January 1, 2009-December 31, 2011 monitoring period; 30 TAC §290.107(e) and §290.108(e), by failing to provide the results of sexennial sampling for volatile organic chemical contaminants and radionuclides to the executive director for the January 1, 2006-December 31, 2011 monitoring period; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service fees and associated late fees for

TCEQ Financial Administration Account Number 91810061 for Fiscal Year 2013; PENALTY: \$600; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Southwest Convenience Stores, LLC dba 7-Eleven 57652; DOCKET NUMBER: 2013-1927-PST-E; IDENTIFIER: RN105204283; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(1) and Texas Health and Safety Code, §382.085(b), by failing to successfully complete the Stage II vapor recovery system testing to ensure that the system meets the performance criteria for the system within 30 days of major system replacement or modification; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(16) COMPANY: Sunny Day Enterprises, Incorporated dba Sunrise Grocery 5; DOCKET NUMBER: 2013-1666-PST-E; IDENTIFIER: RN101377893; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,506; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: TPC Group LLC; DOCKET NUMBER: 2013-1377-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 20485, Special Conditions Number 1, and Federal Operating Permit Number O1327, Special Terms and Conditions Number 19, by failing to prevent unauthorized emissions; PENALTY: \$13,688; Supplemental Environmental Project offset amount of \$5,475 applied to Southeast Regional Planning; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2013-1837-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2951, General Terms and Conditions, by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Vicki S. Seyer and Watson A. Seyer, Jr. dba Greenvilla Mobile Home Park; DOCKET NUMBER: 2013-1770-PWS-E; IDENTIFIER: RN101438182; LOCATION: Dickinson, Galveston 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 to the executive director each quarter by the tenth day of the month following the end of each quarter; and 30 TAC §290.117(c)(2)(A) 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: \$2,668; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201400118

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 14, 2014



### Enforcement Orders

An agreed order was entered regarding Halliburton Energy Services, Inc., Docket No. 2012-0084-MWD-E on December 20, 2013 assessing \$4,502 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAR, LLC dba Sam's Grocery, Docket No. 2012-1146-PST-E on December 20, 2013 assessing \$2,975 in administrative penalties with \$595 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marvin Wesley Browder Jr. and Jerry G. Carpenter dba B & C Oil Company, Docket No. 2012-1505-PST-E on December 20, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Terry N. Smith, Docket No. 2013-0089-MSW-E on December 20, 2013 assessing \$7,000 in administrative penalties with \$5,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John G. Hayes dba Mister Car Wash Detail Lube Center 106, Docket No. 2013-0309-PST-E on December 20, 2013 assessing \$4,643 in administrative penalties with \$928 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Pevey dba Big Country Bait Grocery & Cafe, Docket No. 2013-0397-PST-E on December 20, 2013 assessing \$6,429 in administrative penalties with \$1,285 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Hardin County Consolidated Independent School District, Docket No. 2013-0439-MWD-E on

December 20, 2013 assessing \$6,187 in administrative penalties with \$1,237 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & W Convenience Stores, LLC dba OT's Landing, Docket No. 2013-0652-PST-E on December 20, 2013 assessing \$5,755 in administrative penalties with \$1,151 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hibeam Corporation dba MQ Food Mart, Docket No. 2013-0675-PST-E on December 20, 2013 assessing \$3,751 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Khairunissa Lakhani dba Cracker Barrel 1, Docket No. 2013-0690-PST-E on December 20, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MUDualistic Limited Liability Company, Docket No. 2013-0696-WR-E on December 20, 2013 assessing \$808 in administrative penalties with \$161 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Roxton, Docket No. 2013-0749-MWD-E on December 20, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nalco Company, Docket No. 2013-0799-AIR-E on December 20, 2013 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH VICTORIA UTILITIES, INC., Docket No. 2013-0803-PWS-E on December 20, 2013 assessing \$1,796 in administrative penalties with \$359 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2013-0809-AIR-E on December 20, 2013 assessing \$7,001 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American General Realty Investment Corporation, Docket No. 2013-0829-PST-E on December 20, 2013 assessing \$4,631 in administrative penalties with \$926 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grant Road Public Utility District, Docket No. 2013-0863-MWD-E on December 20, 2013 assessing \$4,575 in administrative penalties with \$915 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VHS San Antonio Partners, LLC, Docket No. 2013-0867-PST-E on December 20, 2013 assessing \$3,143 in administrative penalties with \$628 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JIMBO'S ROAD HOUSE, LLC, Docket No. 2013-0879-PWS-E on December 20, 2013 assessing \$262 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akbar Alesha L.L.C. dba Shell PTC, Docket No. 2013-0883-PST-E on December 20, 2013 assessing \$6,172 in administrative penalties with \$1,234 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chong Bai Xia dba Twin Lakes Water Co., Docket No. 2013-0891-PWS-E on December 20, 2013 assessing \$570 in administrative penalties with \$114 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHEMIN INC. dba Netos Food Mart, Docket No. 2013-0922-PST-E on December 20, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vinyard Enterprises, Inc. dba Vinyards Food Mart, Docket No. 2013-0947-PST-E on December 20, 2013 assessing \$5,993 in administrative penalties with \$1,198 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE DYNAMITE INC dba Country Food Mart, Docket No. 2013-0953-PST-E on December 20, 2013 assessing \$4,064 in administrative penalties with \$812 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MUTUAL OIL TRADING INC. dba One Stop & Go, Docket No. 2013-0957-PST-E on December 20, 2013 assessing \$3,503 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Premium Waters, Inc., Docket No. 2013-0963-IWD-E on December 20, 2013 assessing \$3,250 in administrative penalties with \$650 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jatinbhai Patel dba Heights Food Mart, Docket No. 2013-1017-PST-E on December 20, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valor Telecommunications of Texas, LLC, Docket No. 2013-1020-PST-E on December 20, 2013 assessing \$3,516 in administrative penalties with \$703 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NILO BUSINESS INC. dba New Horizon Grocery Store, Docket No. 2013-1024-PST-E on December 20, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUNDANCE FUELS, LTD., Docket No. 2013-1038-PST-E on December 20, 2013 assessing \$4,610 in administrative penalties with \$922 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-

3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Valley Community College, Docket No. 2013-1042-PST-E on December 20, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gilbert V. Perez, Docket No. 2013-1063-MSW-E on December 20, 2013 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Antonio C. Sanchez dba Blanco A. S., Docket No. 2013-1071-PST-E on December 20, 2013 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JK & JK Enterprises LLC dba Joes Minimart, Docket No. 2013-1078-PST-E on December 20, 2013 assessing \$3,504 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRIPLE B TRADING LLC dba 3 Star Mart, Docket No. 2013-1082-PST-E on December 20, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lee Oak Grove Inc. dba Lee Oak Grove Food Mart, Docket No. 2013-1097-PST-E on December 20, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANDY MINI MART, INC., Docket No. 2013-1099-PST-E on December 20, 2013 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RICARDOS TRAILER PARK, LLC dba Ranch Oaks Mobile Home Park, Docket No. 2013-1113-PWS-E on December 20, 2013 assessing \$1,331 in administrative penalties with \$266 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VNSS INVESTMENTS L L C dba Superior Mini Mart, Docket No. 2013-1138-PST-E on December 20, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Star Simran Inc dba Highway Speed Mart, Docket No. 2013-1148-PST-E on December 20, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.I. Enterprises, LLC, Docket No. 2013-1152-MWD-E on December 20, 2013 assessing \$3,050 in administrative penalties with \$610 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2013-1173-PST-E on December 20, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Commodore Marine, Limited Partnership dba Mill Creek Resort & Marina, Docket No. 2013-1175-PST-E on December 20, 2013 assessing \$2,567 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Thompson as Trustee of THOMPSON MINERAL TRUST 2 dba 4 Way Store and Café, Docket No. 2013-1198-PWS-E on December 20, 2013 assessing \$481 in administrative penalties with \$96 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J.J.R.S. Family Investments LLC dba Stop Fast Marina, Docket No. 2013-1201-PST-E on December 20, 2013 assessing \$4,624 in administrative penalties with \$924 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Troup, Docket No. 2013-1202-MWD-E on December 20, 2013 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KKAR INVESTMENT, LLC, Docket No. 2013-1204-EAQ-E on December 20, 2013 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTH TEXAS STORES INC dba I Stop 4, Docket No. 2013-1213-PST-E on December 20, 2013 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADDISON ENTERPRISES INC. dba Minit Mart, Docket No. 2013-1226-PST-E on December 20, 2013 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southside Feed & Supply, LLC, Docket No. 2013-1228-PST-E on December 20, 2013 assessing \$2,567 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Karen Reeves, Docket No. 2013-1232-PWS-E on December 20, 2013 assessing \$300 in administrative penalties with \$60 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALFAAZ, L.L.C. dba Metro Food Mart, Docket No. 2013-1238-PST-E on December 20, 2013 assessing \$2,981 in administrative penalties with \$596 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COTTONWOOD CREEK MHP, L.P., Docket No. 2013-1248-PWS-E on December 20, 2013 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANGER UTILITY COMPANY, Docket No. 2013-1256-PWS-E on December 20, 2013 assessing \$836 in administrative penalties with \$166 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harman Dhillon Inc dba Paris Mart, Docket No. 2013-1306-PST-E on December 20, 2013 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The 5125 Company, Docket No. 2013-1324-WQ-E on December 20, 2013 assessing \$1,876 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BIROME WATER SUPPLY CORPORATION, Docket No. 2013-1343-PWS-E on December 20, 2013 assessing \$650 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KEMPNER WATER SUPPLY CORPORATION, Docket No. 2013-1344-PWS-E on December 20, 2013 assessing \$1,824 in administrative penalties with \$364 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Friedman, Docket No. 2013-1394-PWS-E on December 20, 2013 assessing \$816 in administrative penalties with \$162 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Advanced Micro Devices, Inc., Docket No. 2013-1426-EAQ-E on December 20, 2013 assessing \$1,219 in administrative penalties with \$243 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mabank, Docket No. 2013-1455-MWD-E on December 20, 2013 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding County Line Special Utility District, Docket No. 2013-1470-PWS-E on December 20, 2013 assessing \$160 in administrative penalties with \$32 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Go Park Mobile, LLC, Docket No. 2013-1491-PWS-E on December 20, 2013 assessing \$2,088 in administrative penalties with \$416 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K & RABBANI CORPORATION dba Minit Market, Docket No. 2013-1578-PST-E on December 20, 2013 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding GOOSE CREEK CONSOLIDATED INDEPENDENT SCHOOL DISTRICT PUBLIC FACILITY CORPORATION, Docket No. 2013-1631-PST-E on December 20, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ronnie D. Barton, Docket No. 2013-1838-WOC-E on December 20, 2013 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Glenn R. Teakell, Docket No. 2013-1839-WOC-E on December 20, 2013 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Quatro Oil & Gas Inc, Docket No. 2013-1885-WR-E on December 20, 2013 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ranger Excavating LP, Docket No. 2013-1925-WR-E on December 20, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512)

239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding McMinn Ranches Ltd, Docket No. 2013-1928-WR-E on December 20, 2013 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Liebrum Properties LLC, Docket No. 2013-1974-WQ-E on December 20, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201400127

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 15, 2014



### Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40281

Application. Stericycle Specialty Waste Solutions, Inc., 28161 N. Keith Drive, Lake Forest, Illinois 60045, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40281, to operate a Type V municipal solid waste transfer station. The proposed facility, Stericycle-Dallas Facility will be located at 8801 Governors Row, Dallas, Texas 75247 in Dallas County. The Applicant is requesting authorization to transfer and store medical waste, non-hazardous pharmaceuticals, municipal solid waste, and non-hazardous chemicals. The registration application is available for viewing and copying at the J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Texas 75201 and may be viewed online at [www.cirrusassociates.com](http://www.cirrusassociates.com). The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.825555&lng=-96.879722&zoom=13&type=r>. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be

extended to the close of any public meeting. The executive director is not required to file a response to comments.

**Executive Director Action.** The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

**Information.** Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to <http://www10.tceq.texas.gov/epic/ecmnts/>. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Further information may also be obtained from Stericycle Inc. at the address stated above or by calling Ms. Catherine Moss, Environmental Safety & Health Manager, at (224) 343-1200.

TRD-201400126

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 15, 2014



### Notice of Water Quality Applications

The following notices were issued on January 3, 2014, through January 10, 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

OPTIM ENERGY TWIN OAKS LP which operates Twin Oaks Power Station, a lignite-fired steam electric generation station, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002877000, which authorizes the discharge of coal pile runoff and stormwater on an intermittent and flow-variable basis via Outfall 001; low volume waste, cooling tower blowdown, and stormwater runoff at daily maximum dry weather flow not to exceed 3,000,000 gallons per day via Outfall 002; and stormwater runoff from the ash storage area on an intermittent and flow-variable basis via Outfall 003. The facility is located at 13065 Plant Road in the City of Bremond, Robertson County, Texas 76629.

CITY OF CISCO has applied for a renewal of TPDES Permit No. WQ0010424002, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 400 feet west of State Highway 6 and approximately 800 feet down-

stream of the Lake Cisco Dam, and approximately 3.5 miles north of the intersection of U.S. Highway 80 and State Highway 6 in Eastland County, Texas 76437.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495037, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 60,000,000 gallons per day. In the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit Renewal, the facility's location was incorrectly described as 4503 Beechnut Street, at the intersection of Beechnut Street and Newcastle Street, approximately 0.5 mile northeast of the intersection of Interstate Highway 610 and Post Oak Road in Harris County, Texas 77096. The facility is located at 4211 Beechnut Street, at the intersection of Beechnut Street and Newcastle Street, approximately 0.5 mile northeast of the intersection of Interstate Highway 610 and Post Oak Road in Harris County, Texas 77096.

CIBOLO CREEK MUNICIPAL AUTHORITY has applied for a major amendment to TPDES Permit No. WQ0011269001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 6,200,000 gallons per day to an annual average flow not to exceed 10,000,000 gallons per day. The applicant also requests to discharge either to Outfall 001 or 002 and increase the sewage sludge land application area from 165.3 to 167.3 acres. The facility is located at 12423 Authority Lane, Cibolo, approximately 2.25 miles northeast of the center of Randolph Air Force Base on the south bank of Cibolo Creek in Bexar County, Texas 78108. The sludge treatment works are located at the wastewater treatment facility and the sludge disposal site is located adjacent to the wastewater treatment facility.

CITY OF LEANDER has applied for a renewal of TPDES Permit No. WQ0012644001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day. TCEQ received this application on May 30, 2013. The facility is located at 10201 Farm-to-Market Road 2243, approximately 4,000 feet east of the intersection of U.S. Highway 183 and Ranch-to-Market Road 2243 in Williamson County, Texas 78641.

DRIPPING SPRINGS HOLDINGS LLC has applied for a renewal of TCEQ Permit No. WQ0014866001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 23,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 5.28 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility will be located approximately 2,080 feet west of Bell Springs Road (County Road 169) at a point approximately 2.5 miles north of the intersection of West Highway 290 and Bell Springs Road in the Bella Vista Subdivision in Hays County, Texas 78620. The disposal areas will be located in multiple areas throughout the Bella Vista Subdivision, located approximately 2.2 miles north of the intersection of West Highway 290 and Bell Springs Road in Hays County, Texas.

FELLOWSHIP CHURCH has applied for a new permit, Proposed TCEQ Permit No. WQ0015097001 to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via surface irrigation of 18 acres of public access land. The wastewater treatment facility and disposal site will be located approximately at 885 feet northwest of the intersection of County Road 3841 and County Road 7850 on Private Road 7850, in Wood County, Texas 75765. The facility was previously permitted under Permit No. WQ0014895001 which expired March 1, 2011. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on June 12, 2013.

BP AMOCO CHEMICAL COMPANY P.O. Box 1688, Texas City, Texas 77592, which operates BP Texas City Chemical Plant, a petro-

chemical manufacturing facility, tank farm, and dock area has applied for a renewal of TPDES Permit No. WQ0000452000, which authorizes the discharge of stormwater on an intermittent and flow-variable basis via Outfalls 001 - 004 and cooling tower blowdown, steam condensate, and non-process area stormwater on an intermittent and flow-variable basis via Outfall 005. The facility is located at 2800 Farm-to-Market Road 519 East, on the north bank of the Texas City Barge Canal, approximately 3200 feet east of the termination of the barge canal along Docks 50 through 53 in the City of Texas City, Galveston County, Texas.

THE DOW CHEMICAL COMPANY which operates The Dow Chemical La Porte Site, a chemical manufacturing facility (SIC 2869, 2821, and 3086), has applied to the TCEQ for a renewal of TPDES Permit No. WQ0000663000, which authorizes the discharge of process wastewater, stormwater, utility water, domestic wastewater, cooling tower blowdown, and groundwater at a daily average flow not to exceed 642,000 gallons per day via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfalls 002 and 003. The facility is located at 550 Independence Parkway South, in the City of La Porte, Harris County, Texas 77571.

THE CITY OF LUBBOCK which operates the Jim Bertram Lake System, has applied for renewal of TPDES Permit No. WQ0004599000, which authorizes the discharge of groundwater collected from beneath the City of Lubbock Land Application Site to the Jim Bertram Lake System at a daily average flow not to exceed 3,000,000 gallons per day. The facility is located on the North Fork Double Mountain Fork Brazos River, within the city limit of Lubbock, Lubbock County, Texas 79415.

LONE STAR NGL MONT BELVIEU LP which operates a pipeline transportation and storage terminal facility, has applied for a renewal of TPDES Permit No. WQ0004876000, to authorize the discharge of stormwater at an intermittent and flow-variable rate. The facility is located at 4201 Farm-to-Market Road 1942, west of the City of Mont Belvieu and north of the City of Baytown, on the northside of the Coastal Water Authority canal road on the levee, 0.6 miles from where the canal road on the levee intersects Crosby-Barbers Hill Road (FM 1942), near the intersection of Barbers Hill Road and Crosby-Barbers Hill Road (FM 1942), Harris County, Texas 77521.

ELG METALS INC P.O. Box 1319. Channelview, Texas 77530, which operates a scrap metal processing facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed TPDES Permit No. WQ0005018000, to authorize the discharge of stormwater at an intermittent and flow variable basis via Outfall 001. The facility is located at 15135 Jacintoport Boulevard, Houston, Harris County, Texas 77015.

CITY OF ROXTON has applied for a renewal of TPDES Permit No. WQ0010204001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 2,400 feet southeast of the intersection of Farm-to-Market Road 137 and Chaparral Railroad on the north side of Denton Creek and on the south side of the City of Roxton in Lamar County, Texas 75477.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010518001, 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 approximately 1,000 feet east of Sweetwater Street on the south side of Halls Bayou in Harris County, Texas 77037.

KWIK KOPY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013059001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gal-

lons per day. The facility is located at 12715 Telge Road, 1.5 miles north of the intersection of Telge Road and State Highway 6 and U.S. Highway 290 in Harris County, Texas 77429.

CITY OF CRANFILLS GAP has applied for a renewal of TPDES Permit No. WQ0014169001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 900 feet southeast of the intersection of State Highway 22 and Farm-to-Market Road 219 (3rd Street) in Bosque County, Texas 76637.

WESTSIDE WATER LLC a water and wastewater utility provider, has applied for a new permit, TPDES Permit No. WQ0015101001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 85,000 gallons per day. The facility will be located approximately 4,850 feet west of the intersection of Clay Road and Pitts Road and 4,650 feet north of Clay Road in Waller County, Texas 77449.

EAST RIO HONDO WATER SUPPLY CORPORATION has applied for a new permit, TPDES Permit No. WQ0015162001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility will be located approximately 1.98 miles east of the intersection of U.S. Highway 83/77 and State Highway 100, on the south side of State Highway 100 in Cameron County, Texas 78586.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

SOUTH CENTRAL WATER COMPANY has applied for a minor amendment to the TPDES Permit No. WQ0015069001 to authorize a change in the facility location description by adding that the facility is on the south side of Interstate Highway 20 and in the discharge route description by excluding the 3,200 foot pipe. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located 3,300 feet west-southwest of the intersection of South Farm-to-Market Road 818 and Interstate Highway 20, on the south side of Interstate Highway 20 in Howard County, Texas 77720.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201400125  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 15, 2014



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on January 8, 2014, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. City of Bridge City; SOAH Docket No. 582-13-4773; TCEQ Docket No. 2011-1907-MWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against City of Bridge City on a date and time to be deter-

mined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201400128

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 15, 2014



## Texas Facilities Commission

### Request for Proposals #303-5-20422

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-5-20422. TFC seeks a five (5) or ten (10) year lease of approximately 8,202 square feet of office space in Laredo, Texas.

The deadline for questions is January 28, 2014, and the deadline for proposals is February 11, 2014, at 3:00 p.m. The award date is March 19, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=109557](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=109557).

TRD-201400091

Kay Molina

General Counsel

Texas Facilities Commission

Filed: January 10, 2014



## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project during the period of December 4, 2013 through January 13, 2014. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the General Land Office's web site. The notice was published on the web site on January 15, 2014. The public comment period for this project will close at 5:00 p.m. on February 14, 2014.

## FEDERAL AGENCY ACTIVITIES:

**Applicant: U.S. Army Corps of Engineers (non-federal sponsor is the Brownsville Navigation District);** Location: The Brazos Island Harbor (BIH) Channel Improvement project site is located at the Brownsville Ship Channel in Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: Port Isabel, Laguna Vista, Palmito Hill, and East Brownsville, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 26.00745 North; Longitude: 97.27346 West.

**Project Description:** The applicant proposes to conduct the BIH Channel Improvement project that would extend the Brownsville Ship Channel Entrance Channel 3/4 of a mile farther into the Gulf of Mexico. The Entrance and Jetty Channels from Station -17+000 to 0+000 would be deepened to a depth of 54 feet MLLW. From Station 0+000 to 84+200, the Main Channel would be deepened to a depth of 52 feet MLLW. From Station 84+200 to 86+000, the existing channel is 42 feet deep and no deepening is proposed. The channel would be maintained at the existing depth of 36 feet MLLW from Station 86+000 to the end of the Turning Basin at 89+500, as ships will have been light-loaded or unloaded before entering. No channel widening is proposed and channel side slopes would remain the same as the existing project - 1 foot vertical over 6 feet horizontal in the Entrance and Jetty Channels; 1 foot vertical over 3 feet horizontal from station 0+000 to 35+000 and 1 foot vertical over 2 1/2 feet horizontal from station 35+000 through 89+500 in the Main Channel. No improvements are proposed for the existing jetties. If the project is authorized, it is estimated that the 29-month long construction period could be finished and the project completed by 2021. The least cost dredging disposal alternative includes the beneficial use of maintenance material from the Entrance and Jetty Channels, and the first 11,000 feet of the Main Channel for placement into the nearshore Feeder Berm off of South Padre Island. No environmental mitigation would be required as the plan would cause only negligible environmental impacts. Additional details of the project can be obtained from the Draft Integrated Feasibility Report and Environmental Assessment available online at: <http://www.swg.usace.army.mil/BusinessWithUs/PlanningEnvironmentalBranch/DocumentsforPublicReview.aspx>.

CMP Project No: 14-1310-F1.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the CMP goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Newby at the above address or by email.

TRD-201400149

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: January 15, 2014



## Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

Being a Coastal Boundary Survey, dated September 2013, by Nedra Foster, Licensed State Land Surveyor, delineating the line of Mean High Water and Mean Higher High Water, along a portion of the shoreline of Cowtrap Lake No. 2, at the San Bernard National Wildlife Refuge, same line being situated in and traversing the Solomon Blundell Survey, Abstract 501, the C. R. Cox Survey, Abstract 692, and the C. G. & H. H. Alsberry Survey, Abstract 4, Brazoria County. The survey is associated with General Land Office (GLO) lease No. SL20130042 and U.S. Army Corps of Engineers (USACE) Project No. SWG-2013-00436.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5212, email at bill.o'hara@glo.texas.gov, or fax at (512) 463-5223.

TRD-201400086

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: January 9, 2014



#### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

Coastal Boundary Survey, dated April 9, 2013, by J. L. Brundrett, Registered Professional Land Surveyor and duly elected Aransas County Surveyor, delineating the line of Mean Higher High Water along the northerly shore of Aransas Bay, same line being a portion of the littoral boundary line of the William Lewis Survey, Abstract 96 and Aransas Bay, Submerged Land Tract 68. The survey is associated with and in support of channel dredging, along with breakwater and bulkhead construction, proposed under Texas General Land Office lease number LC20140007 and is located on Lamar Peninsula approximately 1,400 feet easterly from Front Street at coordinates N 28.129991°, W 96.981774°, WGS84.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5212, email bill.o'hara@glo.texas.gov, or fax (512) 463-5223.

TRD-201400087

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: January 9, 2014

## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Community Based Alternatives Personal Attendant Services and Associated Consumer Directed Services Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Thursday, February 13, 2014, at 1:00 p.m. to receive public comment on proposed rate increases in the Community Based Alternatives - Home and Community Support Services (CBA-HCSS) waiver and associated Consumer Directed Services (CDS) programs operated by the Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the Brown-Healy Building, located at 4900 North Lamar, Austin, Texas. Entry is through Security at the front of the building facing North Lamar. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes rate increases for CBA-HCSS Personal Attendant Services (PAS) and associated CDS rate(s). The proposed rates will be effective March 1, 2014, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** Effective September 1, 2013, DADS amended 40 TAC Chapter 49, Contracting for Community Care Services, and HHSC amended its managed care contracts to incorporate a minimum wage requirement of \$7.50 per hour for personal attendants (to increase to \$7.86 effective September 1, 2014). These changes were made in response to the 2014-15 General Appropriations Act (Article II, Special Provisions, §61, Senate Bill 1, 83rd Legislature, Regular Session, 2013) which indicated that appropriations made elsewhere in the Act included funds for an increase in the base wage of personal attendants to \$7.50 an hour in fiscal year 2014 and \$7.86 an hour in fiscal year 2015. HHSC proposes to increase the attendant compensation rate component for nonparticipating and participating contracts in the Attendant Compensation Rate Enhancement for the CBA-HCSS program and associated rate(s) in the CDS program to support the required minimum wage.

The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter C, §355.503, Reimbursement Methodology for the Community Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Program, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, and §355.114, Consumer Directed Services Payment Option. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, and §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs, and Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on January 31, 2014. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475;



or by e-mail at [doug.odle@hhsc.state.tx.us](mailto:doug.odle@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7401; or by e-mail to [doug.odle@hhsc.state.tx.us](mailto:doug.odle@hhsc.state.tx.us). In addition, written comment may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar, Austin, Texas 78751.

TRD-201400131

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: January 15, 2014



### Notice of Public Hearing on Proposed Medicaid Payment Rates for 2014 Annual Healthcare Common Procedure Coding System Updates for Clinical Diagnostic Laboratory Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 19, 2014, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the 2014 Annual Healthcare Common Procedure Coding System (HCPCS) Updates for Clinical Laboratory Services.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements. HHSC also will broadcast the public hearing; the broadcast can be accessed at <http://www.hhsc.state.tx.us/news/meetings.asp>. The broadcast will be archived and can be accessed on demand at the same website.

**Proposal.** The payment rates for the Annual HCPCS Updates for Clinical Diagnostic Laboratory Services are proposed to be effective January 1, 2014.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8610, which addresses the reimbursement methodology for Clinical Laboratory Services.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after February 12, 2014. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [sarah.hambrick@hhsc.state.tx.us](mailto:sarah.hambrick@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [sarah.hambrick@hhsc.state.tx.us](mailto:sarah.hambrick@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand-delivered to Texas

Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance so appropriate arrangements can be made.

TRD-201400113

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: January 13, 2014



## Department of State Health Services

### Notice of Certification of Nonprofit Hospitals or Hospital Systems for Limited Liability

The Hospital Survey Program in the Center for Health Statistics, Department of State Health Services (department), has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability in accordance with the Health and Safety Code, §311.0456. We received requests for certification from 14 hospitals. We will notify each hospital by mail that is certified in accordance with §311.0456. Therefore, if you have any comments or questions about the following certification results, please contact Mr. Dwayne Collins of the department's Center for Health Statistics.

**Certified: 1 non-profit hospital system (6 hospitals) and 6 non-profit hospitals** were determined to be eligible for certification based on information that they provided; i.e., charity care in an amount equal to or greater than 8 percent of their net patient revenue and that they provided 40 percent or more of the charity care in their counties. The certification issued under Health and Safety Code, §311.0456, to a non-profit hospital or hospital system takes effect on December 31, 2013, and expires on the anniversary of that date.

#### Seton Healthcare System - Travis County only (6 hospitals)

1. Dell Children's Medical Center in Travis County;
2. Seton Medical Center Austin in Travis County;
3. Seton Northwest Hospital in Travis County;
4. Seton Shoal Creek Hospital in Travis County;
5. Seton Southwest Hospital in Travis County; and
6. University Medical Center at Brackenridge Hospital in Travis County.
7. Seton Highland Lakes in Burnet County;
8. Seton Medical Center Hays in Hays County;
9. Seton Smithville Regional Hospital in Bastrop County;
10. Hillcrest Baptist Medical Center in McLennan County;
11. Shannon West Texas Memorial Hospital in Tom Green County; and
12. Seton Medical Center Williamson in Williamson County.

**Not Certified: 2 non-profit hospitals** were not certified because, based on their survey data, they did not provide charity care in an amount equal to or greater than 8 percent of their net patient revenue nor did they provide 40 percent of the charity care in their counties.

1. Seton Edgar B. Davis in Caldwell County; and

2. Scott and White Memorial Hospital in Bell County.

For further information about this report, please contact Mr. Dwayne Collins or Mrs. Andria Orbach in the Center for Health Statistics of the Department of State Health Services, telephone (512) 776-7261.

TRD-201400119

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: January 14, 2014

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**Texas Higher Education Coordinating Board**

**Notice of Intent to Engage in Negotiated Rulemaking - Capital Projects (Public Universities, Health-Related Institutions, Technical and State Colleges Only)**

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the establishment of statewide standards for newly purchased improved real property added to an institution's educational and general buildings and facilities inventory as well as the construction, repair, or rehabilitation of buildings and facilities at public universities, health-related institutions, technical and state colleges of higher education. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents of public universities, health-related institutions, technical, and state colleges of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 21 individuals responded (out of approximately 64 affected institutions) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for capital projects. The authority of the volunteers and nominations includes Presidents, Vice Presidents and Directors. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high, and that there is a good probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for capital projects:

- 1) Public universities;
- 2) Public health-related institutions;
- 3) Public technical and state colleges; and
- 4) Texas Higher Education Coordinating Board

The THECB proposes to appoint the following 14 individuals to the negotiating rulemaking committee for capital projects to represent affected parties and the agency:

**Public Health-Related Institutions**

Kirby Vahle, Vice President for Facilities Management, The University of Texas Southwestern Medical Center

**Public Universities**

Brian J. May, President, Angelo State University

Marilyn Fowle, Vice President for Business Affairs and Finance, Midwestern State University

Al Hooten, Vice President for Finance and Operations, Sam Houston State University

Lee Brittain, Director, Physical Plant, Stephen F. Austin State University

Gaylene Nunn, Vice President for Finance and Administration, Texas A&M University-Central Texas

John Casey, Director, Contracts and Property, Texas A&M University-Corpus Christi

Peter E. Graves, Vice Chancellor for Contract Administration, Texas State University System

Michael S. Molina, Vice Chancellor for Facilities Planning and Construction, Texas Tech University System

Brenda Floyd, Vice President for Finance and Administration, Texas Woman's University

J. Douglas Lipscomb, University Architect, Director of Facilities Planning and Development, The University of Texas at San Antonio

Gary Barnard, Director of Accounting and Administration, The University of Texas System

James Maguire, Vice Chancellor for Administrative Services and Chief Architect, University of North Texas System

Texas Higher Education Coordinating Board

Susan Brown, Assistant Commissioner for Planning and Accountability

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- Name and contact information of the person submitting the application;
- Description of how the person is significantly affected by the rule;
- Name and contact information of the person being nominated for membership; and
- Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for capital projects. Comments and applications for membership of the committee must be submitted by February 3, 2014 to:

Linda Battles, Associate Commissioner/Chief of Staff

Texas Higher Education Coordinating Board

P.O. Box 12788 Austin, Texas 78711, or

Linda.Battles@thehb.state.tx.us.

TRD-201400146

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: January 15, 2014



Notice of Intent to Engage in Negotiated Rulemaking - Texas Educational Opportunity Grants (Public Community, Technical, and State Colleges Only)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the Texas Educational Opportunity Grants ("TEOG") Program allocation methodology for public community, technical, and state colleges of higher education and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents of public community, technical, and state colleges of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 18 individuals responded (out of approximately 86 affected institutions) and expressed an interest to participate or nominated someone from their institution to participate on the TEOG negotiated rulemaking committee. The authority of the volunteers and nominations includes Presidents, Vice Presidents and Directors. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high, and that there is a good probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee on TEOG:

- 1) Public community colleges;
- 2) Public technical colleges;
- 3) Public state colleges;
- 4) Texas Association of Community Colleges; and
- 5) Texas Higher Education Coordinating Board.

The THECB proposes to appoint all 18 volunteer and nominated individuals to the negotiating rulemaking committee on TEOG to represent affected parties and the agency:

Public Community Colleges

Harold G. Whitis, District Director of Student Financial Aid, Alamo Colleges

Terry Bazan, Executive Director for Student Assistance and Veteran Affairs, Austin Community College

Annabelle L. Smith, Director Student Financial Aid and Veteran Affairs, Central Texas College

Raul H. Lerma, Executive Director for Financial Aid, El Paso Community College

Juanita Chrysanthou, Vice Chancellor of Student Success, Lone Star College

Gene Gooch, Vice President of Finance and Administrations, McLennan Community College

Kristal Nicholson, Director of Financial Aid, Navarro College

Ashley Tatum, Director of Financial Aid and Veteran Services, North Central Texas College

Denise Welch, Director of Financial Aid, Panola College

Pam Anglin, President, Paris Junior College

Robert Merino, Director of Financial Aid Services, San Jacinto College

Miguel Carranza, Associate Dean of Student Financial Services and Veteran Affairs, South Texas College

Martin Hernandez, Director of Financial Aid, Texarkana College

Kim Obsta, Director of Financial Aid, Victoria College

Public Technical Colleges

Jackie Adler, Director of Financial Aid, Texas State Technical College-Waco

Public State Colleges

David Mosley, Coordinator of Institutional Effectiveness and Grants, Lamar Institute of Technology

Texas Association of Community Colleges (TACC)

Steve Johnson, Vice President of Public Affairs

Texas Higher Education Coordinating Board

Dan Weaver, Assistant Commissioner for Business and Support Services

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- Name and contact information of the person submitting the application;
- Description of how the person is significantly affected by the rule;
- Name and contact information of the person being nominated for membership; and
- Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee. Comments and applications for membership of the committee must be submitted by February 3, 2014, to:

Linda Battles, Associate Commissioner/Chief of Staff

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711, or

Linda.Battles@thehb.state.tx.us.

TRD-201400132

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: January 15, 2014



**Texas Department of Insurance**

Company Licensing

Application for admission to the State of Texas by WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK, a foreign life, accident and/or health company. The home office is in Garden City, New York.

Application for admission to the State of Texas by GLOBAL AEROSPACE UNDERWRITERS, a foreign joint underwriting association. The home office is in Parsippany, New Jersey.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201400145

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: January 15, 2014



## Texas Lottery Commission

Instant Game Number 1591 "White Ice 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1591 is "WHITE ICE 8'S". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1591 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1591.

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, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, BLACK 8 SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000. The possible blue Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20 and BLUE 8 SYMBOL.

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. 1591 - 1.2D

PLAY SYMBOL	CAPTION
1 (BLACK)	ONE
2 (BLACK)	TWO
3 (BLACK)	THR
4 (BLACK)	FOR
5 (BLACK)	FIV
6 (BLACK)	SIX
7 (BLACK)	SVN
9 (BLACK)	NIN
10 (BLACK)	TEN
11 (BLACK)	ELV
12 (BLACK)	TLV
13 (BLACK)	TRN
14 (BLACK)	FTN
15 (BLACK)	FFN
16 (BLACK)	SXN
17 (BLACK)	SVT
19 (BLACK)	NTN
20 (BLACK)	TWY
BLACK 8 SYMBOL	WIN
1 (BLUE)	ONE
2 (BLUE)	TWO
3 (BLUE)	THR
4 (BLUE)	FOR
5 (BLUE)	FIV
6 (BLUE)	SIX
7 (BLUE)	SVN
9 (BLUE)	NIN
10 (BLUE)	TEN
11 (BLUE)	ELV
12 (BLUE)	TLV
13 (BLUE)	TRN
14 (BLUE)	FTN
15 (BLUE)	FFN
16 (BLUE)	SXN
17 (BLUE)	SVT
19 (BLUE)	NTN
20 (BLUE)	TWY
BLUE 8 SYMBOL	DOUBLE
\$2.00 (BLACK)	TWOS
\$4.00 (BLACK)	FOURS
\$5.00 (BLACK)	FIVES
\$10.00 (BLACK)	TENS
\$20.00 (BLACK)	TWENTY
\$50.00 (BLACK)	FIFTY
\$100 (BLACK)	ONE HUND
\$1,000 (BLACK)	ONE THOU
\$20,000 (BLACK)	20 THOU

E. Serial Number - A unique 22 (twenty-two) 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 \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

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 22 (twenty-two) digit number consisting of the four (4) digit game number (1591), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1591-0000001-001.

K. Pack - A Pack of "WHITE ICE 8'S" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; Tickets 003 and 004 on the next page; etc.; and Tickets 149 and 150 will be on the last page. Please note the books will be in an A - B configuration.

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 "WHITE ICE 8'S" Instant Game No. 1591 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 "WHITE ICE 8'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If the player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbol, the player wins the PRIZE for that number. If a player reveals a BLACK "8" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a BLUE "8" Play Symbol, the player wins DOUBLE 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 22 (twenty-two) 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 22 (twenty-two) 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 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) 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. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket, regardless of color.

C. No duplicate WINNING NUMBERS Play Symbols on a Ticket.

D. The "BLUE 8" (doubler) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

E. The "BLACK 8" (auto win) Play Symbol will never appear more than once on a Ticket.

F. No more than two (2) matching non-winning Prize Symbols will appear on a Ticket.

G. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

I. There will be a minimum of 3 and a maximum of 7 blue Play Symbols on every Ticket.

J. A match between a WINNING NUMBER Play Symbol and a YOUR NUMBERS Play Symbol is a win, regardless of color.

K. The top prize will appear on every Ticket unless otherwise restricted by other parameters, play action or the prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "WHITE ICE 8'S" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, 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 or \$100 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 "WHITE ICE 8'S" Instant Game prize of \$1,000 or \$20,000, 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 "WHITE ICE 8'S" 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 "WHITE ICE 8'S" 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 "WHITE ICE 8'S" 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 §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. 1591. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1591 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,800,960	8.93
\$4	1,479,360	10.87
\$5	192,960	83.33
\$10	225,120	71.43
\$20	96,480	166.67
\$50	86,430	186.05
\$100	14,770	1,088.69
\$1,000	120	134,000.00
\$20,000	16	1,005,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.13. 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. 1591 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. 1591, 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-201400115

Bob Biard

General Counsel

Texas Lottery Commission

Filed: January 14, 2014



Instant Game Number 1632 "Bonus Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1632 is "BONUS BREAK THE BANK". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1632 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1632.

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, MONEY STACK SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$7,500 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. 1632 - 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	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY STACK SYMBOL	WIN\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV

\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$7,500	75 HUND
\$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, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$7,500 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 (1632), 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: 1632-0000001-001.

K. Pack - A Pack of "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" Instant Game No. 1632 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 "BONUS BREAK THE BANK" Instant Game is determined once the latex on the Ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols within the same game, the player wins the prize for that number. If a player reveals a "MONEY STACK" Play Symbol, the player wins the prize instantly. 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:

- Exactly 38 (thirty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The Ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
- The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The Ticket must not be counterfeit in whole or in part;
- The Ticket must have been issued by the Texas Lottery in an authorized manner;
- 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;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The Ticket must be complete and not miscut and have exactly 38 (thirty-eight) 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;
- 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;
- The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- Each of the 38 (thirty-eight) 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;
- 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. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBER Play Symbols on a Ticket.

C. No duplicate LUCKY NUMBER Play Symbols on a Ticket.

D. No more than four matching non-winning Prize Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBER Play Symbol (i.e., 5 and \$5).

G. The MONEY STACK (auto win) Play Symbol will never appear more than once in a game, but may appear once in both games on Tickets that win 2 or more times.

H. No YOUR NUMBER Play Symbol in one game will match a LUCKY NUMBER Play Symbol in the other game.

I. The top prize will appear on every Ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Instant Game prize of \$5.00, \$10.00, \$15.00, \$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 "BONUS BREAK THE BANK" Instant Game prize of \$1,000, \$7,500 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 "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" 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 §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 15,000,000 Tickets in the Instant Game No. 1632. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1632 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,400,000	10.71
\$10	1,600,000	9.38
\$15	550,000	27.27
\$20	150,000	100.00
\$50	195,000	76.92
\$100	37,500	400.00
\$500	2,000	7,500.00
\$1,000	375	40,000.00
\$7,500	40	375,000.00
\$100,000	16	937,500.00

\*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 3.81. 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. 1632 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. 1632, 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-201400116  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: January 14, 2014

◆ ◆ ◆  
**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 January 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 Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42152.

The requested amendment is to expand the service area footprint to include the city limits of Plainview, 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 tele-

phones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42152.

TRD-201400148  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 15, 2014



### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 13, 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 Northland Cable Television, Inc. for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42154.

The requested amendment is to expand the service area footprint to include the city limits of Fairfield, 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 42154.

TRD-201400129  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 15, 2014



### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 7, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Denton, Tarrant, and Wise Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company, LLC to Amend its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Denton, Tarrant, and Wise Counties (Hicks-Elizabeth Creek CCN), Docket Number 42087.

The Application: The application of Oncor Electric Delivery Company, LLC (Oncor) for a proposed 138-kV transmission line in Denton, Tarrant and Wise Counties is designated as the Hicks-Elizabeth Creek 138-kV Transmission Line Project. The facilities include construction of a new 138-kV double-circuit transmission line connecting the existing Oncor Hicks Switching Station, located north of the intersection of North Saginaw Boulevard and Bailey Boswell Road in Tarrant County, to the existing Oncor Elizabeth Creek Substation, located southwest of the intersection of Interstate Highway 35 West and State Highway 114 in Denton County. The total estimated cost for the project is approximately \$43,000,000.

The proposed project is presented with 52 alternate routes and is estimated to be approximately 12 to 27 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is February 21, 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 42087.

TRD-201400084  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 9, 2014



### Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 7, 2014, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Dell Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to P.U.C. Substantive Rule §26.406, Docket Number 42143.

The Application: Dell Telephone Cooperative, Inc. (Dell) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Dell. The petition requests that the commission allow Dell recovery of funds from the TUSF in the amount of \$2,140,039.00 for 2014, to replace projected FUSF revenue reductions. Dell is not seeking any rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 42143.

TRD-201400085  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 9, 2014



## Texas Department of Transportation

### Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, February 18, 2014, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the January 2014 Out of Cycle Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP

also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed January 2014 Out of Cycle Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at: <http://www.txdot.gov/government/programs/stips.html>

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Friday, February 14, 2014, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed January 2014 Out of Cycle Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Tuesday, February 25, 2014.

TRD-201400123

Angie Parker

Associate General Counsel

Texas Department of Transportation

Filed: January 14, 2014



### Public Notice - Public Hearing, Webb County-City of Laredo Regional Mobility Authority

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on the proposed formation of the Webb County-City of Laredo Regional Mobility Authority (Webb

County-Laredo RMA) by Webb County and the City of Laredo (RMA petitioners).

The RMA petitioners filed a revised petition requesting authorization from the Texas Transportation Commission to form the Webb County-Laredo RMA. As proposed, the Webb County-Laredo RMA would encompass the boundaries of Webb County and would be governed by a board of directors consisting of nine members. Four of the nine board members would be appointed by the Webb County Commissioners Court and four board members would be appointed by the Laredo City Council. In addition to the eight board members appointed by the county and city, the presiding officer of the board will be appointed by the Governor. The proposed initial project of the Webb County-Laredo RMA is an approximately 10.8 mile project to upgrade Loop 20 to Interstate standards from US 59 to the World Trade International Bridge IV. This project will upgrade Loop 20 from the existing US 59 overpass to World Trade International Bridge IV to an urban expressway with continuous frontage roads that contain mainlane overpasses at the major street and highway intersections (i.e., Airport Drive, Jacaman Road, University Boulevard, Del Mar Boulevard, Shiloh Road, International Boulevard and the mainlanes over the IH 35 mainlanes as well as two direct connectors to IH 35). Additional right-of-way for the project will be required from approximately International Boulevard to south of Airport Drive.

This major upgrade of Loop 20 is anticipated to proceed in phases and will involve changing the official highway designation of this portion of Loop 20 to US 59. As a result of this change, US 59 from Loop 20 to IH 35 in central Laredo would, subject to the approval of the Texas Transportation Commission, be designated as Business US 59. It is the intent of Webb County, the City of Laredo and TxDOT that this portion of Loop 20/US 59 would become a part of the western leg of IH 69 when this roadway is upgraded to Interstate roadway standards. The department intends to submit an application to designate this portion of Loop20/US 59 as IH 69 after the upgrade is completed.

Pursuant to 43 TAC §26.12, the department will hold a public hearing on the date, time, and location indicated below to receive public comments and assess the level of public support concerning the proposed Webb County-Laredo RMA:

Tuesday, February 4, 2014, 6:00 p.m.

Texas Department of Transportation - Laredo District Headquarters Office

Large Meeting Room

1817 Bob Bullock Loop

Laredo, Texas 78043

All interested persons are invited to attend this Public Hearing and to provide input. Local officials, their staff members and Laredo District staff will be available before and after the Public Hearing (from 5:00 to 7:00 p.m.) to informally discuss the Webb County-Laredo RMA formation as well as the initial project for the upgrade of Loop 20/US 59 to Interstate highway standards.

Those desiring to make official comments may register starting at 5:00 p.m.. Oral and written comments may be presented at the public hearing, or written comments may be submitted by mail or electronic mail. To be included in the official record of the public hearing, written comments must be received by 5:00 p.m. on February 13, 2014. Written comments should be mailed to Melisa D. Montemayor, Laredo District Administrator, Texas Department of Transportation, 1817 Bob Bullock Loop, Laredo, Texas 78043. Comments submitted via electronic mail should be sent to [Melisa.Montemayor@txdot.gov](mailto:Melisa.Montemayor@txdot.gov).

Persons who need special communications or other special needs should contact: Raul Leal, the Texas Department of Transportation - Laredo District Public Information Officer, at (956) 712-7416 or e-mail: Raul.Leal@txdot.gov at least two days before the hearing so that appropriate arrangements can be made. Spanish speaking staff will be present at this hearing. This Public Hearing will be documented in a verbatim record.

Copies of the Webb County-Laredo RMA petition that contains more detailed information will be available at the office of the Webb County Judge Danny Valdez (Webb County Courthouse, 1000 Houston Street - Third Floor, Laredo, Texas), the office of the City of Laredo Mayor Raul Salinas (1110 Houston Street, Laredo, Texas), and the Texas Department of Transportation - Laredo District Headquarters Office (1817 Bob Bullock Loop, Laredo, Texas). Copies of the petition may also be requested by contacting Raul Leal, the Texas Department of Transportation - Laredo District Public Information Officer, at (956) 712-7416 or Raul.Leal@txdot.gov.

The department will also publish notices of the public hearing concerning the formation of the Webb County-Laredo RMA in the *Laredo Morning Times* newspaper.

TRD-201400124  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 14, 2014

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## The Texas A&M University System

### Notice of Sale of Oil and Gas Lease

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all policies and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 743, The Texas A&M University System, Moore-Connally Building, 301 Tarrow, College Station, Texas, at 10:00 a.m., Wednesday, February 19, 2014, an oil and gas lease on the following described land in Loving County, Texas.

The property offered for lease contains 360 net mineral acres, more or less, and is more particularly described as follows:

Section 20, Block 54, Township 1, T&P RR Co. Survey, Loving County - 3/8th mineral interest; Section 24, Block 54, Township 1, T&P RR Co. Survey, Loving County - 3/16th mineral interest.

The minimum lease terms, which apply to this tract, are as follows:

- (1) Bonus: Market rate, but in no event will it be less than \$1,400 per net mineral acre
- (2) Royalty: 25%
- (3) Primary term: Three (3) years
- (4) Delay Rental: \$25 per acre
- (5) Net Mineral Acres: 360 (more or less)

The lease will be without warranty of any kind.

Each bidder will be required to conduct its own due diligence to confirm title to, and availability of, the mineral interests being leased.

Prior to bidding at the auction, your company will be required to register and sign a Certification Statement agreeing to be bound by the terms thereof.

The successful bidder shall pay 25% of the bonus amount by 5:00 p.m. the day of the auction.

The balance shall be paid within 24 hours after notification that the bid was accepted.

All payments shall be by certified check, cashier's check or wire transfer.

Failure to pay the balance of the amount bid will result in forfeiture of the 25% paid.

The Texas A&M University System RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

Should The Texas A&M University System reject all bids, the bid bonus will be returned to you if you are the successful bidder; however, administration/advertisement fees are not refundable.

Further inquiries concerning oil and gas leases on A&M System land should be directed to: Melody Meyer, System Real Estate, The Texas A&M University System, 301 Tarrow, 6th Floor, College Station, Texas 77840-7896; (979) 458-6350.

TRD-201400101  
Don Barwick  
HUB and Procurement Manager  
The Texas A&M University System  
Filed: January 13, 2014

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## Workforce Solutions Brazos Valley Board

### Notice of Release of Request for Proposals for Workforce Investment Act Youth In-School Machinist Training Services

On January 15, 2014, Workforce Solutions Brazos Valley Board (WS-BVB) and its fiscal/administrative agent Brazos Valley Council of Government (BVCOG) released a Request for Proposal (RFP) for Workforce Investment Act (WIA) in-school youth machinist training services. The board is seeking a single contractor to provide machinist occupational training to 7 WIA eligible high school seniors, enrolled in a Brazos Valley public independent school district. WSBVB provides publicly funded employment and training services within Brazos, Washington, Robertson, Burleson, Madison, Leon and Grimes counties. WSBVB will accept proposals from public and private organizations or individuals to provide these training services.

Potential respondents may view and print the RFQ at [www.bvjobs.org](http://www.bvjobs.org). Difficulties downloading the RFP document should be referred to Vonda Morrison at (979) 595-2800 or [vmorrison@bvcog.org](mailto:vmorrison@bvcog.org). The contact person for this RFQ is Vonda Morrison. A non-mandatory bidders conference call will be conducted Friday, January 24, 2014 from 1:00 p.m. to 2:00 p.m. CST. Potential proposers should call Vonda Morrison no later than 9:00 a.m., CST, on the day of the call to receive the phone number for the call. Potential proposers may submit questions by email to Vonda Morrison up until noon January 23, 2014. All questions and answers will be posted on [www.bvjobs.org](http://www.bvjobs.org) by January 28, 2014.

Proposals in response to this RFP are due no later than 4:00 p.m., CST, February 14, 2014. They may be hand-delivered to Workforce Solutions Brazos Valley Board at 3991 East 29th, Bryan, Texas 77802 or, if mailed, proposals should be addressed to WSBVB, P.O. Box 4128, Bryan, Texas 77805. Proposals arriving after the due date and time will not be accepted regardless of postmarked date.

This is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Re-

lay Texas (800) 735-2989, TDD (800) 735-2988, Voice, TTY (979)  
595-2819.



TRD-201400144

Tom Wilkinson

Executive Director

Workforce Solutions Brazos Valley Board

Filed: January 15, 2014



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 38 (2013) is cited as follows: 38 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 "38 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 38 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

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